



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
13 November 2013

English only

Fifth session

Panama City, 25-29 November 2013

Item 7 of the provisional agenda*

Other matters

Document submitted by Transparency International, a non-governmental organization in consultative status with the Economic and Social Council**

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* CAC/COSP/2013/1.

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Zimbabwe – Civil Society Report

By Transparency International Zimbabwe An input to the UNCAC Implementation Review Mechanism: Second year of review of UNCAC chapters III and IV – Executive Summary –

This is the executive summary of a Transparency International Zimbabwe report¹ of April 2013 that reviews Zimbabwe's implementation and enforcement of selected articles in the United Nations Convention against Corruption (UNCAC) chapters III (Criminalization and Law Enforcement) and IV (International Cooperation).

The report is intended as a contribution to the UNCAC peer review process of Zimbabwe covering those two chapters. The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), trading in influence (Article 18), abuse of functions (Article 19), money laundering (Article 23), liability of legal persons (Article 26), protection of witnesses, experts and victims (Article 32), protection of reporting persons (Article 33), compensation for damage (Article 35) and transfer of sentenced persons (Article 45).

Zimbabwe has codified and enacted a significant portion of its principal anti-corruption legislation (the Criminal Law (Codification and reform) Act and the Anti-Corruption Commission Act for example) between the years that Zimbabwe signed and ratified the UNCAC (2004 and 2007 respectively). Even though the implementation of the provisions of the UNCAC is not complete, the new legislation is notable as it exhibits a clear desire by the Zimbabwean government to transpose the obligations placed on it by this instrument of international law. However, the enforcement of the legislation is a greater challenge.

Despite the commendable steps already taken by the Zimbabwean government, the convention has not been fully implemented. It is therefore important to consider areas of deficiencies in order to address them and achieve full compliance. From a legislative perspective the focus areas are those areas where compliance is partial due to the fact that an article in the UNCAC may be construed as existing in the legislation solely as a result of interpretation but it is not expressly encompassed. As to enforcement there are promising developments, but capacity building of the anti-corruption agency and significant improvement in the cooperation of the law enforcement bodies is needed.

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Themba Mahleka (TI Zimbabwe). The full report will be used to continue the dialogue and engagement with stakeholders, including the government, beyond the first round country review process.

Conduct of process

Table 1
Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	No

Availability of information

The availability of information needed for the report was uneven.

Legislation in Zimbabwe is well codified and readily accessible in hard copy from the Government printers and in addition, most of the legislation can be found on various websites (for free) with relative ease.

Obtaining information to assess the level of enforcement was a much more difficult process as the case law is difficult to access and the enforcement statistics have not been compiled. It is clear however, that there is indeed a level of enforcement from the cases presided over in the Magistrates' Court of Zimbabwe. The documentation of cases is however in hard copy, uncategorised and accessible only upon attaining the requisite clearance. The media has also proven to be a good source of at least the existence of enforcement. Corruption cases are regularly reported in the media, though it this is not sufficient to provide adequate statistical data. Another source of case law is the internet. It is recognised, however, that reports on the internet may not always be 100% accurate or factual.

Implementation and enforcement

Table 2
Implementation and enforcement summary table

UNCAC article	Status of implementation (Is the article Fully/Partially/ Not implemented?)	How are these provisions enforced in practice? (Good/Moderate/Poor)
Art 15 (Bribery of national public officials)	Fully	Good
Art. 16 (Bribery of foreign public officials)	Not	n/a
Art.17 (Embezzlement, misappropriation or other diversion of property by a public official)	Partially	Poor
Art. 18 (Trading in influence)	Partially	Poor
Art.19 (Abuse of functions)	Fully	Good
Art. 23 (Money laundering)	Fully	Poor
Art. 26 (Liability of legal persons)	Partially	Poor
Art. 32 (Protection of witnesses)	Partially	Poor

Art. 33 (Protection of reporting persons)	Partially	Poor
Art. 35 (Compensation for damage)	Fully	Poor
Art. 45 (Transfer of sentenced persons)	Partially	Poor

Zimbabwe has complied to quite a great extent with the provisions of the UNCAC especially with regard to the articles that form the basis of this report. Areas of good compliance are the legislative provisions on bribery of national public officials and the abuse of function or position. There is also a level of “partial” compliance with the UNCAC where for example the scope of a certain offence such as bribery or criminal abuse of functions, is broad enough to encompass other offences such as trading in influence.² Another instance where this occurs is the offence of abuse of functions that encompasses some aspects of embezzlement.³ This compliance is deemed to be partial due to the fact there are no express / direct provisions in the legislative framework of Zimbabwe addressing certain aspects of the UNCAC although these aspects may still result in criminal liability subject to the interpretation of an adjudicator or law enforcement agent making it a subjective endeavour. There is also a level of complete non-compliance such as in case of foreign bribery.

Various corruption cases have been published in law reports (see part III.) as well as been placed in the public domain through the media:

- *S v Mangoma*, presided over by Justice Bhunu (judgment delivered on the 28th day of June 2011). The accused, who was Minister of Energy and Power Development, was charged with criminal “abuse of duty as a public officer”, in contravention of Chapter IX (Bribery and Corruption) s. 174(1)(a) of the Criminal Law Code [Chapter 9:23]. The accused was acquitted by the High Court.⁴
- “CDF scandal: MP freed on bail” – an on-going (widely publicised) case of members of parliament being accused and tried for the misappropriation of USD 50,000 earmarked for constituency development. This particular article was published in the Newsday of the 23rd of February 2012;⁵

² An example is the case which appeared in the Chronicle Newspaper (17/08/2012), “Magistrate nabbed over bribery case”. The Magistrate allegedly traded in influence, but was charged with criminal abuse of functions.

www.chronicle.co.zw/index.php?option=com_content&view=article&id=39419:magistrate-nabbed-over-bribery-case-&catid=46:crime-a-courts&Itemid=138.

³ An example is the case which appeared in the Sunday Mail Newspaper (03/02/2013), “Senior Nurse to perform community service”. His actions squarely fit into Article 17, however, he was convicted of “criminal abuse of duty as a public officer”.

www.sundaymail.co.zw/index.php?option=com_content&view=article&id=33545:senior-nurse-to-perform-community-service&catid=38:local-news&Itemid=131. Another example is “CDF scandal: MP freed on bail” – an on-going (widely publicised) case of members of parliament being charged with “criminal abuse of duty as a public officer” for the misappropriation of USD 50,000 earmarked for constituency development. www.newsday.co.zw/2012/02/23/2012-02-23-cdf-scandal-mp-freed-on-bail/.

⁴ www.zimlil.org/zw/judgment/harare-high-court/2011/74 Case No: B 317/2011 Judgment Number: 74 Media Neutral Citation: [2011] ZWHHC 74 Judgment Date: 15 March 2011.

⁵ www.newsday.co.zw/2012/02/23/2012-02-23-cdf-scandal-mp-freed-on-bail/.

- “*Drama, As Prosecutor Arrested for Bribery*” – describes the arrest (by the Zimbabwe Anti-Corruption Commission) of a public prosecutor accused of receiving a bribe.⁶
- “*Bribed Police Officer Frees Prisoners*” - an on-going case in Kadoma Magistrates’ Court which was reported in the Newsday on the 5th of April 2012.⁷
- “*Prosecutor gets ox bribe*” – an on-going case in the Karoi Magistrates’ Court in which a public prosecutor allegedly received an ox to facilitate the withdrawal of assault charges against an accused person. This case was reported in the Newsday on the 19th of April 2012.⁸

Suffice it to say, the occurrence (or appearance) of such cases in the media is very common across state and non-state owned publications. This clearly shows a certain level of efforts to enforce those anti-corruption provisions that do exist. However, as already alluded to, such media reports may not conclusively and solely be relied upon for the assessment of the level of enforcement of the provisions of the UNCAC that have been criminalised or codified in Zimbabwean law.

Recommendations for priority actions

1. Improve the availability of information on cases and statistics to members of the public, including electronically accessible information.
2. Adopt provisions on criminalisation of foreign bribery. Improve legislation on protection of witnesses, experts and victims and on liability of legal persons.
3. Unify existing legislation by adoption of stand-alone acts on laundering of proceeds of crime as well as on protection of whistleblowers.
4. Build the capacity of the individuals and institutions tasked with curbing corruption.
5. Develop a more coherent enforcement system that interlinks investigation, arrest and prosecution.

⁶ www.newsday.co.zw/2012/02/23/2012-02-23-drama-as-prosecutor-arrested-for-bribery/.

⁷ www.newsday.co.zw/2012/04/05/2012-04-05-bribed-police-officer-frees-prisoners/.

⁸ www.newsday.co.zw/2012/04/19/2012-04-19-prosecutor-gets-ox-bribe/.