



ANTI-CORRUPTION HANDBOOK



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GENERAL INTRODUCTION

CHAPTER 1

There is no easy definition of corruption. The word 'corruption' is itself often used as an omnibus term to describe inordinate economic and political practices that benefit those involved.¹ When narrowly defined, it is often used to characterize the misuse of public resources by government officials for private ends,² thus leaving out corruption in the private sector. The fact that the UN Convention Against Corruption (2003) and the AU Convention on Preventing and Combating Corruption (2003) do not attempt to thoroughly define corruption is illustrative of the challenge of crafting a widely acceptable definition.

However, unlike the UN and AU corruption Conventions, the SADC Protocol Against Corruption (2001) attempts a more comprehensive definition. It considers corruption as including 'bribery and other behaviors in relation to persons entrusted with responsibilities in the public and private sectors... aimed at obtaining undue advantage of any kind for themselves and others.'³ The definition of corruption under the SADC Protocol is preferable as it goes beyond the conventional definition of corruption as a misuse of public office for private ends, to include corruption in the private sector. Corruption in this Handbook, is therefore, conceived broadly, to cover both the public and private sectors.

The negative consequences of corruption are well known. Corruption undermines the rule of law, weakens democracy, lowers the quality of public service and retards national

development. In a sense, corruption is the negation of common values and the common good and a manifest violation of the rule of law and constitutionalism. Chaskalson, then President of the South African Constitutional Court, stated the relationship between constitutionalism and corruption more eloquently:

Corruption and Maladministration are inconsistent with the rule of law...They undermine constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state.⁴

Civil Society Organisations in Zambia have been advocates of good governance. As a result, they have been involved in several initiatives aimed at fighting corruption. This Handbook is intended to be a complementary tool to their anti-corruption activities and initiatives. It contains five chapters. Chapter one is this introduction. Chapter two discusses the prevalence of corruption in the country; chapter three gives an overview of the institutional and legal framework for fighting corruption in Zambia; chapter four highlights the types and crimes of corruption; and chapter five discusses the role of CSOs in the fight against corruption.



1 Inge Amundseu, 'Political Corruption: An Introduction to the Issues' Chri Michelseu Institutite Working Paper 1999/7, 1

2 Ibid

3 SADC Protocol Against Corruption 2001, article 1

4 *South African Association of Personal Injury Lawyers V. Health Willem Hendrik and Others Case CCT 27/00 (2000)*



PREVALENCE OF CORRUPTION

Introduction

It is not easy to measure corruption. However, the prevalence of corruption can be seen from the actual cases decided by courts, from the indicators developed by organisations and from the research reports of organisations. This chapter discusses four ways of determining, in various ways, the prevalence of corruption in the country. It is intended to briefly point members of CSOs to available tools for determining the existence of corruption in the country.

PREVALENCE OF CORRUPTION

It is not easy to measure the prevalence of corruption because acts of corruption are usually done secretly with the aim of not being discovered. However, there are several ways the prevalence of corruption can be determined. These are through the following:

- Corruption cases that have gone to court and have been proved;
- Through surveys of public perception of corruption. This is usually done by organisations such as Transparency International Zambia and Afrobarometer;
- Through the findings of government oversight institutions such as the Auditor General and the Financial Intelligence Centre (FIC); and
- Reports of international organisations, such as the World Bank on corruption in Zambia.

CASES

Civil and criminal cases may give an insight into the prevalence of corruption in the country as the cases require those who allege to prove the existence of corruption. When the case is proved, a finding is made, that gives a clear, evidence-based indication of corruption. In Zambia, several cases of corruption have been brought against senior government officials, military and security leaders as well as bankers and private individuals. These cases may be commenced within Zambia, or in other countries where aspects of the alleged corruption were committed or proceeds or the offences can be found.

One of the most well-known cases was against former President, Dr Fredrick Chiluba,⁵ who was President of Zambia from 1991 to 2001. From 1995 to 2001, the Ministry of Finance transferred large sums of money mainly into the Zamtrop account held by the Zambian government at the Zambia National Commercial Bank branch in London. The money was transferred for purposes of servicing or repaying the country's external debts. Chiluba and his senior officers including their Permanent Secretary in the Ministry of Finance and his intelligence chief, conspired to abuse these resources whereby most of the money transferred for debt servicing was diverted for personal use. This money was then laundered through Meer Care and Desai, a law firm, using its client accounts, whereby Zambian officials would subsequently instruct the law firm to release the funds to support personal expenses. The money laundered in this manner was then used to buy enormous amounts of expensive cloths, luxurious properties in Belgium and South Africa. The High Court in the United Kingdom found that through this mechanism the culprits defrauded the Zambian people and found them liable to pay back a total of US \$ 58 million.⁶

In relation to Chiluba the London High Court had this to say:

At the end of the day, he was the President at the top of the control of government finances. He was uniquely positioned to prevent any corruption. Instead of preventing corruption, he actively participated in it and ensured it happened. It is difficult to find an adjective that adequately describes the failure on the part of FTJ [Chiluba]. He has defrauded the Republic. He has deprived the people over whom he was exercising stewardship on their behalf of huge sums of money which was supposed to be spent for their benefit. He has diverted those monies for wide ranging benefits of the Co-conspirators but has not shown restraint himself in the amount of money which he "plundered" from the government coffers. It is a shameful series of actions and he should be ashamed.⁷



⁵ *Attorney General of Zambia V. Meer Care and Desai (a firm) and others [2007] EWHC 952 (ch)*. See also John Hatchard, *Combating Corruption: Legal Approached to Supporting Good Governance and Integrity in Africa* (Edward Elger publishing Limited, 2014), 34 and 189.

⁶ *Ibid*

⁷ *Attorney General of Zambia V. Meer Care and Desai and other [2007] EWHC 952 (Ch)*, para 443

SURVEYS BY INDEPENDENT ORGANISATIONS

Independent organisations conduct their own surveys on the prevalence of certain forms of corruption or simply assess public perception of corruption. These may be done routinely by established organisations such as TI-Z and Afrobarometer or as oneoff research activities by academic institutions.

TI-Z (in conjunction with the Anti-Corruption Commission), for example, compiles the bi-annual Zambia Bribe Payers Index (ZBPI) Survey Report. The report details the findings on the prevalence of bribery in the service sectors of the public institutions. The 2022 ZBPI Survey Report, for example, summarized the findings of the report as follows:

- a. In 2022, an individual seeking a service from the 22 institutions covered in the survey had a 10.1 % likelihood of paying a bribe solicited by a public officer, indicative of a marginal decrease of 0.8 percentage point when compared to 2019;
- b. The least likelihood of paying a bribe solicited or demanded is observed in Ministry of Finance and National Planning (0.34%); ZRA- Tax (0.9%); NAPSA (1.0 %); ZRA-Customs (1.1%); Immigration Department (1.1%); and PACRA (1.2%);
- c. The most likelihood of paying a bribe solicited or demanded is in Zambia Police Service- excluding Traffic Section, 55.0 %; RATSA, 29.2 %; Zambia Police Service- Traffic Section, 24.5 %; ZESCO, 21.1%; Local Authorities (Councils), 20.4%; Ministry of Education, 19.2%; and Health Services (Hospital, Clinic, Health Centre), 18.5%;
- d. A comparison with the 2019 ZBPI based on percentage point difference shows most decrease in Zambia Police Service (Traffic Section), 16.2;

RATSA, 9.5; Zambia Police Service, excluding Traffic Section, 4.6; ZRA-Customs, 2.9; Ministry of Education, 2.9; Local Authorities (Councils), 2.5; and Passport Office, 1.6;

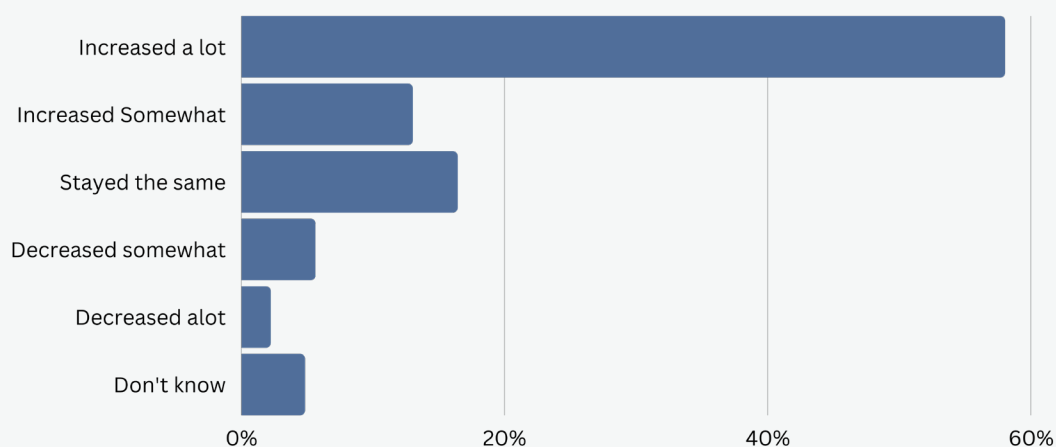
- e. Percentage point increases are observed in ZESCO, 11.3; Health Services, 9.3; Ministry of Lands (Land Issues only), 3.9; Ministry of Agriculture, 1.9; and Public Service Pensions Fund (PSPF), 1.8; and
- f. Service Delivery Charters and Integrity Committees likely effect on likelihood of paying a bribe solicited is indeterminate, as their effect evidences both decrease and increase; and decreases in the likelihood of paying a bribe solicited are observed in 63.6 % of the institutions that have both Service Charters and Integrity Committees; increases in 36.4 %.⁸

Equally, Afrobarometer conducts bi-annual surveys on several socio-economic issues in the country. These include many aspects of corruption. The 2020 survey, for example, had several questions relating to prevalence of corruption among key government officials, including the President, parliamentarians and police. The following was one of the questions and responses from the respondents:

Question: In your opinion, over the past year, has the level of corruption in the country increased, decreased, or stayed the same?⁹

The 2020 Afrobarometer survey also revealed that 79.4 per cent of respondents felt that reporting corruption could result in retaliation.¹⁰ However, the 2022 Afrobarometer survey reported a rebound of public confidence in government’s fight against corruption (61 percent).¹¹

Question: In your opinion, over the past year, has the level of corruption in the country increased, decreased, or stayed the same?



8 TI-Z/ACC, 2022 Zambia Bribe Payers Index (ZBPI) Survey Report, March 2023, 3

9 Afrobarometer Round 8 Survey in Zambia, 2020, 50

10 Ibid, 52

11 Afrobarometer, News Release: Zambians Divided on the Economy and the country’s direction, Afrobarometer survey shows, 24 January 2023, 1

REPORTS OF OVERSIGHT INSTITUTIONS

There are several public oversight institutions such as the Financial Intelligence Centre (FIC) and the Auditor General (AG), which report on financial misconduct, corruption and utilization of public funds. These often highlight acts of corruption. FIC was established to investigate suspicious financial transactions. It publishes an annual Trends Report, which indicates its findings for each preceding year. In its 2016 report, FIC stated that over K3 billion was received by public officials or their associates through kickbacks from public contracts.¹² In 2017, the FIC figures more than doubled. FIC reported that politically exposed persons received more than K6.3 billion in kickbacks mainly from the infrastructure contracts.¹³ The 2021 FIC Trends report indicated that they received 22 reports of corruption, amounting to about K1.2 billion and 34 reports of money laundering amounting to K1.6 billion.¹⁴ Considering that these are just figures for one year, and only capturing suspicious transactions through the formal banking system, one can safely conclude that what was reported is only the tip of an iceberg.

Another key oversight institution is the Auditor General (AG). The office of the AG carries out annual audits of public institutions and occasional or special audits of specific institutions. The annual reports of the AG are well known for exposing misuse of public resources and are readily available on the AG's website. AG also carries special audits on specific institutions. For example, in 2017, the AG carried out a thorough audit of the Road Development Agency (RDA), covering the period 2012 to 2015, and found clear evidence of corruption, wastage and lawlessness in the construction sector. The audit report discovered numerous systematic shortcomings that suggest collusion between government officials and construction companies.¹⁵ They include:

- Systemic delays in engagement of supervising consultants for periods ranging from one to twelve months, resulting in projects being implemented without adequate supervision;
- Most of the projects commenced without detailed road engineering designs;
- RDA procured works of the unconstrained budget as opposed to the approved budget by parliaments;
- There were inexplicable variations on several contracts ranging from 50 percent to 400 percent, which were beyond the allowed standard of 25%, and which significantly increased the cost and for which RDA never sought approval of the Attorney General;
- Specifications were not adhered to leading to poor quality of works; and

- In many cases, the same contractor building the road was engaged to do detailed road designs for the same road.¹⁶

The volume of these shortcomings suggest pre-meditation and not occasional lapses. The Auditor General for example, found that in 29 construction projects with an initial contract sum of K8, 011,422,391 (about us \$ 800 million) were procured and commenced without detailed designs.¹⁷

The Auditor General Report movingly depicts the quality of the infrastructure as being of poor quality and not durable:

Samples of base course thickness did not meet the minimum specifications on selected roads.

These were crumbled cores which were as a result of inadequate compaction. The surfacing of some sections of the roads were found to be peeling off. Drainage on selected roads in Lusaka were characterized by incomplete and abandoned works. Some road signs did not meet the required specification of retro-reflectivity. Surface irregularities were also observed on most roads, with seals. However, despite contractors not meeting specifications, all payments were made as per specifications in the contract resulting in overpayments, wasteful expenditure and lack of value for money.¹⁸



12 Financial Intelligence Center, 'Money Laundering and Terrorist Financing Trends Report 2017'

13 Financial Intelligence center, 'Money Laundering and Terrorist Financing Trends Report 2017,' 10

14 FIC, The 7th Money Laundering and Terrorist Financing 2021 Trends Report (2022), 12

15 Report of the Auditor General on the Road Projects under the Road Development Agency for the period January 2012 to December 2015 (February 2017)

16 ibid

17 Ibid, 18

18 Ibid, 19

Similarly, a parliamentary ‘inquiry’ that followed the Auditor General’s report on the RDA, established that the infrastructure built was of poor quality and did not reflect value for money.¹⁹ A survey by the University of Zambia reported that 92 percent of stakeholders in the construction sector ‘admitted that corruption was a very serious problem and still high in the procurement process of construction projects,’²⁰ while 72 percent of community members surveyed indicated that corruption was ‘extremely common’ in the construction sector.²¹



REPORTS OF INTERNATIONAL ORGANISATIONS

Several international organisations track prevalence of corruption across the world. Their indicators help to see how each country is performing in relation to other countries. The World Bank, for example, has the Corruption Control Index, which ranks countries based on the “extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests. Percentile rank indicates the country’s rank among all countries covered by the aggregate indicator, with 0 corresponding to lowest rank, and 100 to highest rank.”²² Based on this, Zambia’s score for 2021, for example, was 25.48 %.²³

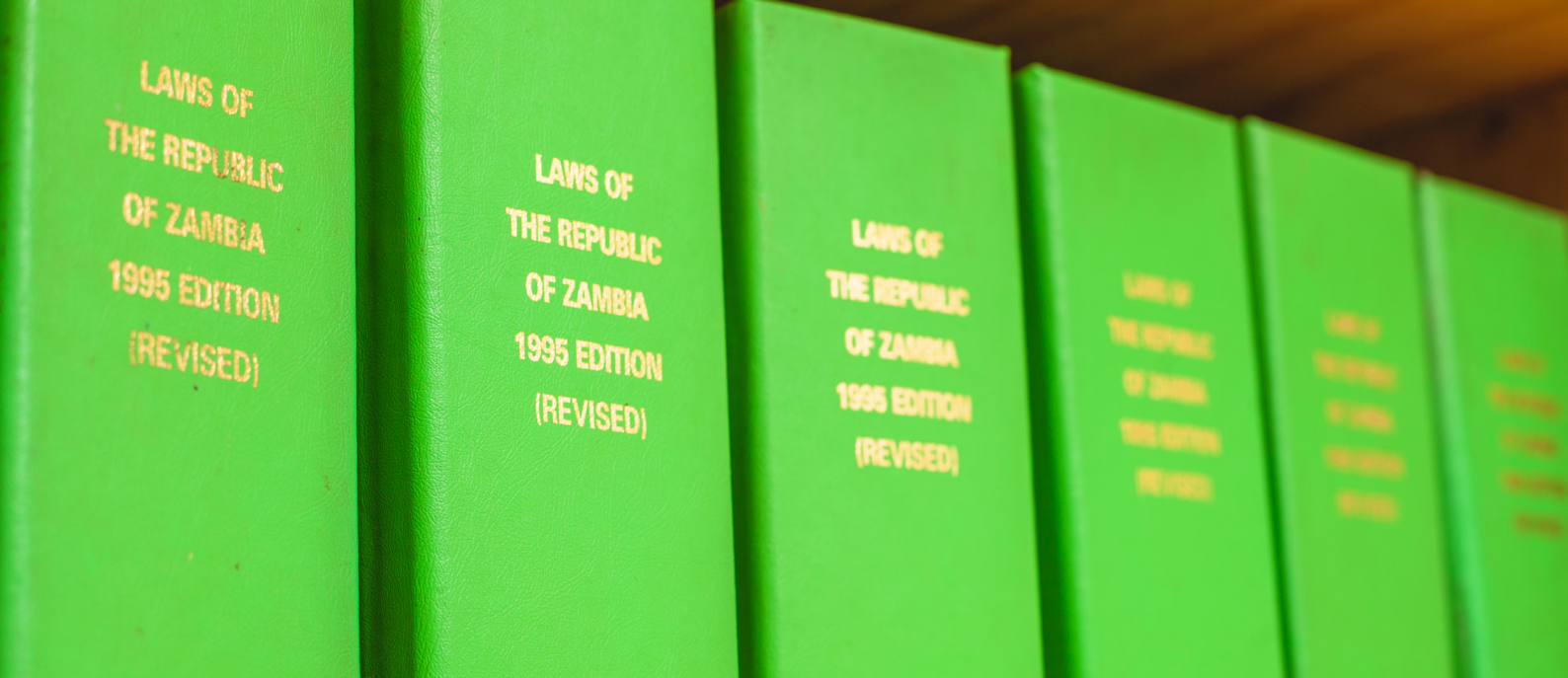


19 Report of the Public Accounts Committee on the Report of the Auditor General on the Road Projects Under the Road Development Agency for the Period January 2012 to December 2015 for the First Session of the Twelfth National Assembly

20 University of Zambia, ‘Options for Reducing Corruption in Procurement: The Case of the Construction Sector in Zambia: Final Research Report’ (March 2018)

21 Ibid

22 < [23 Ibid](https://tradingeconomics.com/zambia/control-of-corruption-percentile-rank-wb-data.html#:~:text=Control%20of%20Corruption%3A%20Percentile%20Rank%20in%20Zambia%20was%20reported%20at,compiled%20from%20officially%20recognized%20sources.> accessed 22 April 2023</p>
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LEGAL AND INSTITUTIONAL FRAMEWORK FOR FIGHTING CORRUPTION IN ZAMBIA

Introduction

This chapter gives an overview of the existing institutional and legal framework. It highlights the key institutions and their mandates as well as the key pieces of legislation in the anti-corruption sector.

LEGAL FRAMEWORK

At independence in 1964, Zambia did not have its own autochthonous or homegrown legislation dedicated to fighting corruption. It instead relied on laws that were inherited from the United Kingdom. The inherited laws included the Prevention of Corruption Act of 1916, the Public Bodies Corrupt Practices Act of 1889, and the Prevention of Corruption Act of 1906. The Penal Code, which codifies many conventional crimes, was for many years the principal legislation governing criminalization of corruption in Zambia. Its main focus was on financial misconduct in the public sphere. It still has relevant provisions to this day and remains a key piece of legislation.

It was not until 1973 that the Zambian government began to respond to corruption at policy level with the adoption of the Leadership Code. The code governed government officials and made it illegal for leaders to own a business or earn additional income other than their salaries. In terms of scope, the code applied to all persons holding positions in the ruling party (United National Independence Party), the civil service, local authorities, state enterprises, institutions of higher learning and in government. It has to be noted that enforcement of the leadership code was inconsistent. It was also unpopular because of its restrictions and was abolished in 2002.

Another major development in the fight against corruption was in 1971, when government established the Special Investigations Team on Economy and Trade (SITET) with the purpose of investigating economic crimes. This was at the time when Zambia had in place strict exchange control regulations, which prohibited the holding and externalization of foreign exchange without the written permission of the central bank. Its mandate extended to matters of money laundering, illegal foreign exchange dealings, hoarding of commodities and smuggling. Although SITET was relatively successful in accomplishing its tasks, it was abolished in 1992 as it was seen to be inconsistent with democratic standards.²⁴

It was in 1980 that Zambia finally passed a specific law dealing with corruption: the Corrupt Practices Act of 1980.



The Act pooled or consolidated into one piece of legislation all crime-related offences and criminalized corruption both in the private and public sectors. To deal with corruption, it set up a specialized body, the Anti-Corruption Commission, to be the principal law enforcement wing fighting corruption. The Corrupt Practices Act has undergone several reforms, but its substance and spirit has been preserved in its successor legislation, currently reflected in the Anti-Corruption Act of 2012.

Zambia has a fairly comprehensive legal framework for addressing corruption. The main pieces of legislation include the following:

THE ANTI-CORRUPTION ACT, 2012

The Act provides for the continued existence of the Anti-Corruption Commission as the main body responsible for fighting corruption in the country.²⁵ The Commission is established as an autonomous institution not subject to the direction or control of any person or authority.²⁶ The functions of the commission include preventing, investigating and prosecuting crimes of corruption.

Significantly, the Act contains a list of offences amounting or relating to corruption. It includes proscribed conduct in both the public and private sectors. The list of offences includes abuse of authority, possession of unexplained property, conflict of interest, payment of bribes, and concealment of property.²⁷

THE FORFEITURE OF PROCEEDS OF CRIME ACT, 2010

The Act provides for the forfeiture to the state of property believed to be derived from commission of a crime. The underlying idea is that those who commit crimes should not benefit from them, but should be deprived of the property accumulated from the crime. Forfeiture is generally done in one of two ways: conviction-based (where a person is convicted of a criminal offence) and civil forfeiture (where authorities simply target the property but the concerned person may not be visited with criminal prosecution).

²⁴ This relates primarily to the right to own property. It was felt that SITET was too restrictive and an unnecessary restriction on the right to own property by public officers.

²⁵ Section 4 Anti-Corruption Act 2012

²⁶ Ibid, sections 5 and 6

²⁷ Ibid, Part III

THE PUBLIC INTEREST DISCLOSURE (PROTECTION OF WHISTLEBLOWERS) ACT, 2010

The Act provides a framework for the protection of whistleblowers or those who disclose information exposing corruption, crimes, maladministration or other similar wrongs. It sets out mechanisms for ensuring that the whistleblowers are protected from reprisals as a result of their actions.

THE PLEA NEGOTIATIONS AND AGREEMENTS ACT 2010

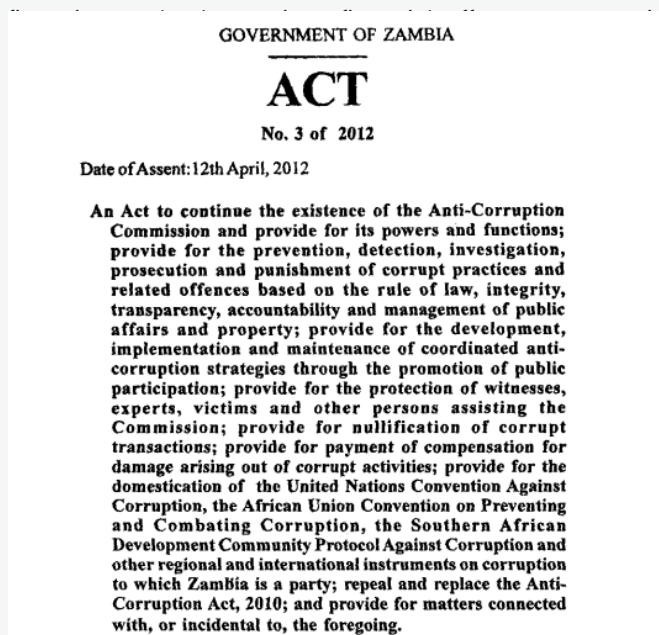
This law sets out the mechanism for plea agreements. It only recognizes one type of plea agreement, that is, a charge reduction, i.e. the suspect agrees to plead guilty to a lesser crime than that actually committed. It does not expressly provide for sentencing pleas.

THE PROHIBITION AND PREVENTION OF MONEY LAUNDERING ACT (AS AMENDED IN 2010)

The Act proscribes money laundering and puts in place mechanisms for its prevention and investigation. This includes mechanisms for the disclosure of information on suspicion of money laundering activities by supervisory authorities and regulatory institutions, forfeiture of property of persons convicted of money laundering, as well as international cooperation in the prevention, investigation and prosecution of money laundering.

THE FINANCIAL INTELLIGENCE ACT, 2010

This is the main law dealing with intelligence-gathering for suspicious financial transactions. The Act establishes the Financial Intelligence Center (FIC), as the only designated agency responsible for the receipt, requesting, analyzing and disseminating the disclosure of suspicious transaction reports. It is responsible for preventing money laundering, terrorism



28 Section 4 Anti-Corruption Act 2012

29 Ibid, sections 5 and 6

PUBLIC PROCUREMENT ACT 2008 [AS AMENDED BY THE PUBLIC PROCUREMENT (AMENDMENT) ACT 2011]

The Act establishes the Zambia Public Procurement Authority as the entity responsible for public procurement of goods and services (beyond a certain threshold). The Act is intended to enhance transparency and accountability in the public procurement processes by putting in place standard procedures and practices. This would also ensure that the procurement process is fair to all stakeholders.

INSTITUTIONS

ANTI-CORRUPTION COMMISSION (ACC)

The Anti-Corruption Act 2012 provides for the continued existence of the Anti-Corruption Commission as the main body responsible for fighting corruption in the country.²⁸ The Commission is established as an autonomous institution not subject to the direction or control of any person or authority.²⁹ The functions of the commission include preventing, investigating and prosecuting crimes of corruption. It is the main specialized body dedicated to fighting corruption in Zambia. It has a triple mandate: to prevent, investigate and prosecute acts of corruption. The ACC has offices in Lusaka, where it is headquartered, and in all provincial capitals of the country.



FINANCIAL INTELLIGENCE CENTRE (FIC)

The Financial Intelligence Act 2010 establishes the Financial Intelligence Center (FIC), as the only designated agency responsible for the receipt, requesting, analyzing and disseminating the disclosure of suspicious transaction reports. It is responsible for preventing money laundering, terrorism financing and other serious financial offences. It puts in place mechanisms for reporting and investigating suspicious financial transactions.

The following are some of the more specific functions of the FIC:

- a) Receive, request and analyse suspicious transaction reports required to be made under this Act or any other written law, including information from any foreign designated authority;
- b) Analyse and evaluate suspicious transaction reports and information so as to determine whether there is sufficient basis to transmit reports for investigation by the law enforcement agencies or a foreign designated authority;
- c) Disseminate information to law enforcement agencies, where there are reasonable grounds to suspect money laundering or financing of terrorism;
- d) Provide information relating to suspicious transactions in accordance with this Act to any foreign designated authority, subject to such conditions as the Director may determine;
- e) Provide information, advice and assistance to law enforcement agencies in furtherance of an investigation;
- f) Enter into any agreement or arrangement, in writing, with a foreign designated authority which the Board considers necessary or desirable for the discharge or performance of its functions;
- g) Conduct inquiries on behalf of foreign designated authorities and notify them of the outcome; and
- h) Inform the public and reporting entities of their obligations and measures that have been or might be taken to detect, prevent and deter money laundering.³⁰

The Centre is required to submit a report to the minister, not later than 90 days after the end of its financial year. The report should include information and statistics on money laundering, financing of terrorism and any other serious offences including typologies, trends and other observable statistical patterns.³¹ The minister is then required to lay the report to the National Assembly (NA), not later than seven days after the first sitting of the NA next after receipt of the report from the Centre.³²

DRUG ENFORCEMENT COMMISSION (DEC)

The Drug Enforcement Commission is established under Article 235(b) of the Constitution. Its primary mandate is the combating of offences relating to drugs and money laundering. More specifically, it has the mandate to prevent and control illegal cultivation, production, trafficking and abuse of narcotic drugs, psychotropic substances and money laundering activities.



30 Ibid, section 5(2)

31 Ibid, section 55(1) and (2)

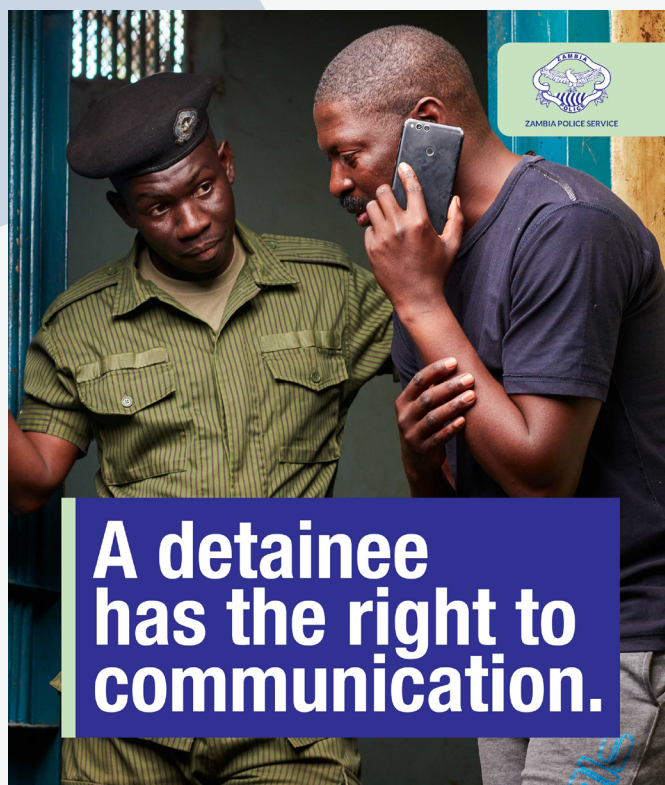
32 Ibid, section 55(3)

ZAMBIA POLICE SERVICE (ZP)

The Zambia Police is established under Article 193(1)(a) of the Constitution. It is the law enforcement entity with the broadest mandate over combating all forms of crime in the country, including corruption. It is found in every district of the country and is the most accessible law enforcement agency. Its functions are:

- a. Protect life and property;
- b. Preserve peace and maintain law and order;
- c. Ensure the security of the people;
- d. Detect and prevent crime; (e) uphold the Bill of Rights;
- e. Foster and promote good relationships with the Defence Force, other national security services and members of society; and
- f. Perform other functions as prescribed.³³

Considering this broad mandate, it entails that the Police functions overlap with those of specialized bodies such as ACC and DEC, which have narrow mandates over specific types of crimes. This is the case also when it comes to crimes relating to corruption and money laundering.



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AUDITOR GENERAL (AG)

The office of the Auditor-General (AG) is established through Article 249 of the Zambian Constitution. The functions of the AG are as follows:

- g. Audit the accounts of—
 - i. State organs, State institutions, provincial administration and local authorities; and
 - ii. institutions financed from public funds;
- h. Audit the accounts that relate to the stocks, shares and stores of the Government;
- i. Conduct financial and value for money audits, including forensic audits and any other type of audit, in respect of a project that involves the use of public funds;
- j. Ascertain that money appropriated by Parliament or raised by the Government and disbursed—
 - i. has been applied for the purpose for which it was appropriated or raised;
 - ii. was expended in conformity with the authority that governs it; and
 - iii. was expended economically, efficiently and effectively; and
- k. Recommend to the Director of Public Prosecutions or a law enforcement agency any matter within the competence of the Auditor-General, that may require to be prosecuted.³⁴

The Public Finance Act and the Public Audit Act further empower the AG to audit:

- Every statutory corporation or public company;
- Every department in which funds and working accounts are established; and
- Every private institution which receives government grants, subsidy or subvention in any financial year.³⁵

In performance of his/her duties, the AG has power to call for any relevant information from persons responsible for the financial administration of an institution being audited as well as to have access to all books, records, returns, reports and other documents relating to the accounts of anybody being audited.³⁶ Apart from special audits, the AG's routine audit of government accounts is done annually. S/he is required to submit a report on the accounts not later than 12 months after the end of each financial year.

The office of the AG has helped expose thefts, misapplications and abuse of public resources. However, once it has conducted an audit and issued its report, it lacks power to bring about compliance with public finance rules and regulations. It lacks

33 Article 193(2) Constitution of Zambia 2016

34 Ibid, Article 250

35 Section 44 (1) Public Finance Act 2004; and section 3 Public Audit Act Chapter 378 of the Laws of Zambia

36 Section 7(1) Public Audit Act, Chapter 378 of the Laws of Zambia

power to sanction officials who have been found to have stolen, misused or misapplied public funds. It can only make recommendations to appropriate institutions and authorities on corrective measures to be undertaken.

PUBLIC PROTECTOR (PP)

Article 243(1) of the Constitution of Zambia establishes the PP, who is appointed by the President on recommendation by the Judicial Service Commission, subject to ratification by the National Assembly. The Public Protector has the power to investigate an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function.³⁷ In the definition of a state institution, Article 266 'includes a ministry or department of the Government, a public office, agency, institution, statutory body, commission or company in which the Government or local authority has a controlling interest, other than a *State organ*.' Under the same article, a state organ is defined as 'the Executive, Legislature or Judiciary.'

Article 244(2) defines an action or decision taken or omitted to be taken as an action or decision which is—

- a. Unfair, unreasonable or illegal; or
- b. Not compliant with the rules of natural justice.

What constitutes rules of natural justice is not defined in the Constitution, but is defined under section 2 of the Public Protector Act as:

The principles and procedures underlying the making of a decision or taking of an action by a State institution, which are that an act or decision should be unbiased, transparent and made in good faith; and that each party should have equal access to the person taking the action or making the decision and should be aware of the facts of the decision and the documents that are used or adduced by the person taking the action or making the decision.

In furtherance of these functions, the PP has power under Article 244(3) of the Constitution to:

- a. Bring an action before a court;
- b. Hear an appeal by a person relating to an action or decision taken or omitted to be taken in respect of that person; and
- c. Make a decision on an action to be taken against a public officer or Constitutional office holder, which decision shall be implemented by an appropriate authority. (emphasis by authors)

Article 244(3)(c) suggests that the decision or action taken against a public officer or constitutional office holder is binding and not a mere recommendation. This seems to be in line with South African jurisprudence where the current PP model was borrowed. In the South African the case of *Economic Freedom Fighters v Speaker of the National Assembly and Other*,³⁸ South African Chief Justice, Mogoeng Mogoeng, in relation to the



³⁷ Ibid Article 244(1).

³⁸ [2016] ZACC 11.

powers of the Public Protector, stated:

If compliance with remedial action taken were optional, then very few culprits, if any at all, would allow it to have any effect. And if it were, by design, never to have a binding effect, then it is incomprehensible just how the Public Protector could ever be effective in what she does and be able to contribute to the strengthening of our constitutional democracy. The purpose of the office of the Public Protector is therefore to help uproot prejudice, impropriety, abuse of power and corruption in State affairs, all spheres of government and State-controlled institutions. The Public Protector is a critical and indeed indispensable factor in the facilitation of good governance and keeping our constitutional democracy strong and vibrant.

The Public Protector Act, however, seems to deviate from this position in as much as it does not expressly provide that remedial actions by the Public Protector are binding. Section 6(2)(a), for example, in vesting the Public Protector with power to consider administrative actions, only empowers the PP to make 'recommendations' to state institutions, contrary to the extensive powers given to the PP by article 244(5) of the Constitution which include;

- d. enforcing decisions issued by the Public Protector; and
- e. citing a person or an authority for contempt for failure to carry out a decision.

While the Constitution has given the Public Protector extensive powers, these powers are limited by provisions of 245 of the Constitution which divests him/her power to investigate a matter which is before a court, court martial or a quasi-judicial body;

- a. relates to an officer in the Parliamentary Service or Judicial Service;
- b. involves the relations or dealings between the Government and (a) foreign government or an

international organization;

- c. relates to the exercise of the prerogative of mercy; or
- d. is criminal in nature.

Initiation of investigations is governed by section 13(1) of the Public Protector Act which states that the PP may investigate an allegation of maladministration:

- a. on the Public Protector's own initiative; or
- b. on receipt of a complaint made by;
 - i. a complainant acting in the complainant's own interest;
 - ii. an association acting in the interest of its members;
 - iii. a person acting on behalf of a complainant;
 - iv. a person acting on behalf, and in the interest, of a group or class of persons; or
 - v. an anonymous person.

The Public Protector may, refuse to or discontinue an investigation on grounds that the complaint is trivial; frivolous, vexatious or not made in good faith; where the complainant does not have sufficient interest in a matter; where the complainant has a right of appeal or other remedy that has not been exhausted; or the conduct complained of has been subject of another investigation or another action by another authority under a written law.³⁹

When it comes to reporting, Article 248 of the Constitution states that the PP shall report to the NA on matters concerning its affairs. Further, section 34(1) of the PP Act requires the PP to submit a report to the Speaker of the NA, not later than 90 days after the end of the financial year. Section 34(2) enjoins the Clerk of the National Assembly to lay the report before the NA, not later than seven days after the first sitting of the Assembly next after the report was received. This is an improvement over the former legislation that required the PP to simply report to the President.



TYPES AND CRIMES OF CORRUPTION

Introduction

Corruption takes many forms. This chapter gives an over view of the forms corruption may take. More importantly, it outlines the types of corruption that are recognized by the law and are criminalized under the Anti-Corruption Act 2012.

TYPES AND CRIMES OF CORRUPTION

Corruption takes many forms. These may include:

- Government officials or public servants demanding or taking money or favours in exchange for the giving of services. This would, for example, include bribes paid to get services in the health, education, judicial sectors or to simply have one's NRC, win a bursary, get good grades in exams or to have passport processed;
- Politicians misusing public money or granting public jobs or contracts to their sponsors, friends and families. This may include corruption in the process of trying to win political party nominations in order to run as a political candidate (local government, parliamentary and presidential levels);
- Corporations or private individuals in business bribing officials to get lucrative deals. Government has huge procurement needs, which are often at risk of fueling corruption as those who wish to win tenders to supply or provide services are often willing to pay their way to win the award of contracts.

These acts of corruption are not just morally reprehensible but are a crime in Zambia. This means that those involved in corruption can be prosecuted and if found liable, can be sentenced according to the law. The Anti-Corruption Act 2012 lists, in a comprehensive manner, the most common forms of corruption in Zambia and makes them criminal offences. This are listed under part III of the Act, and include the following:

CORRUPTION BY OR WITH PUBLIC OFFICERS

19(1) A public officer who, by oneself, or by or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.

CORRUPT TRANSACTIONS BY OR WITH PUBLIC OFFICERS

20(1) A person who, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for and having done or forborne to do, anything in relation to any matter or transaction

actual or proposed, with which any private body is or may be concerned, commits an offence.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned, commits an offence.

ABUSE OF AUTHORITY OF OFFICE:

21(1) A public officer commits an offence who—

- a. does, or directs to be done, in abuse of the public officer's position, office or authority any arbitrary act prejudicial to the rights or interests of the Government or any other person;
- b. uses that public officer's position, office or authority or any information that the public officer obtains as a result of, or in the course of, the performance of that public officer's functions to obtain property, profit, an advantage or benefit, directly or indirectly, for oneself or another person;
- c. uses the public officer's position, office or information to obtain, promise, offer, or give an undue advantage to oneself or another person, directly or indirectly, in order for the public officer to perform or refrain from performing the public officer's duties; or
- d. solicits or accepts directly or indirectly an undue advantage or benefit for oneself or for another person in order for the public officer to perform or refrain from performing the public officer's duties.



POSSESSION OF UNEXPLAINED PROPERTY

22(1) Subject to the Constitution, any public officer who—

- a. maintains a standard of living above which is commensurate with the public officer's present or past official emoluments or other income;
- b. is in control or possession of pecuniary resources or property disproportionate to the public officer's present or past official emoluments; or
- c. is in receipt of the benefit of any services which the public officer may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

shall, unless the contrary is proved, be liable for the offence of having, or having had under the public officer's control or in the public officer's possession pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused the public officer's office, as the case may be.

CORRUPT TRANSACTIONS BY OR WITH AGENTS

23(1) An agent who, with or without the principal's knowledge or concurrence, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to the principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business, commits an offence.

(2) A person who corruptly gives, promises or offers any gratification to an agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to the principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business, commits an offence.

(3) A person who gives to an agent, or any agent who, with intent to deceive the principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to the principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to the agent's knowledge or belief is intended to mislead the principal, commits an offence.

CORRUPTION OF MEMBERS OF PUBLIC OR PRIVATE BODIES WITH REGARD TO MEETINGS

24(1) A person who being a member of any public or private body by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for—

- a. that person's voting or abstaining from voting at any meeting of such public or private body in favour of, or against, any measure, matter, resolution or question submitted to such public or private body;
- b. that person's performing or abstaining from performing, or for that person's aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public or private body; or
- c. that person's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; commits an offence.

(2) A person who, by oneself or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to a member of any public or private body in any circumstance referred to in subsection (1), commits an offence.

**CORRUPTION OF WITNESSES**

(25)1 A person who, directly or indirectly, corrupts a witness so as to induce false testimony, an advantage or benefit for oneself or another person from the witness in a trial, hearing or other proceeding before any court, tribunal, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly promises, offers or gives any gratification to any witness whether for the benefit of that witness or any other person, with intent to influence the witness to be absent from trial, to give false testimony or withhold testimony, commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

- (3) A witness who, by oneself or by, or in conjunction with, any other person, corruptly solicits, accepts or receives, or agrees to accept or attempts to receive or obtain, from any person for oneself or another person, any gratification as an inducement or reward whether for the witness's benefit or any other person, in order for the witness to be absent from trial or to give false testimony or withhold testimony, commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

CORRUPTION IN RELATION TO SPORTS EVENTS:

- 27(1) A person who, directly or indirectly, corruptly—
- a. solicits or accepts or agrees to accept any gratification, whether for the benefit of that person or any other person, as an inducement or reward for a person influencing or having influenced the run of play or the outcome of any sporting event; or
 - b. offers or gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event; commits an offence.

CONFLICT OF INTEREST

- 28(1) Where a public body in which a public officer is a member, director, employee or is otherwise engaged proposes to deal with any person or company, partnership or other undertaking in which that public officer has a direct or indirect private or personal interest, that public officer shall forthwith disclose, in writing to that public body, the nature of such interest and shall not take part in any proceedings or process of that public body relating to such decision.
- (2) Where a public officer or a relative or associate of such public officer has a personal interest in a decision to be taken by a public body, that public officer shall forthwith disclose, in writing to that public body, the nature of such interest and shall not vote or take part in any proceedings or process of that public body relating to such decision.
- (3) A public officer who contravenes subsection (1) or (2) commits an offence.

GRATIFICATION FOR GIVING ASSISTANCE:

- 29(1) A public officer who, directly or indirectly, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for or otherwise on account of, that public officer giving assistance or using influence in, or having given assistance or used influence in—

- a. the promotion, execution or procurement of—
 - i. any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or
 - ii. any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or
 - b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or sub-contract; commits an offence.
- (2) A person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for, or otherwise on account of, such public officer giving assistance or using influence in, or having given assistance or used influence in—
- a. the promotion, execution or procurement of; or
 - b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in; any contract or sub-contract commits an offence.





THE ROLE OF CIVIL SOCIETY ORGANISATIONS (CSOs) IN FIGHTING CORRUPTION

Introduction

What can CSOs do about corruption? This chapter gives an overview of ways CSOs can play an active role in the fight against corruption in Zambia.

ROLE OF CSOS

Civil Society provides a check on government to ensure that government is accountable and provides the services it is supposed to provide to its citizens. Civil society is also a forum through which citizens participate in the governance of their country by speaking out for themselves and others on matters of public interest and national development. Without civil society, public participation in governance would be severely limited.

A civil society organization (CSO) is considered to be one where “any association of citizens who have come together, independent of government and political parties, to pursue a given social or political agenda.”⁴⁰ This includes academic associations, NGOs, Trade Unions, Women’s organizations and traditional associations. The handbook is primarily of concern to one subset of CSOs, that is advocacy NGOs operating in Zambia. Advocacy NGOs are those NGOs advocating for good governance, human rights, rule of law and accountability, as opposed to those NGOs which simply provide social services such as health and education.

Advocacy NGOs are largely a post 1991 phenomenon. They found room to operate following Zambia’s return to multiparty politics. They have become a prominent feature of public discourse. Over the years, they have played a significant role in promoting human rights, exposing corruption, promoting good governance and rule of law. They have championed constitutionalism and institutionalization of democratic norms.

When it comes to fighting corruption, civil society organisations play a key role as no sustainable anti-corruption measures can be effective without a vibrant civil society. This role is recognized under both UN and AU anti-corruption treaties. The United Nations Convention Against Corruption provides extensively as follows:

Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.⁴¹

Similarly, the African Union Convention on Preventing and Combating Corruption provides:

State Parties undertake to:

1. Be fully engaged in the fight against corruption and related offences and the popularisation of this Convention with the full participation of the Media and Civil Society at large;
2. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;
3. Ensure and provide for the participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this Convention;
4. Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.⁴²

To effectively play its role in the fight against corruption, CSOs may specifically do the following:

AWARENESS RAISING

CSOs can play a key role in sharing information about corruption, sensitizing the citizens and officials about corruption and help provide platforms for exchange of information about corruption and related policies and laws. The goal is to empower citizens to participate in public affairs and to demand accountability from the duty bearers and those who manage public resources.

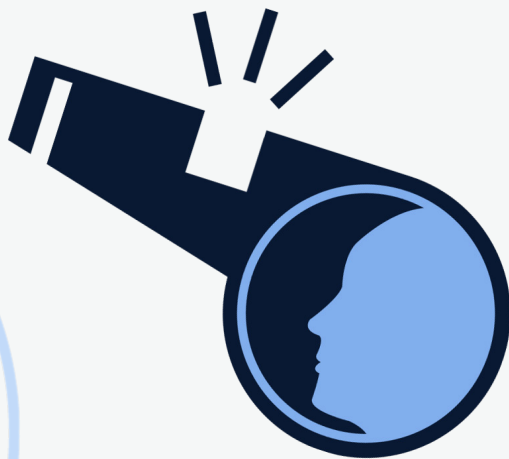
⁴⁰ Peter Takirambudde and Kate Fletcher (2006) “Civil Society in Governance and Poverty Alleviation: A Human Rights Perspective” in Muna Ndulo (ed) *Democratisation Reform in Africa: Its Impact on Governance and Poverty Alleviation* (Ohio: Ohio University Press), 72

⁴¹ Article 13(1) United Nations Convention Against Corruption

⁴² Article 12 African Union Convention on Preventing and Combating Corruption

WHISTLEBLOWING

Whistle blowing is about helping expose corruption. Because CSOs are not part of government, they are ideally positioned to expose corruption. A whistleblower, therefore, discloses information about corruption or other wrongdoing. It is one of the most effective ways to detect and prevent corruption and other malpractice as a Whistleblowers' disclosures have often helped expose corruption. The Chiluba case discussed above, for example, became known through the efforts of whistle blowers.



ADVOCACY AND STRATEGIC OR PUBLIC INTEREST LITIGATION

CSOs use advocacy is a tool that helps them to identify blockages to good governance and in the fight against corruption. This could be at the level of laws, policies, practices, and behaviour, and helps identify points of leverage, power relations and clarifies what is winnable with the resources of those advocating.⁴³ It is defined by its ability to cause change, and is a tool that clarifies the specific changes needed, identifies possible coalitions of diverse actors on a commonly felt issue, increases popular education, harnesses popular opinion and builds popular support for an issue.⁴⁴

In a sense, advocacy is: "A series of actions designed to persuade and influence those who hold governmental, political, or economic power so that they will adopt and implement public policies in ways that benefit those with less political power and fewer economic resources."⁴⁵

According to Holloway, CSO advocacy in the fight against corruption has the following elements:

- a series of strategic activities or actions – systematic, democratic, and organized – that build on each other over a period of time.
- a technique for changing laws, policies, behaviours or the ways that these are carried out in practice.
- an instrument for changing the balance of power so that vulnerable people are freed from exploitation.⁴⁶

MONITORING, RESEARCH AND LOBBYING

Monitoring is one of the most effective tools at the disposal of CSOs in the fight against corruption. It helps diagnose problems, assess actual situations and the actual functioning of systems, and can highlight corrupt practices systematically over time (thus providing a base for advocacy action).⁴⁷

The constitutive elements of monitoring are the following:

- It is carried out over a long period of time
- It involves collecting or receiving as much data as possible
- It means close observation of the situation, usually through constant or periodic examination or investigation or documentation of developments
- Standards or norms are used as reference to determine what is wrong with the situation
- Tools or instruments are used in the process of monitoring
- The product of monitoring is usually a report about the situation
- The report embodies an assessment of the situation, which provides a basis for further action.⁴⁸

Monitoring can help CSOs to observe the performance of duties by public officials in relation to corruption; determine the levels and causes of corruption; and to expose corruption and draw public attention to instances of corruption; and to find solutions to systemic weaknesses that fuel corruption.

43 Richard Holloway, *NGO Corruption Fighters' Resource Book: How NGOs Can Use Monitoring and Advocacy to Fight Corruption* (NDI, Washington DC), 38

44 Richard Holloway, *NGO Corruption Fighters' Resource Book: How NGOs Can Use Monitoring and Advocacy to Fight Corruption* (NDI, Washington DC), 38

45 Ibid

46 Ibid

47 Ibid

48 Ibid



CORRUPTION REPORTING TEMPLATE



INTRODUCTION

Civil Society Organisations are key stakeholders in the fight against corruption. They play a key role in raising awareness, research, whistleblowing and reporting corruption, advocating for policy and law reform, as well as promoting good governance. This reporting template is intended to aid the work of CSOs in their work of fighting corruption. It is primarily a tool to guide CSOs on how and where to report cases of corruption.

The template is divided into the following, easy to follow parts:

- A. Case Monitoring and Reporting
- B. Finding a case to report
- C. Identifying appropriate authorities to report to
- D. Making a report (to the ACC and the Public Protector); and
- E. Advocating for law reform

The template has an annex that exhibits the standard complaint form for submitting a complain to the Public Protector (annex 1) and a sample letter of petition to the National Assembly on law reform.



A. WHAT IS CASE MONITORING AND REPORTING?

In order to provide effective oversight over the management and utilisation of public resources and to detect and effectively help fight corruption, CSOs need to be aware of how public resources are utilised. This means CSOs must keep their eyes wide open and pay special attention to all potential avenues of corruption. However, in order to exert evidence-driven interventions, CSOs should not just end at observing. They must engage into systematic collecting and documenting of cases of corruption and maladministration and all levels of government. The CSO should keep the information safe and secure, with limited access as it may have details of informants who wish to be anonymous or may be harmed if their role is known. The collection and documentation may involve a CSO setting up a basic record system or database on a computer. At this stage, the record is for the internal information of the CSO and not for public viewing. It does not need to be complicated. The record should at least indicate the following:

- What the issue of concern is (for example, health workers demanding a bribe in order to attend to patients; or a teacher demanding for sex in order to give favourable grades to a student);
- The persons and institutions involved;
- Eye witnesses, if any;
- Documentary or digital evidence, if any;
- The date and place where the alleged concern happened from;
- If the complaint is common, frequency of the alleged concern; and
- If preliminary action was taken by authorities, an indication of what preliminary action has been taken. This could be administrative, or legal.
- The gender and age of the complainant (if known).

The goal of collecting and documenting this information is to bring it out in a systematic manner to the attention of appropriate authorities and the citizens to ensure that the problems are attended to. More specifically, CSO may contribute towards accountability by going a step further and taking specific action to hold the perpetrators accountable. This entails taking steps to report cases of corruption or maladministration to appropriate authorities. This will help ensure that corrective measures are taken and helps send a clear message that there should be no impunity for corruption. The reporting procedure is discussed in the sections below.

By collecting and documenting cases of corruption and taking concrete measures to bring this information to the attention of authorities and reporting specific cases to authorities, CSOs contribute towards:

- The holding of duty-bearers or officials accountable over the management and utilisation of public resources;
- Empowering citizens with information to demand accountability from duty bearers and service providers;
- Raising awareness among the citizens and CSOs of the negative consequences of corruption and maladministration on public service delivery and on the realisation of human rights, particularly socio-economic rights.
- Advocacy and public institution strengthening; and
- Help expedite investigations through providing adequate and timely information.



B. FINDING A CASE TO REPORT

We have seen in the preceding section that CSOs can contribute to accountability by reporting cases of corruption. Where can CSOs go about finding the right cases to report? Where can CSOs find the information about the cases to report?

There are several potential sources of information CSOs may rely on to make a report. These include the following:

- The Auditor General’s Reports;
- The electronic and print media;
- Reports of other national and international organisations on corruption;¹
- Reports by whistle-blowers and members of the public;
- Independent audit reports of institutions;
- Trends Report by the Financial Intelligence Centre (FIC);
- Direct observation or experience of members of CSOs;
- Open sessions and reports of the Parliamentary Accounts Committee; and
- Service delivery points such as health centres, education institutions, police stations, courts, NRC and Passport issuance points.

What then should CSOs be looking for from these sources, which they should report? CSOs should be looking out for instances of corruption and maladministration, which may manifest through:

- Fraud;
- Theft;
- Financial crimes that may not amount to corruption (for example, tax evasion);
- Failure to declare assets by designated public officials;
- Conflict of interest;
- Procurement irregularities;
- Abuse of authority;
- Inefficiency and bottlenecks in provision of services; and
- The conduct or behaviour of public officials, attitudes and unreasonable delays.

Having identified a case, it is recommended that a short report is written. The report should contain accurate details of the case. The report should narrate the order of events truthfully, and never omit key information. It should contain at least the following details:

- The date of the event or conduct being reported (if known);
- Where the event took place, if known;
- Names of persons involved;
- Chronological order of the events in short narrative form;
- An indication of the money or resource subject of the complaint. If it is money, an estimation or exact amount of money if known;
- List of potential witnesses, if any; and
- An indication of availability of documentary or digital evidence, if any.

It must be noted that this information is intended to help the CSO have an understanding of the issue and make an informed report to the appropriate authority. Where a law enforcement agency decides to move the case forward, it will normally ask for formal witness statements from the witnesses. This potentially includes the CSO that reports the incident of corruption.

¹ Such as the report of the EIA which exposed the corrupt smuggling of rosewood or mukula from Zambia. The full report is available on the following link: <https://us.eia.org/report/20191205-mukula-cartel-zambia-report/>

C. IDENTIFYING RELEVANT AUTHORITIES TO REPORT

There are various institutions to which reports may be made. Below is an indication of where cases can potentially be reported:

- Corruption and corruption related cases such as conflict of interest must be reported to the Anti-Corruption Commission;
- Cases of money laundering and drug trafficking should be reported to the Drug Enforcement Commission;
- General financial crimes such as theft should be reported to the Zambia Police;
- Cases of maladministration and inefficiency must be reported to the Public Protector;
- And where there is need for policy and legislative intervention to address the above, a petition can be made to parliament (more about this below). Alternatively, reports may be made to CSOs such as Transparency International Zambia (TI-Z), Caritas, Young Women's Christian Centre, Zambia Civic Education Association (ZCEA), Women in Law and Development (WILDAF), Alliance for Community Action (ACA) and Paralegal Alliance Network (PAN), which will help refer the reports to the relevant government institutions.

Note that further details of the areas of jurisdiction for the relevant oversight bodies can be found in the Handbook.



D. MAKING A REPORT

At this stage we have all the relevant information about the case and the appropriate institution to report the case. Considering that there are several law enforcement institutions, it is important to decide which one to report the matter to. The Handbook shows the jurisdiction of each institution and can be a useful guide here. However, the focus of this Template is on reporting corruption and maladministration, which is often an offshoot of corruption. The focus of reporting a case here, therefore, will focus on the Anti-Corruption Commission, which has the primary responsibility of fighting corruption, and the Public Protector's Office, which was primarily instituted to deal with maladministration.

1. Reporting to the ACC

Sections 51 and 52 of the Anti-Corruption Act 2012 lays out the procedure for making a complaint and consideration of the complaint to the ACC. Any person can report an act of corruption to the ACC. The report is received and investigated in the name of the Director General of the ACC. The report should allege or be based on the fact that a person has engaged or is about to engage in a corrupt practice. The report or complaints can be submitted to the ACC by any of the following ways:

- Making a report in person at any of the ACC offices across the country (see list below);
- Sending a letter by post or courier (the contact details are indicated below). A sample letter is annexed below;
- Sending an email through the general email account of ACC at: infor@acc.gov.zm;
- Calling the commercial reporting anonymous line +260973039535;
- Through the ACC online platform on the following link: <https://www.acc.gov.zm/contact/>; or
- Calling the toll free line 5980.

Physical reporting would require knowing in which towns or cities ACC has offices. The ACC has presence in all provincial towns or headquarters, except for Chinsali. In addition, it has offices in Livingstone and Chirundu. Below are the physical and contact details for each of the ACC offices around the country:

- **LUSAKA:** Anti-Corruption House, Cha Cha Cha Road, PO Box 50486;
- **KITWE OFFICE:** House No. 23; 13th Avenue, Nkana East; P.O. Box 22436; (0212) 226788/ 220761
- **LIVINGSTONE OFFICE:** Zambia National Commercial Bank; 2nd Floor Mosi-o-tunya Rd, P. O. Box 60015; (0213) 322141/2
- **CHIPATA OFFICE:** Plot 153 Kalindawalo Rd, Opposite Golf Course; P. O. Box 510552; (0216) 221603
- **KASAMA OFFICE:** Plot 877, Off Kasama-Luwingu Rd; P. O. Box 410152; (0214) 221169;
- **KABWE OFFICE:** House No. 4 National Way; PO Box 80112; (0215) 221473
- **MANSA OFFICE:** NAPSA Building, Second floor, Rooms 3106 – 3110 P. O. Box 710197; (0212) 821273;
- **SOLWEZI OFFICE:** Anti-Corruption Building; P. O. Box 110168; (0218) 821953
- **MONGU OFFICE:** House No. 797 Mwanawina Street; Boma Area; P. O. Box 910217; (0217) 221320;
- **CHOMA OFFICE:** House No. 1199/34; Macha Rd; P. O. Box 630656; (0213) 221590;
- **CHIRUNDU OFFICE:** ZRA-Complex;-Passenger-Terminal; P.O.Box CHR53; (0211) 51507.

Each reported case is evaluated by the Director General. This is in order to determine whether or not a full investigation is warranted. The Director-General examines each alleged corrupt practice and decides whether or not an investigation in relation to the allegation is warranted. In determining whether or not to authorize an investigation, the Director General is required by section 52(2) to take into account the following three factors:

1. The seriousness of the conduct or involvement alleged;
2. Whether or not the allegation is frivolous or vexatious (that is, petty, unreasonable or not based on facts);
3. Whether or not the allegation has been subject of investigation by any other appropriate authority.

The Director-General shall, where he or she determines that an investigation into an allegation is warranted, decide whether the ACC shall carry out the investigation or whether the allegation should be referred to another appropriate authority for investigation or action. Regardless of the outcome, and where the report is not anonymous, the Director General is required to inform the complainant in writing about the decision to authorize or not authorize full investigation.

Cases reported to the ACC may not all lead to arrest, successful prosecution and conviction. Roughly, cases may proceed as follows:

- Case report to ACC;
- ACC DG may authorize investigation. Where the investigations confirm evidence of corruption, the suspect may be arrested. Where the evidence may not be sufficient or non-existent, the suspect may not be arrested and that may be the end of the case;
- Where the accused is arrested and charged, the case is submitted to court for trial. During trial, it is the duty of the ACC to present proof beyond reasonable doubt that the suspect committed the acts of corruption alleged in the charge. CSOs are at liberty to attend trial and follow proceedings. Their presence is important to show that a matter is of significant public interest;
- At the end of trial, the magistrate or judge will determine if the ACC has presented enough evidence or not. If the evidence is enough to provide the commission of the alleged offence, the court will find the accused guilty and sentence him or her according to the prescribed sentence for the offence he or she is convicted of. However, if the evidence is insufficient, the Court will set the accused free and dismiss the case.
- Where the case is dismissed, but the ACC feels the Court did not weigh the evidence correctly or that the Court misapplied the law, the ACC may appeal to the next Court in the judicial hierarchy. A successful appeal leads to a reversal of the decision of the lower Court. Appeal Courts, however, do not lightly reverse decisions of lower courts, unless there are compelling reasons.

The picture that emerges from these stages is that cases of corruption may take long to conclude and need strong commitment. They cannot be concluded overnight. This requires patience and understanding from members of the public and CSOs.

[Note that, where ACC has no offices or the cannot be easily reached using the above indicated means, a report can be made to any Zambia Police Service station. The Zambia Police Service has jurisdiction over all crimes].

2. Reporting to the Office of the Public Protector

The mandate of the Public Protector (PP) is to investigate complaints of maladministration against government or government funded entities (except the judiciary and parliament). The PP may investigate an action or decision taken or omitted to be taken by a State institution in the performance of an administrative function. This includes an action or decision which is— (a) unfair, unreasonable or illegal; or (b) not compliant with the rules of natural justice.

The office of the PP is empowered to act on its own initiative or to receive and act on the complaints from members of the public. Once a complaint is received, the PP has powers to investigate, criticize, recommend corrective actions, publicize administrative action and in some cases make decisions that are binding.

The importance of investigating maladministration and taking corrective action is that often maladministration is a manifestation of corruption. Manifestations of maladministration may include the following:

1. **Prolonged delay:** Unnecessary lengthy delivery of a service by a public institution amounts to maladministration. This relates to the instances when public servants in the exercise of their duties, take unreasonably long to provide the required service.
2. **Rudeness:** In the delivery of public services, public service employees are required at all times to be as polite as they can possibly be to the recipients of the services.
3. **Carelessness:** This is when there are inaccuracies or negligence that arises in the delivery of services which result in disadvantaging the recipient of a service.
4. **Unfair treatment:** This amounts to discrimination or biasness by the service provider. An individual could be unfairly treated due to their social or economic status in society, sex or physical and mental ability.



However, the Public Protector cannot investigate the following?

1. A matter that is before the Courts of Law, Court martial or a quasi-judicial body;
2. A matter that relates to an officer in the parliamentary service or the judicial service;
3. A matter that involves the relations or dealings between Government and foreign government or an international organization;
4. Relates to the exercise of the prerogative mercy; or
5. Is criminal in nature.

The following are the persons who can make a complaint to the PP, pursuant to section 13 of the Public Protector Act 2016:

1. A complainant acting in the complainant's own interest;
2. An association acting in the interest of its members;
3. A person acting on behalf of a complainant;
4. A person acting on behalf, and in the interest, of a group or class of persons; or
5. An anonymous person.

The PP may refuse to investigate or discontinue an investigation under the following circumstances:

1. Complaint is trivial;
2. Complaint is frivolous, vexatious or not made in good faith;
3. Complainant does not have sufficient interest in the action complained of, except that this paragraph shall not apply to anonymous complaints;
4. Complainant has a right of appeal, review or remedy that has not been exhausted; or
5. Conduct or involvement to which the complaint relates is or has been the subject of an investigation or other action by any other appropriate authority under any other written law

Except for anonymous complaints or reports, reports to the PP shall be in writing and in the prescribed manner. The PP has developed a standard complaint form and it is annexed below.

Complaints can be submitted:

- Electronically, by emailing: complaints@oppz.gov.zm
- Physically or by post to: Off Lake Road, Plot No. Kabul/100/120, P.O. Box 50494, Ibex Hill LUSAKA.

Those who make complaints can follow up on the following contact details:

- Telephone: (+26) 0211 228330/1
- WhatsApp: (+26) 0955 399655
- E-Mail: info@oppz.gov.zm

The Office of the Public Protector is in the process of opening new offices in provincial capitals across the country. CSOs should be on the lookout for this new development.



E. ADVOCATING FOR LAW REFORM

Several times, it may turn out that the various CSOs may observe several inappropriate acts relating to public resources but the law may not be adequate in addressing them. As a result, CSOs may wish to advocate for law reform. A useful starting point would be to engage the **line ministry** responsible for the law that requires reform. In addition, CSOs may wish to address their concerns to the following two institutions:

First, is the **Zambia Law Development Commission (ZLDC)**. It is the public institution mandated to research and propose to government reform of the law to keep the law in touch with the needs of society. Submissions can be made to:

The Executive Director,
Plot No. 26F, Cheetah Road,
Kabulonga, P.O Box 34670, Lusaka, Zambia. Tel: +260 (211) 26 1976 Email:Research@zambialawdevelopment.org
Lusaka

Second, a CSO may wish to directly send its submission to the **National Assembly**. Article 88 of the Constitution as well as Order 123 of the National Assembly of Zambia Standing Orders 2021 entitle citizens to petition the National Assembly in order to initiate enactment, amendment or repeal of legislation. The petition or letter should be in writing and addressed to the Speaker, through the Clerk of the National Assembly. The letter should adhere to the following requirements:

1. Be addressed to the Speaker;
2. Ask the House to take action on a specified subject matter;
3. Be signed by the petitioner;
4. Be in the English language; and
5. Have the full name of the petitioner, address and a day time telephone number.

The petition does not need to be technical or complicated. A simple formal or polite letter would suffice. A sample petition letter is annexed below.

Once the Speaker receives the petition, he/she lays it on the table and refers it to an appropriate committee of the House for consideration. The Committee will then consider the petition and if need be, call witnesses to help it make an informed decision. The Committee then drafts a report, with recommendations and the report is submitted or laid before the House. If the reported is adopted, it is then forwarded to appropriate public institutions to take action. The Clerk will then communicate in writing with the petitioner to advise on the manner in which the petition was dealt with and the resolutions of the House.



ANNEX

ANNEX 1: PUBLIC PROTECTOR COMPLAINT FORM

Telephone: +260 955 399 655

Fax: +260 211 222 295

Email: info@oppz.gov.zmNo.....

Telegram: OMBUDSMAN



REPUBLIC OF ZAMBIA

In reply please quote

OFFICE OF THE PUBLIC PROTECTOR

Off Lake Road
Joe Kapilikisha RoadPlot No. Kabul/100/120
P.O. Box 50494
10101 Lusaka

COMPLAINT FORM

Employer	Profession/Position
Address	Unemployed Retired Other
Employee No.	

PARTICULARS OF THE COMPLAINANT

Name of complainant First names (underline the name used)	Surname	First Name

CONTACT DETAILS OF THE COMPLAINANT

Address Street	Postal Address
City	Province
Telephone	Cellular phone
ID	Email address

w
EMPLOYMENT DETAILS

PARTUCULARS OF THE COMPLAINT

RESPONDENT (ORGANISATION OR INDIVIDUAL)	
THE COMPLAINANT (Describe alleged facts and date alleged incident(s) and state the relief you wish to be given) Please do not forget the date of the alleged facts	
Have you reported this case elsewhere?	Yes/No (Give Details)

DOCUMENTS

Attach copies of documents in support of complaint

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TELL US HOW YOU HEARD ABOUT THIS OFFICE

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ANNEX 2: SAMPLE OF PETITION LETTER TO THE NATIONAL ASSEMBLY

The Honourable Speaker of the National Assembly
Manda Hill
Lusaka

Dear Honourable Speaker,

Ref: Petition to Reform the Constitution and Electoral Process Act for Disability Inclusiveness

XXXXXXXXX is pleased to submit this petition pursuant to Article 88 of the Constitution, which entitles citizens to petition the National Assembly in order to initiate enactment, amendment or repeal of legislation, as read with Order 123 of the National Assembly of Zambia Standing Orders of 2021. Kindly find enclosed our detailed review of the Constitution of the Republic of Zambia and the Electoral Process Act. Our review highlights shortcomings in terms of disability inclusiveness and makes concrete proposals for constitutional and legislative reforms.

It is our humble prayer that our petition will receive your due consideration and that of your members, Honourable Speaker.

Sincerely Yours,

XXXXXXXXXXXX,
Executive Director
XXXX CSO

ANNEX 3: SAMPLE LETTER TO THE ACC DIRECTOR GENERAL

The Director General
Anti Corruption Commission
Lusaka

Dear Sir/Madam,

Ref: Reporting Case of Corruption at XXX Clinic

I am Executive Director of XXXXXXXX, a civil society organisations that works in XXX District. Part of our work involves building the capacity of the members of the community to hold duty bearers accountable, especially in the delivery of services to the public. It is in this context that we would like to report two instances of corruption, involving health staff at XXX Clinic, who demanded for bribes from members of the public in order to provide services. The concerned members of the public captured the incidents on video and shared with us. We have saved the video on a flash and are pleased to enclose it in this letter. The two members of staff at the clinic are XXX and XXX.

Should you have questions or need more information, do not hesitate to contact the undersigned.

Sincerely Yours,

XXXXXXXXXXXX,
Executive Director
XXXX CSO

ANTI CORRUPTION HANDBOOK



Implemented by

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



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