

Endemic corruption in Zimbabwe: Is the Constitution of Zimbabwe Amendment (No.20) Act 2013 failing us?

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A constitution is a “mirror reflecting the national soul, the identification of the ideals and aspirations of a nation; the articulation of the values binding its people and disciplining its government.”

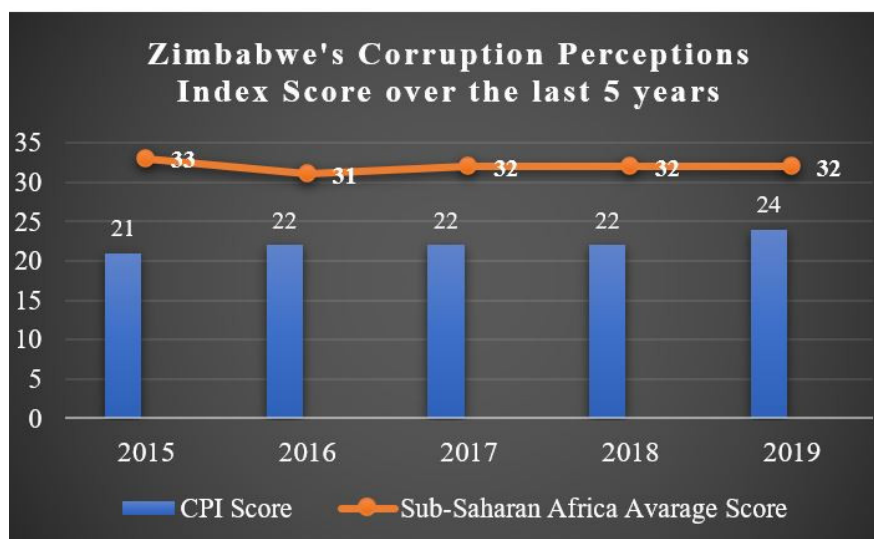
Former Chief Justice of South Africa, Justice Ismail Mohammed in *State v. Acheson* 1991 (2) SA 805 (Nm) at p. 813 A-B.

Introduction

In 2013 Zimbabwe adopted its “new” constitution- the supreme law of the land, Constitution of Zimbabwe Amendment (No.20) Act 2013. The term new is used cautiously as the constitution is now seven years old but various pieces of legislation are yet to be aligned to it. This constitution is hailed as a progressive piece of legislation as it not only contains a chapter dedicated to the Bill of Rights but also clearly sets out provisions that relate to the tenets of good governance. It also makes provision for institutions designed to combat corruption in Zimbabwe. However, despite having this supreme law of the land, corruption in Zimbabwe has become so deeply entrenched and endemic. A look at various governance and corruption indices such as the Transparency International Corruption Perceptions Index (CPI) and the Ibrahim Index of African Governance (IIAG) reinforces the extent to which bad governance and corruption have become pervasive in Zimbabwe.

The CPI, scores and ranks countries based on how corrupt a country’s public sector is perceived to be by experts and business executives using a score of 0 to 100 where 0 is perceived to be very corrupt and 100 very clean. Zimbabwe has remained below the sub-Saharan regional average for the past 5 years (2015-2019). The IIAG on the other hand measures and monitors the quality of governance in African countries. In the 2017 IIAG, Zimbabwe was ranked 39th on the continent of 54 countries with 47% as its overall governance score. Ordinary citizens, church leaders, the private sector and public officials have also lamented the extent to which corruption has deprived the nation of resources that should be channelled towards the development of the nation. The head of State, President Emmerson Mnangagwa has also made

several statements on the need to eradicate corruption. It is against this backdrop that this week's weekend digest focuses on interrogating the reasons why Zimbabwe is not making the desired strides in the fight against corruption, whose social and economic effects on citizens can no longer be denied.



The Constitution and Good Governance

In its broad sense a constitution consists of a set of rules or norms which regulates the allocation of powers, functions, and duties of the government (the executive, parliament, and the judiciary) and other important national institutions. It also defines the relation between the state and its citizens. Constitutions can be written, as in the case of Zimbabwe or unwritten. The constitution of Zimbabwe contains several provisions that speak to good governance. Good governance can be defined as the use of political authority and exercise of control over a society and the management of its resources for social and economic development. Its key elements are accountability, transparency, responsiveness, combating corruption, citizen participation, and an enabling legal/judicial framework. For this digest, we look at some of constitutional provisions that promote anti-corruption efforts.

The preamble and founding values set the tone of good governance and anti-corruption. The preamble of the constitution states that “We the people of Zimbabwe...Recognising the need to entrench democracy, **good, transparent and accountable governance and rule of law** (own emphasis)...Resolve by the tenets of this Constitution to commit ourselves to build a united, just and prosperous nation, **founded on values of transparency**, equality, freedom,

honesty and dignity of hard work... (own emphasis). Section 3(1) sets out the founding values and principles of the constitution and these include the **supremacy of the constitution, the rule of law, and good governance.**

Section 9 of the constitution provides for **mechanisms that ensure the integrity and accountability of public officials.** It provides that the state must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution, and in particular the appointments to public offices must be made primarily based on merit; and measures must be taken to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices. The state must also ensure that all institutions and agencies of government at every level, in particular Commissions and other bodies established by or under this constitution, are provided with adequate resources and facilities to enable them to carry out their functions conscientiously, fairly, honestly, and efficiently.

Section 59 (freedom to demonstrate and petition), section 61 (freedom of expression and freedom of the media) and section 62 (access to information) are some of the constitutional **provisions that contribute to democratic processes.**

Separation of powers. The constitution respects the doctrine of separation of powers between the three arms of the government. Section 3(2)(e) states that one of the principles of good governance which binds the state and all its institutions and agencies of government at every level is that of separation of powers. The separation of powers between the three arms of government is considered as the spirit of constitutionalism. Chapter 5 of the constitution provides for executive authority. Such authority is derived from the people of Zimbabwe and must be exercised in accordance with the Constitution (section 88(1)). Chapter 6 makes provision for the legislature and section 119 outlines the role of the parliament. In terms of this section the parliament is responsible for ensuring that the provisions of the constitution are upheld and that the state, including all institutions and agencies of government at every level act in accordance with the supreme law of the land and in the national

interest. For avoidance of doubt, subsection 2 explicitly states that in relation to the aforesaid, all state institutions and agencies including the government at every level are accountable to the parliament. Chapter 8 is dedicated to the judicial authority, which is vested in the courts. As with the executive authority, judicial authority is also derived from the people of Zimbabwe. The constitution places a duty and an obligation on the judiciary to be independent. The courts are independent and are subject only to the constitution and the law, (section 164(1)). The constitution makes it clear that the judiciary's independence, impartiality, and effectiveness are central to the rule of law and democratic governance. An independent judiciary is another characteristic of constitutionalism.

Creation of institutions to combat corruption. Notwithstanding other institutions provided for in the constitution that aid in the fight against corruption, chapter 13 is dedicated to two institutions whose mandate is to fight corruption and crime, that is the Zimbabwe Anti-Corruption Commission (ZACC) and the National Prosecuting Authority (NPA). Section 235 of the constitution requires inter-alia that the ZACC be independent and not subjected to the direction or control of anyone, must act in accordance with the constitution and must exercise their functions without fear, favour, or prejudice. With reference to the Prosecutor General, who is the head of the NPA, the constitution states that the Prosecutor General must be independent and not subjected to the direction or control of anyone (section 260(1)(a)).

The question, therefore, is:

- If the supreme law of the land has solid provisions that make it possible for Zimbabwe to fight corruption, where are we going wrong? Is ours a case of constitution without constitutionalism– where the principles set out in the constitution are simply ignored and amended without following due processes?

Whilst there is no universal definition of the term “constitutionalism”- it simply denotes the principle of limiting the powers of the government so as to protect its citizens from arbitrary rule. However, Fombard (2014) correctly opines that constitutionalism encompasses more than that, it “combines the idea of a government limited in its actions and accountable to its citizens for

its actions” (Fombard 2014:416). **Has the absence of constitutionalism given room for endemic corruption to thrive in our country, giving resistance to tenets of good governance such as transparency and accountability?** In an attempt to answer this pertinent question, Transparency International Zimbabwe (TI Z), conducted a live streamed dialogue on the 6th of August 2020 on ZTN under the topic: Endemic Corruption in Zimbabwe: Is Lack of Constitutionalism to Blame?

Issues emerging from the dialogue

Although at face value, it might appear that the constitution is founded on the principles of constitutionalism the panellists on the live streamed show held contrary views. One panellist said, “we need to have honest discussions on the fight against corruption in Zimbabwe.” This resonates with what the former president of South Africa Thabo Mbeki said during the launch of TMALI Alumnae Forum a few year back (in relation to corruption in Africa). This view is also shared by the majority of citizens who state that in as much as the country has established and adopted various legal and institutional frameworks designed to fight corruption (in line with the constitution), such measures are merely symbolic gestures without any “political will” to see them succeed. Citizens have lost faith in the institutions that are mandated to fight corruption and uphold the rule of law. Corruption has robbed ordinary citizens of their basic human rights such as the right to basic health care. One panelist on the programme aptly described the situation when he said,

“the fact that we don’t have institutions for health care when our leadership goes overseas for their own treatment, the fact that our health workers are poorly paid and don’t have PPE is not because of external forces. Our Ministers drive the most expensive SUVs (cars) and they have more than one. It is the lack of empathy in our leadership not just lack of political will.”



Another panellist lamented that although the constitution provides for the right to freedom of expression and the right to demonstrate or petition, this is contrary to what is actually taking place on the ground.

Conclusion and Recommendations

It is indisputable that Zimbabwe needs an urgent remedial action to the scourge of corruption, whose effects on ordinary citizens have been amplified during this COVID-19 pandemic (failing public health sector, lack of adequate social safety nets for the poor and marginalised to mention but a few). The constitution of Zimbabwe defines necessary frameworks and institutions to respond to corruption, however, there are eminent gaps that need to be addressed in responding to endemic levels of corruption in Zimbabwe. TI Z makes the following recommendations:

1. Make corruption a high-risk, low-return activity for all, regardless of status (financial or political).
2. Provide and maintain an effective constitutional right such as the freedom to demonstrate and petition, freedom of expression and access to information. This will ensure that civil society and the media play their role of exposing and reporting on corruption.
3. Adopt corrective measures pertaining to the judiciary. The effect of perceived corruption in the judiciary should not be underrated. Corrective measures require both “marketing a non-corrupt image and rebuilding the legitimacy of, and confidence in, the system”. Perceptions often take time and are more difficult to address as opposed to actual actions of corruption.
4. Value the constitution. A nation’s constitution should be its most valued document. The proposed amendments to the constitution, especially those that relate to oversight, and accountability must not be compromised. Instead the relevant pieces of legislation must be aligned to the constitution.

Resist Reject and Report Corruption!

