

UNVEILING THE HURDLES: EXPLORING THE KEY CHALLENGES HINDERING THE EFFECTIVE IMPLEMENTATION OF THE SADC PROTOCOL ON CORRUPTION IN ZIMBABWE

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Abstract

The article investigates the challenges hindering the implementation of the SADC Protocol against corruption in Zimbabwe. Utilising a qualitative approach and documentary analysis of newspaper articles and publications, the study identifies political interference, underfunding and inadequate human resources as the primary obstacles. A number of obstacles affect the effectiveness of anti-corruption bodies while insufficient funding limits operational capabilities and resources. Furthermore, the scarcity of skilled personnel hampers the comprehensive enforcement of anti-corruption measures. These findings underscore the need for structural reform and enhanced support to effectively combat corruption in Zimbabwe and see the successful implementation of the protocol.

Keywords: Corruption, SADC Protocol against Corruption, implementation.

I. Introduction

Signed on August 14, 2014, the Southern African Development Community (SADC) Protocol Against Corruption seeks to advance and fortify the systems required to stop, identify, punish, and eliminate corruption in the public and private spheres. It aims to promote the development and harmonization of anti-corruption policies and domestic laws as well as to enable and regulate collaboration in areas of corruption among Member States. Corruption remains a persistent challenge across Africa, hindering development and eroding public trust. Zimbabwe, a member of the Southern African Development Community (SADC), signed (2001) and ratified (2003) the SADC Protocol against Corruption. However, despite the protocol's framework, effective implementation in Zimbabwe faces significant hurdles. With a score of 24/100 on the Corruption Perception Index for 2023, Zimbabwe is ranked 149th out of 180 nations (Transparency International, 2023). The index's interpretation guidelines state that a score of 24 out of 100 is low and denotes high levels of corruption. It's crucial to note, though, that this score represents a minor gain over the 23/100 obtained the year before. This article examines the main obstacles to the Protocol's implementation and offers some possible fixes.

II. Literature Review

Corruption is a widespread issue in many countries, especially in developing ones. A clear and scholarly understanding of corruption is essential to effectively tackle and mitigate it. Scholars have defined corruption in various ways, each underscoring different aspects of the issue. For instance, Abhijit Banerjee, Rema Hanna, and Sendhil Mullainathan (2012) describe corruption as the act of breaking rules, not merely unethical behaviour or actions against the collective interest. This viewpoint stresses the need to analyse the underlying tasks that bureaucrats perform and their personal incentives. It recognizes that corruption results from the interaction of personal motivations and delegated tasks in addition to being a moral or ethical conundrum. Moreover, corruption can occur at multiple levels, including within a company, throughout a supply chain, across broader business operations, and within societal contexts.

The World Bank (2019) defines corruption as "the abuse of public power for private benefit." This widely used definition focuses on the misuse of power for personal gain. Nye (1967) offers a broader perspective. He characterises it as "behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains." This definition leaves out certain associated immoral

behaviours but includes non-monetary gains like nepotism. While it is evident that there is no universally accepted definition of corruption, a sector-specific and systemic understanding of corruption is useful. Robbins (2000) offers a perspective on corruption that enables practitioners to go beyond individual actions and concentrate on the networks, power dynamics, social norms, and inequality that contribute to corruption in a particular setting. Corruption takes various shapes and forms based on the context in which it occurs, extortion, bribery, nepotism among others are forms of corruption that manifest in various contexts.

SADC Protocol against Corruption

According to the SADC Protocol against Corruption (2001), corruption is defined broadly as any action that goes against the obligations of a person who has been given a responsibility. This is applicable to anybody in a position of authority, including public servants and workers in the private sector. In order to acquire an unfair benefit for themselves or others, it defines corruption as "any act that violates the duties of public officials, private employees, independent agents, or other relationships of that kind." The Protocol understandably takes a broader view to corruption because it is a high-level document to guide national governments in the fight against the scourge of corruption. Article 3 of the Protocol lists acts that constitute corruption in terms of the treaty:

- a). the solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.*
- b). the offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.*
- c). any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party.*

The diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official received by virtue of his or her position for purposes of administration, custody or for other reasons.

The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties.

The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or for the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

The fraudulent use or concealment of property derived from any of the acts referred to in this Article; and participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

The Protocol gives signatories specific guidelines on what constitutes corruption and what steps they should take to overcome this obstacle. In this contribution, the focus is on the challenges that affect the implementation of this important document in eradicating corruption in Zimbabwe.

III. Methodology

This research employed a qualitative documentary analysis approach to explore documented challenges in fighting corruption in Zimbabwe. The analysis focused on two primary sources, newspaper reports and published institutional reports such as the Transparency International Zimbabwe (TI-Z).

Newspaper articles were obtained from credible national newspapers published in Zimbabwe.

Articles were selected based on the following criteria:

Articles published within the same timeframe as the documented cases.

Articles focusing on reported corruption cases not necessarily included in official reports.

Articles providing details and public perspectives on ongoing or recently concluded corruption cases.

Data Analysis

The collected data from documented cases and newspaper reports was analysed thematically. The study identified four themes, namely political interference, lack of resources, delays in cross-border investigations and centralisation of corruption investigations. The article identified recurring themes related to the nature and characteristics of corruption cases in Zimbabwe. Additionally, the analysis explored the media's portrayal of corruption and public discourse surrounding these issues.

Rigor and Limitations

To ensure the credibility of the analysis, triangulation was employed by cross-referencing information from documented cases with related newspaper reports. We acknowledge limitations inherent to documentary analysis, such as potential bias in official reports and selective reporting in the media.

This methodology allows for a comprehensive examination of documented corruption cases in Zimbabwe, providing valuable insights into the scope, nature, and public perception surrounding these issues.

Data Analysis

Despite the clear guidelines and objectives of the Protocol, Zimbabwe has faced significant challenges in its implementation. These challenges can be categorized into individual problems, each having a unique impact on the implementation of the Protocol, and collectively, they interrelate to compound the difficulty of implementation.

Political Interference

Political interference has been a major impediment to the enforcement of anti-corruption laws and policies in Zimbabwe. Article 2 of the Protocol notes that, each State Party shall adopt such legislative and other measures under its domestic law to prevent and combat acts of corruption committed in and by private sector entities. The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Sections 254 and 255) and the Zimbabwe Anti-Corruption Commission [Chapter 9:22] established the Zimbabwe Anti-Corruption Commission (ZACC), the National Anti-Corruption Agency tasked with fighting corruption in Zimbabwe, to combat corruption, theft, misappropriation, abuse of power, and other irregularities in the public and private sectors. In 2018, the President of Zimbabwe established a Special Anti-Corruption Unit in the office of the President. Its mandate included collaboration with other national institutions in the fight against corruption including the Zimbabwe Republic Police and ZACC.

The national institutions for the fight against corruption have found it difficult to execute their duties when cases involve politically exposed persons. "The degree of independence of public prosecutors and other enforcement agencies and the judiciary is difficult to ascertain in practice," according to Transparency International Zimbabwe (2013). Concerns regarding perceptions of political meddling, the length of time it takes to resolve cases involving high-profile individuals, and the caliber of investigations and prosecutions of corruption cases are among the difficulties, Mundopa (2021) lists in the battle against corruption in Zimbabwe. Thus, while the country has institutional mechanisms to fight

corruption, they still face huge hurdles in executing their mandate owing to interference by political office holders.

Inadequate Resources

Anti-corruption institutions in Zimbabwe have been hampered by a lack of resources, which has affected their ability to effectively combat corruption. While Zimbabwe has made efforts to counter corruption, it still faces significant challenges. Resource constraints in improving transparency and accountability within state enterprises and parastatals are evident (Transparency International Zimbabwe, 2023). The fight against corruption in Zimbabwe faces a significant obstacle in the form of limited capacity and resources. Implementing the SADC Protocol against Corruption requires a well-oiled system with robust institutions, trained personnel, and adequate funding. However, Zimbabwe's current situation presents several challenges in fulfilling these needs.

The Zimbabwe Republic Police (ZRP) and Zimbabwe Anti-Corruption Commission (ZACC) are the primary actors tasked with investigating corruption. However, these institutions are often understaffed and underfunded. This can lead to overworked officers who lack the time and resources to properly investigate complex corruption cases. For example, a 2021 report by Transparency International Zimbabwe (TI-Z) highlighted the ZACC's limited manpower, hindering its ability to handle the high volume of complaints it receives. Enweramadu (2020) notes that chronic funding of anti-corruption agencies is a serious challenge in Western Africa and Southern Africa. Zhangazha (2014), Langa (2017) and, Makwanise and Masunda (2022) highlight the chronic underfunding of the anti-corruption institutions in Zimbabwe. ZACC was allocated USD 1.7 million, USD 2.3 million, and USD 2.1 million respectively for the years 2015, 2016 and 2018. Considering capital and recurring costs these levels of funding are too low and cannot possibly support the work of the commission.

Table 2. Funding gap for the Zimbabwe Anti-corruption Commission

ZACC's Bid allocation year	versus actual	Presented Bid	Actual allocation
2015		\$3.4 Mn	\$1.7Mn
2016		\$6.9Mn	\$2.3Mn
2017		\$8.6Mn	\$2.1Mn

Source: Langa 2017

The table above highlights the funding gap for the Commission in the budget years of 2015, 2016 and 2017 where they were allocated less than half of their proposed amounts. The impact of this has been to scale back on many activities that would have enhanced the operations of the institution thereby affecting its effectiveness.

In 2022 and 2023 ZACC was allocated ZWL3,6 billion (USD 31 million) and ZWL9,6 billion (USD 29 million) respectively. Although the amounts appear lofty, exchange rate volatility eroded most of the resources. Most of the resources covered employment and other routine costs leaving little for investigative and technical work.

A slow and overburdened judicial system further impedes progress. Backlogs of cases can delay prosecutions for years, allowing corrupt individuals to remain free while evidence weakens. Additionally, a lack of specialized courts dedicated to handling corruption cases can lead to delays and technicalities that undermine successful convictions. However, progress has been registered in the establishment of specialised corruption courts. Effectiveness however is yet to be established as no convictions have been secured as yet especially for high profile cases.

Inadequate Manpower

According to Makwanise and Masunda (2022) ZACC's operations have been hindered by a shortage of trained personnel, especially investigative personnel. They cite the ZACC chairperson, Whabira (2017), who noted that the investigation department of the Commission has 36 officers to carry out investigations for the entire country. Thirty-six officers versus a population of 16 million do not work out to a good ratio. Further, only 21 of these 36 are seconded officers from the police and other stakeholders, which mean that

effectively ZACC has only 15 officers within its rank to carry out investigations. This demonstrates the lack of adequate investigative capacity within the institution to effectively deal with the numerous corruption cases.

Investigating and prosecuting complex financial crimes requires specialized skills in forensics, asset tracing, and financial analysis. According to Whabira (2017) only eight officers are assigned to investigating cases of economic crime. There is a clear lack of human resources and specialised skills to fight corruption at ZACC, especially considering that perpetrators of economic crimes are well resourced and have access to the highest quality of legal representation to scupper any chances of conviction. This could be one reason why there is a very low conviction rate in corruption cases in Zimbabwe. If Zimbabwe is struggling to provide its law enforcement and judicial personnel with the necessary training due to resource constraints, this lack of expertise can hinder the ability to gather strong evidence and build a watertight case against sophisticated corruption networks. Thus, inhibiting the fight against corruption.

Moreover, the lack of human resources and funding also manifests with the office distribution of ZACC. ZACC has only one office in Harare from which it conducts all its investigations. Makwanise and Masunda (2022) argue that the commission should be decentralised into provinces and districts so that people can report acts of corruption directly. This dovetails with a lack of awareness by the public about the work of the commission and the channels that can be utilised for whistle blowing purposes.

Public Education Gap

Public awareness about whistleblower protection mechanisms and how to report corruption remains low. This lack of knowledge not only discourages reporting but also hinders investigations as citizens remain unaware of their role in holding those in power accountable. Moreso, the public image of ZACC needs to be vindicated by efficiency in dealing with reported cases as this affects trust on it by the public. Past and current corruption scandals that have not been dealt with meaningfully have damaged the public image of the institution and degraded the trust from members of the public. The case of Intratek which was paid to build a solar farm in Gwanda but has yet to deliver up to date demonstrates the damage that is caused by slow delivery of justice. The public is largely sceptical about the prosecution of the same individual who is involved in yet another corruption scandal involving inflated prices and overcharging government.

Limited Technological Resources

Modern investigations often rely on sophisticated technology to trace financial transactions and analyse data. However, Zimbabwe may lack the budget to acquire and maintain such resources, hindering its capacity to investigate sophisticated financial crimes. Corruption cases often involve sophisticated movements of money through various vehicles to mask possible crimes. For instance, in the recent ZEC supply contract corruption scandal, although there is audio evidence to the effect of how much was paid to certain individuals to facilitate the corrupt deal, gathering concrete details that prove this may be challenging. For example, the company involved in the supply agreement with ZEC denies any dealings with the individuals who are heard in the audios, thus a thorough forensic analysis of the movement of money would be required to establish a link as well as corrupt intent.

Collective Impact of the Challenges

The collective impact of these challenges has resulted in a situation where, despite having several anti-corruption laws, policies, and institutional arrangements in place, their effectiveness becomes questionable considering the ever-increasing cases of corruption. The challenges are interrelated in such a way that addressing one without the others would not yield the desired results. For instance, even with adequate resources, political interference could still hinder the operations of anti-corruption institutions. Similarly, without addressing the issue of centralisation, local communities and organisations cannot effectively participate in anti-corruption efforts.

These examples discussed above illustrate how limited capacity and resources have crippled Zimbabwe's efforts to implement the SADC Protocol. Addressing this challenge requires a multi-pronged approach, including:

Increased Funding: Allocating more resources specifically for anti-corruption efforts is crucial. This could involve exploring innovative financing mechanisms, such as public-private partnerships or international aid dedicated to capacity building within Zimbabwe's anti-corruption institutions.

Capacity Building Programs: Investing in training programs for law enforcement, prosecutors, and judicial officials on investigating and prosecuting corruption cases is essential. This includes training on financial investigations, digital forensics, and witness protection.

Technological Investment: Modernizing technology used by law enforcement and the judiciary is critical for effectively handling complex financial crimes.

By addressing these resource constraints and building capacity, Zimbabwe can take significant strides towards a more robust anti-corruption framework, allowing for the effective implementation of the SADC Protocol.

I. Conclusion

The implementation of the SADC Protocol against Corruption in Zimbabwe is a complex task that requires a multifaceted approach. Addressing the individual and collective challenges is crucial for the successful implementation of the Protocol. This will require political will, resource allocation, and decentralisation of anti-corruption campaigns. Political will is the greatest impetus that is required to fight corruption in Zimbabwe because it indirectly affects other aspects such as funding. The perception that politically exposed persons easily get away with corruption can be eradicated if powerful politicians dissociate themselves from corruption accused individuals and allow investigation to ensue professionally without hinderances.

II. Acknowledgements

The completion of this research paper would not have been possible without the support and guidance of my academic supervisors. Their dedication and overwhelming attitude towards helping is solely responsible for completing my research paper.

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