

Justice v Corruption: The Judiciary's Role in the Battle for Economic Prosperity in Zimbabwe

Emerge Masiya

*Herbert Chitepo Law School
Great Zimbabwe University
Masvingo, Zimbabwe
emasiya@gzu.ac.zw*

<https://orcid.org/0000-0001-8584-2386>

Musavengana Machaya
*Herbert Chitepo Law School
Great Zimbabwe University
Masvingo, Zimbabwe*

mmachaya@gzu.ac.zw
<https://orcid.org/0009-0006-0010-327>

Abstract— Corruption remains a global cancerous disease that undermines economic development while eroding public trust in institutions. In Zimbabwe, corruption has been a persistent issue, with the country scoring 21 out of 100 on the 2024 Corruption Perceptions Index. The economic ramifications are severe, with corruption contributing to inefficiencies in governance, misallocation of resources, and diminished investor confidence. In response to this, Zimbabwe has established several legal instruments and institutions to combat corruption. The paper examines the role of the judiciary, as an independent legal institution in Zimbabwe that is 'central to the rule of law', in curbing corruption. The Constitution of Zimbabwe promotes transparency and accountability, with Chapter 13 establishing key anti-corruption bodies. Judicial oversight remains the key bottleneck for all anti-corruption enforcement efforts. Using a doctrinal research method, the study analyses existing case law and literature to assess the effectiveness of judicial enforcement in combating corruption. Lee's General Theory of Law and Development serves as the theoretical framework, providing insights into the regulatory impact of the judiciary and identifying systemic loopholes that hinder anti-corruption efforts. This paper contributes to existing literature by providing a comprehensive analysis of the judiciary's pivotal role in combating corruption and fostering economic development in Zimbabwe through the lens of Lee's Theory of Law and Economic Development. The findings of this paper highlight the judiciary's role as a legal institution in shaping regulatory frameworks and enforcing anti-corruption measures. The paper suggests an integrated approach to combat corruption that is cognisant of the existing multifaceted frailties to enhance transparency, rebuild public trust, and support sustainable development.

Keywords—corruption, judiciary, legal institutionalization, law, Theory of Law and Development

I. INTRODUCTION

The recent corruption scrutiny over the US\$88 million-dollar Trabablas Interchange denotes the detrimental effects of corruption in Zimbabwe. After the government's failure to account for the increase from US\$65 to US\$88 million loan, accusations were raised over the lack of open tender and lack of transparency [1]. More so, a survey conducted by the Zimbabwe National Chamber of Commerce (ZNCC) reflected a staggering 81% of its members reported that corruption had severely undermined the business enabling environment [2]. This is supported by the sand-the-wheels hypothesis conjectures that denote that corruption decreases

economic growth by impeding innovation and productivity [3]. The economic ramifications of corruption are severe, with corruption contributing to inefficiencies in governance, misallocation of resources, and lowered investor confidence [4].

This research aims to demonstrate the role played by the judiciary as an institutional linchpin that ensures the wheels of anticorruption efforts continue to move forward. Anticorruption efforts of legal institutions like the ZACC, NPA, and ZRP revolve around the judiciary. According to Abul-Ethem [5], the judiciary ensures effective protection of human rights, including the right to development, through combating corruption. The main research question: What role has been played by the judiciary in curbing corruption in Zimbabwe, and how has this contributed to economic growth? The main objective of the paper is to establish the role played by the judiciary in eradicating corruption in Zimbabwe. Judicial effectiveness, i.e the actual enforcement of legislation and court, is scrutinized as opposed to efficiency which is part of the broader context of judicial performance [6]. This contribution argues that while Zimbabwe's judiciary has increasingly taken a deterrent and rule-of-law-centred approach to corruption, structural challenges, particularly alleged political interference, selective enforcement and institutional dependence, significantly weaken its potential regulatory impact on economic development.

To achieve the above objective, firstly, the paper will reflect on existing literature on corruption and governance, Yong Shik Lee's general theory of development and his suggestions on how legal frameworks and institutions can better achieve economic growth. Secondly, the paper outlines the role played by Zimbabwe's judiciary in eradicating corruption, through an analysis of various case laws, while reflecting on the analogies between Yong Shik Lee's general theory and the key roles of the judiciary. The paper also identifies the obstacles faced by the courts in their pursuit of a corruption-free Zimbabwe. By critically evaluating judicial interventions and their economic implications, the paper aims to propose recommendations for strengthening judicial mechanisms to enhance transparency, accountability, and economic development in Zimbabwe.

II. THEORETICAL FRAMEWORK

Yong Shik Lee's General Theory of Law and Development, firstly, articulates the disciplinary parameters

of law and economic development. He identifies the law to include statutes, judicial precedents and institutional frameworks. He also states that law may be broader than what the term is perceived as based on the formalistic characteristics and should extend even to judicial precedent, especially when it has a de facto binding force and regulatory structures [7]. Judicial precedent is made up of court interpretations that bind future courts [8], in Zimbabwe, it forms part of Zimbabwe's common law. Therefore, judicial efforts are envisaged in Lee's definition of law.

Secondly, he identifies regulatory impact mechanisms in law and economic development. Through these mechanisms, he denotes the causal mechanisms by which law impacts development through three areas: regulatory design, regulatory compliance and quality implementations [7]. The paper will identify how legal institutions like the judiciary, using the legal frameworks, through their regulatory design (how laws are structured to achieve policy goals), regulatory compliance (the extent to which the public adheres to legal frameworks) and quality implementations (state capacity and political will), achieve regulatory impact.

Under regulatory design, he asserts that anticipated policy outcomes, that is the regulatory objectives, organisation of law, legal framework and institutions and adaptability to social and economic condition affect regulatory impact of law on development [7]. In terms of regulatory compliance, he avows that general regulatory compliance by the public in general and specific regulatory compliance of a particular law affect the regulatory impact of legal reform. Lastly, he notes that quality implementation is affected by state capacity and political will. All these variables affect regulatory impact of the law in economic development. The study will analyse the role of the judiciary in its efforts to fulfil these key variables to ensure economic growth through anti-corruption measures. Through the general theory, the paper will determine the effectiveness of the judiciary in realising regulatory impact in economic development.

Another theory considered is legal institutionalism (LI). LI draws from all various mores but gives particular attention to the role of the state in the legal system, and to the constitutive role of law in social and economic life [9]. LI upholds that an understanding of legal rules is essential for economists and other social scientists [9]. It is noteworthy to note that legal institutionalism does not imply that informal institutions, non-legal institutions, customs, or culture are unimportant. More so, legal institutionalism directly links to Lee's categories', namely, regulatory design. Legal institutional design affects development negatively or positively. Laws encompass and are dependent on legal system with an institutionalized judiciary and legislature [10]. From the perspective of legal institutionalism, however, corruption appears as the negative image of legal ordering. It is sometimes defined as the use of the price mechanism where it is outlawed, as in dealings with the bureaucracy [11]. The institutionalisation of anti-corruption measures through the judiciary will thus be analysed.

III. METHODOLOGY

A doctrinal approach is employed to critically analyse case law, legislative frameworks, and academic literature concerning the judiciary's role in combating corruption. Doctrinal legal research concentrates on the issue of

coherence of laws and legal doctrines [12]. It is thus ideal in the pursuit of how the judiciary achieves economic growth through its court. The research utilizes purposive sampling. The sample is of approximately 15 reported cases (readily available online) post the Anti-Corruption Commission Act of 2005, which instituted the main anticorruption body of Zimbabwe, to date. Each case directly addresses allegations of corruption, bribery, abuse of office, or related offences under Zimbabwean law. The cases are those officially reported and accessible through recognised legal databases or repositories. There was also consideration of cases from both the High Court and Supreme Court across the country to reflect cross-court perspectives. However, prior cases are referenced only when considered by the court. The cases are selected based on their prominence, such as those involving high-ranking officials, substantial financial implications, landmark judicial outcomes from across courts. The paper also focuses on sentencing trends and judicial reasoning. Unfortunately, the research is only reliant on reported cases at the expense of unreported cases and cases prior the prior 2005 are merely referenced for emphasis.

IV. LITERATURE REVIEW

A. Corruption

Nyoni [13] transcribes different types of corruption to include fraud, bribery, embezzlement, abuse of power, nepotism, and extortion. Other scholars have also identified other channels such as theft, embezzlement, bribes and kickbacks, money laundering, and other illicit financial flows [14]. Azeez [15] contends that corruption can be extended into other broader forms such as petty corruption, grand corruption and looting.

B. Corruption and Growth

Scholarship on corruption and governance has varied over the years. Some literature assert that good governance in an economy with constant and sound macroeconomic conditions will lead to sustainable economic development [16]. They also note that evidence was found that shows that reforms in the financial governance mechanism, such as risk management were used by the USA government to resolve the financial crisis. Mlambo, Mubecua, Mpanza and Mlambo [17], assert that corruption weakens public administration and sabotages good governance.

Echoing the sentiments of Nyoni [13] that not all corruption is corrupt. Mexico, Indonesia, Nigeria, and Turkey have high economic growth rates alongside high corruption rates [18]. Even in Zimbabwe, despite statistics on the billions lost, corruption creates a positive economic environment for some economic agents. For example, economic agents can easily resort to corruption to speed up their business activities [13]. The informal sector in Zimbabwe is fast growing the formal sector due to corruption [13].

While some scholars exaggerate the importance of corruption by identifying it as "the base for all the ills of a nation which, weakens the foundation and the economic performance of a country" [19], others identified states which have high economic growth rates alongside high corruption rates [18]. For Zimbabwe, corruption has bred negative consequences, and the courts have on occasion emphasized this fact. In *Chiviru v S* HH 40-04, the court noted that a policeman or person of public office who solicits a bribe

should expect to be fried in boiling oil, not leniency. He also noted that bribery and corruption attack the root of good administration and rob society of good governance thus should be nipped in the bud through imposing imprisonment. At the country level, corruption leads to slow economic growth by creating business uncertainty and a lack of trust in government and institutions [14]. At the firm level, it adversely impacts management of public funds, good governance, and market competitiveness [20].

In Zaire (now the Democratic Republic of Congo (DRC), the late Mobutu Sese Seko's fortune was projected to be US\$ 4 billion in 1984, most of it stashed in offshore bank accounts [17]. In 1997, a year when he was forced out of power, it was estimated that his wealth was about US\$ 8 billion [17]. Mugabe and his wife are alleged to have been million-dollar beneficiaries of corruption in Zimbabwe [21]. The Prosecutor-General, Justice Loyce-Matanda Moyo said corruption has become endemic in Zimbabwe, with the country estimated to have lost USD 8.5 billion [22]. This paper aims to highlight judicial efforts to combat corruption in a bid to perpetuate economic growth in Zimbabwe.

C. Judiciary and Governance

Gyimah-Brempong [23] notes that, low levels of law enforcement, lack of clarity of rules, of transparency and accountability in public actions increase corruption. Most of these identified factors are within the ambit of judicial control. The judiciary, as a statutory legal institution, is uniquely positioned to effectively hamper corruption. Not only is its primary role, to clarify rules, in terms of section 164 of the Constitution of Zimbabwe (Amendment No. 20, 2013), the institution affords transparency and accountability through its judicial independence, and it is positioned to ensure effective law enforcement through the court as designated under section 164 of the Constitution. Judicial independence ensures that judges adjudicate matters in a manner that is fair and impartial unaffected by external factors [24]. Though the importance of the judiciary in governance is recognised, its relevance in combatting corruption is peripheral. This paper aims to highlight the role the judiciary has been taking thus far in fighting against corruption.

D. Judicial corruption

Existing studies on judicial enforcement and anticorruption efforts have primarily been on the existence of corruption within the judiciary [25] while some papers dwell on the link between judiciary and political corruption like Sekkat [26] who asserts that corruption in the judiciary causes corruption in politics. More so, scholarship on the role of the judiciary in corruption is specific to a country; for example, Sarwar [27] outlined the role that the judiciary ought to play in combatting corruption in Malaysia but does not particularly detail the role that it was playing to combat corruption. Others like Gbadamosi [28] focused on the role of the judiciary in combating judicial corruption in their specific country. Recent studies have highlighted the perspectives of various stakeholders, including the judiciary, on the growing trend of financial crimes and the efficacy of the judicial system in semi-autocratic Zimbabwe [29]. The study was based on in-depth qualitative interviews with key stakeholders. Thus far, there is little research on the current role of Zimbabwean courts in combating corruption.

V. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Legal Framework

Lee [7] notes that, law may not be effective in the absence of a suitable legal framework and an effective institutional arrangement. He further denotes that criminal sanctions for a violation may not be very effective without an effective institutional arrangement enforcing them, such as a working police force and an efficient and fair prosecution system. Zimbabwe has various legal and institutional frameworks promoting economic growth through corruption control measures. Zimbabwe's anti-corruption legal and institutional framework is expansive. It is characterised by constitutional entrenchment, institutional frameworks, national policies, and international binding obligations as noted below.

Firstly, the supreme law of the country, the Constitution (Amendment No. 20, 2013), declares that all institutions should adhere to the principles of good governance, including transparency, accountability and combating corruption (section 9). It also mandates the establishment of a code of conduct for public officers by mandating public officers to conduct themselves with integrity and avoid corruption (section 198). Section 254 creates the Zimbabwe Anti-Corruption Commission, an independent body responsible for investigating and combating corruption. Zimbabwe also promulgated statutes like the Prevention of Corruption Act [*Chapter 9:16*] as amended by the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] which provides an ambit for corruption related offences (section 13) and avenues of protecting whistle-blowers (section 14) as well as the appointment of investigators (section 2), among others.

Criminal Law (Codification and Reform) Act, under Chapter IX, criminalises bribery (section 170), abuse of duty as a public officer, and lists activities that would be considered corruption (section 172, section 173), all of which are categorised by Nyoni [13] as corruption. It also criminalises fraud (section 136) and Extortion (section 134). The Anti-Corruption Act [*Chapter 9:22*] outlines the functions of the Commission, which included investigating corruption, theft, misappropriation and abuse of power, making recommendations to the government as well as collaborating with enforcement agencies to prosecute corruption cases (section 12). Other laws include, but not limited to, the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], Public Finance Management Act [*Chapter 22:19*] and the Procurement Regulatory Authority of Zimbabwe Act [*Chapter 22:23*].

The National Anti-Corruption Strategy (NACS) was launched in July 2020 and implemented between 2020 and 2024. The strategy emphasises the involvement of government bodies, law enforcement, the judiciary, civil society, and the public aimed at protecting whistleblowers, recovering assets, and promoting [30].

B. Institutional Framework

The Zimbabwe Anti-Corruption Commission (ZACC) was established by the Constitution of Zimbabwe (Amendment No. 20, section 254) and the Anti-Corruption Commission Act. [Chapter 9:22]. It is an independent body tasked with investigating and preventing corruption in both the public and private sectors through raising awareness about corruption and promoting integrity. ZACC encourages

citizens to report corruption and protects whistleblowers. It works with international agencies and recommends cases for prosecution [30].

There is also the Financial Intelligence Unit (FIU) established under the Money Laundering and Proceeds of Crime Act [Chapter 9:24]. The FIU investigates suspicious financial transactions, working to prevent money laundering and financial crimes (section 4). It shares reports with law enforcement agencies and promotes anti-money laundering practices in line with international standards supported by the Asset Management Unit which manages, and safeguards property and assets seized from criminals linked to corruption. ZACC and the NPA refer cases to the AMU when assets need to be managed or disposed of [30].

The National Prosecution Authority was established under Section 258 of the Constitution, governed by the National Prosecuting Authority Act [Chapter 7:20]. The NPA is responsible for prosecuting crimes on behalf of the State, including corruption cases (section 12). Cases are referred to the NPA by the Zimbabwe Republic Police established under section 219 of the Constitution and governed by the Police Act [Chapter 11:10]. The Prosecutor-General is the head of the NPA while the Board employs prosecutors and other staff of the NPA and oversees the overall administration of the NPA [31]. In 2023, NPA prosecuted 1021 Economic Crimes cases, including 7 high profile cases [31].

These legal institutions and laws are a fulfilment of Zimbabwe's international obligations stemming from various international conventions aimed at combatting corruption namely, the United National Convention Against Corruption [32], the African Union Convention on Preventing and Combatting Corruption [33] and the Southern African Development Community Protocol Against Corruption [34] which recognised corruption as a global issue, criminalises corruption, requires member states to implement anticorruption policies and establishes mechanism for extradition and legal cooperation in corruption.

C. Other Jurisdictions

Other countries like South Africa and Nigeria also boast similar robust legal and institutional frameworks on corruption. South Africa promulgated the Prevention and Combating of Corrupt Activities Act (PRECCA) [Act No. 12 of 2004] which defines and criminalizes corruption [36]. The Public Finance Management Act (PFMA) [Act No. 1 of 1999] which ensure accountability in the management of public funds, Municipal Finance Management Act (MFMA) [Act No. 56 of 2003] which regulates financial management in municipalities to curb corruption and Protected Disclosures Act [Act No. 26 of 2000] which provides protection for whistleblowers reporting corruption, among others. It also has institutions like the National Prosecuting Authority, Special Investigating Unit, the Public Protector and the Auditor General of South Africa, among others [36].

In Nigeria, there is the Corrupt Practices and Other Related Offences Act, 2000 which established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and criminalises bribery, fraud and abuse of office [37]. Economic and Financial Crimes Commission (EFCC) Act, 2004, Money Laundering (Prohibition) Act, 2011 and the Public Procurement Act, 2007, inter alia, which promotes public financial

management [38]. It also has the Economic and Financial Crimes Commission (EFCC) and the Nigeria Financial Intelligence Unit (NFIU) which tracks suspicious financial transactions. Despite a similar legal and institutional framework on corruption, Zimbabwe still scored 21 out of 100 on the 2024 Corruption Perceptions Index [39].

Lee [7] notes that well-designed and effectively implemented laws that fulfil the needs of the public and fit the socioeconomic conditions are more likely to command strong compliance and active participation by the public. Moreover, he notes that the impact of law cannot be assessed separately from the relevant institution. Zimbabwe's anticorruption laws are extensive and compete with international standards. However, their regulatory impact can only be assessed through the lens of institutions like the judiciary. The judiciary as an instrument for economic growth through its anticorruption efforts will be evaluated in this paper.

VI. ROLE OF THE JUDICIARY IN COMBATING CORRUPTION: CASE ANALYSIS

A. Adaptability to social conditions.

Lee [7] notes that, the law may not be effective if it does not conform to the socioeconomic conditions on the ground. For example, the Judicial Service Commission has ensured adaptability of its institutions and cases to current technological advancements through its Integrated Electronic Case Management System (IECMS). The Judicial Service Commission (JCS) adopted IECMS in February 2022 as an online platform designed to digitalise the litigation process [40]. One of the reasons for its establishment is to eliminate corruption [41]. The system mitigates against corruption through passwords and data encryption. However, the system itself fails to adapt to the current multilingual Zimbabwe and lacks an efficient internet service, thus lowering the system's efficiency. The Parliamentary Legal Committee (PLC) of Zimbabwe raised concerns over the digital divide that it creates, where limited access to computers, the internet, and technical skills could exclude a significant portion of the population [42].

IECMS brought efficiency into the court. The National Prosecuting Authority [31] reported a 61.01% clearance rate of the 1021 Economic Crimes cases and 85.71% of 7 high profile corruption cases.

B. Robust application of anti-corruption laws

Lee [7] notes that the strength of regulatory enforcement also affects general regulatory compliance. The likelihood of regulatory compliance increases where a violation is sanctioned with a real penalty, including financial and penal ones, because of regulatory enforcement. In the case of Zimbabwe's judiciary, specific regulatory compliance with anticorruption law is encouraged through robust regulatory enforcement by the judiciary. This is noted in the case of *S v Vengesai* (2023) ZWHHC 192 wherein Justice Chikowero expressed his appreciation of the judgment in *S v Ngara* 1987 (1) ZLR 91(S) wherein a harsh sentencing approach in bribery and corruption cases were administered on the basis that, at 101 C, 'if unchecked or inadequately punished, it will disadvantage society by depriving it of a good, fair and orderly administration'. Deterrence and public indignation are the factors which must predominate above all others in the assessment of the penalty.

The court noted that by incarcerating the appellant, the learned magistrate was giving expression to the need to ensure that deterrence and public indignation predominated over all other factors in determining an appropriate sentence. Justice Chikowero further noted that the prevalence and the daring act of approaching a judge requires that the courts take a stand through custodial penalties [43]. The court's intolerance for corruption can be traced back before the enactment of existing legislation. This is noted in the case of *Attorney General of Zimbabwe v Bryan Johnsen & Patrick Maganja* SC 119-98, wherein GUBBAY CJ said that where the offender is a police officer or agent of the State, a custodial punishment (imprisonment) is called for unless there are cogent reasons which indicate the contrary.

Over the years, the court's judgments have been more stringent. It is notable that in the early years, as reflected in *S v Nyawera & Ors* (CRB 1559 of 2009) [2010] ZWHHC 229 (27 September 2010), the accused was sentenced to 6 months imprisonment, wholly suspended on condition of restitution, the court was not as strict. Four years later, in *Murisi v S* (CRB CHN 137 of 2006) [2013] ZWHHC 31 (5 February 2013), the accused was convicted of soliciting and accepting bribes and sentenced to 36 months imprisonment with 12 months suspended on condition of good behaviour.

In 2023, in the case of *S v Chivende* (147 of 2023) [2023] ZWHHC 147 (16 February 2023), the accused was convicted of theft of trust property and sentenced to 7 years imprisonment with 1 year suspended. In *S v Ndemera and Another* HH 344-24, the offenders were charged with the crime of criminal abuse of duty as public officer as defined in s 174(1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] and sentenced to 10 years imprisonment of which 1 year is suspended for 5 years on condition the offender does not within that period commit any offence involving dishonestly and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

It revealed that up to gold worth US\$1.5 billion is unlawfully transported out of the country each year, while billions of dollars' worth of diamonds are unaccounted for [44]. In the year 2018, the AG's office found that 82% of government spending was tainted by financial irregularities of some kind [45]. ZACC in 2020 exposed that Harare metropolitan province accounted for the 93% of all corruption cases received in this particular year [45]. The potentially deterrent implications of an automatic imprisonment, of corrupt government officials creates favourable conditions of building public trust.

C. Judicial oversight of anticorruption institutions

Lee [7] asserts that it is the quality of implementation that determines the effectiveness of law, and it is measured by the extent to which a state meets the requirements set forth by the terms of law and fulfils the mandates under these terms, including its enforcement and monitoring terms. The judiciary ensures quality of implementation through its judicial oversight of anti-corruption institutions like ZACC, ZRP, NPA, and ZIMRA. This is reflected in cases like *Mukondo v S* CCZ 08/20 wherein the application, while employed by the ZRP, was charged and convicted of bribery as defined in s 170(1)(a) of the Criminal Law (Codification and Reform) Act [Chapter 9:23], he was sentenced to 12 months imprisonment of which four months were suspended of five years. He approached the Constitutional Court for an

order for leave for direct access alleging violations of his right to a fair trial. Justice Malaba dismissed the application on the grounds that the application for direct access was a disguised appeal against the decision of the court a quo.

In *S v Taranhike* [2019] ZWHHC 847, the courts were faced with charges against the Finance Director, Finance Manager, Accountant, Regional Engineer North, and Director of Administration and Human Resources of ZINARA. The accused were charged with criminal abuse of duty as public officers as defined in s 174 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. The five accused were said to have made payments amounting to US\$2 940 558.69 to these three companies. The court noted that there was no basis upon which the accused persons should be held to be the ones responsible when what they did was with the full blessings of their ultimate superior under the surrounding circumstances where they were acting in good faith. The court also pointed out the fact that the charges were targeting juniors as scapegoats in an alleged fight against corruption and thus resulting in selective justice which cannot be tolerated.

By carefully scrutinising both the conduct of law enforcement officers and the fairness of proceedings, the courts reinforce the principle that accountability must reach all levels of authority, thus discouraging selective prosecution and scapegoating. This rigorous judicial approach helps foster public trust in the justice system and signals to the economic sector that the rule of law is robustly protected, which is essential for building investor confidence and supporting sustainable economic growth.

D. Institutional linchpin of anticorruption Institutions

In the case of *S v Maketo* [2011] ZWBHC 188 (30 November 2011) in which Maketo, who was, at the time, superintendent in the Zimbabwe Republic Police and the officer commanding Criminal Investigations Department (CID) was charged and convicted of corruption in contravention of section 4(a) as read with section 15(2)(e) of the Prevention of Corruption Act. He was sentenced to 4 years imprisonment of which 2 years imprisonment was suspended for 5 years on condition of good behaviour. He had unlawfully ordered the release of a suspect suspected of committing robbery in South Africa. The case involved cooperation between Zimbabwean and South African police in addressing a major cross-border armed robbery. The court emphasized the importance of law enforcement adhering to legal procedures and acting in good faith during such collaborations.

In 2016, the judiciary, among other stakeholders, collaborated and launched a campaign named 'Against Corruption Together' (ACT) [46]. The ACT campaign was launched to raise awareness on corruption in the justice delivery system. The judiciary also instituted specialized courts combat financial crimes [46]. The economic implications, though innumerable, can be deduced from what Pamela Tremont, US Ambassador to Zimbabwe, stated that corruption, coupled with an unpredictable regulatory landscape, significantly deters American investors from establishing businesses in Zimbabwe [2]. The institutionalisation of anticorruption institutions ensures predictability of the regulatory landscape in corruption.

E. Retaining public confidence

Manyatera [25] notes that the court's influence on society lies in its ability to apply the law that is not only just but also perceived by society as just. The appearance of justice is equally important as its achievement. Lee [7] also notes that the regulatory impact of law on development is affected by public knowledge and understanding of law. The public would be more inclined to comply with the law in general if they believe, based on their knowledge and appreciation of law, that compliance is in the interest of their communities, families, and themselves [48]. Thus, the court's willingness to try and convict high profile figure as reflected in the case of *S v Gomba and 3 Others* [2023] ZWHHC 271 in which the Finance Director of the City of Harare and the Chamber Secretary were convicted of a charge of Criminal abuse of duty as public officers as defined in s 174 of the Criminal Law Code. They had sold council land without complying with the relevant statutory provisions. Such sales were to handpicked beneficiaries. They were each sentenced to 8 years imprisonment of which 2 years were suspended on the usual conditions of good behaviour. Their appeal against conviction and sentence was dismissed by the Supreme Court.

In *S v Mushata* [2023] ZWHHC 135 S wherein the court convicted a public officer for criminal abuse of duty. The court highlighted the need to maintain public confidence in the criminal justice system. It explained that leniency, such as a fine or community service, would undermine society's trust and give the impression that corruption is condoned. In *S v Ndemera and Another* [2024] ZWHHC 344, the offenders were charged with the crime of criminal abuse of duty as public officer as defined in s 174(1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] and sentenced to 10 years imprisonment of which 1 year is suspended for 5 years on condition the offender does not within that period commit any offence involving dishonestly and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Collectively, these cases demonstrate that the judiciary's firm stance against corruption, especially when holding high-profile individuals accountable, reinforces public confidence in the justice system. By ensuring that penalties for criminal abuse of duty are stringent and not diluted by leniency, the courts signal a commitment to fairness and impartiality. This approach not only deters corrupt practices but also assures the public and economic stakeholders that the rule of law prevails. As a result, judicial effectiveness becomes a cornerstone for economic confidence, encouraging investment and fostering an environment where integrity and accountability are valued, thereby supporting sustainable growth and development.

F. Upholding the rule of law

As noted in *S v Vengesai* [44], the court understands its mandate to apply the law 'impartially, expeditiously and without fear, favour or prejudice (Constitution, section 164) in administering deterrent judgment; however, this does not overshadow its primary role in upholding the rule of law. The courts do not condone blatant disregard for the rule of law, specifically, the right to a fair trial. In *Kasukuwere v Mujaya* 3 Ors 2019 ZWHHC 562, the court underscored the absolute right of an accused to a fair trial, as enshrined in the Constitution. It emphasized that charges must be clear, specific, and detailed enough to inform the accused of the

nature of the allegations. This ensures that corruption cases are prosecuted transparently and effectively, preventing arbitrary or flawed prosecutions that could undermine public trust in the justice system. The court criticized the prosecutor's belligerence and refusal to disclose essential information, which could have compromised the integrity of the trial.

G. Challenges

One of the biggest challenges of the judiciary in combating corruption is the existence of corruption within its institutions. The foundation of judicial effectiveness and efficiency is judicial independence. Manyatera [25] asserts that, an independent judiciary is a sine qua non of a democratic state, the key element to the rule of law paradigms. Lee [7] proclaims that legal culture affects general regulatory compliance by influencing the way the public view the law and the degree to which they comply. Legal culture is defined as those characteristics present in a legal system, reflecting the common history, traditions, outlook and approach of that system that may be reflected in the actions or behaviours of the actors, institutions, and even of the substance of the system [48]. Regrettably, corruption has been made part of the legal culture. Any anticorruption efforts may be perceived by the public as a disruption of culture and there is thus resistance [49].

A study by Munjeyi [29] indicates that the judicial system is captured and biased, as evidenced by the low percentage of convicted individuals with a high profile or elite individuals. The study, based on in-depth qualitative interviews with key stakeholders, aimed to explore the perspectives of stakeholders on the growing trend of financial crimes and the efficacy of the judicial system in semi-autocratic Zimbabwe. All participants acknowledged that severe financial offenders in Zimbabwe fly under the judicial radar because they are committed by or for the ruling elite. Gloppen [50] notes that, corruption and perceptions of corruption in the judiciary not only undermines the courts' credibility as corruption fighters but also it erodes trust in the courts' impartiality, harming all the core judicial functions, such as dispute resolution, law enforcement, protection of property rights and contract enforcement thus detrimental to economic growth.

Moreso, judicial effectiveness is heavily reliant on other anticorruption institutions' due diligence. This can be both a blessing and a curse. For example, as noted in the case of *Zimbabwe Anti-Corruption Commission v Mangwiro* Judgment No. SC 11/2022 wherein an urgent chamber application was struck off the roll on the basis that it assumed the character of an ordinary application. The court stated that ZACC had busied itself on nothing and invited the court to walk with it on a matter which was completely devoid of any substance and its attempt to encroach on other's power would not be condoned.

However, when all the institutions work together in solidarity, they produce commendable results like the decision in *S v Maketo* 2011 ZWBHC in which the court scrutinized the actions of senior police officers, ensuring that their conduct aligned with legal and ethical standards. By convicting the appellant for corruption, the court demonstrated its role in curbing abuse of power within law enforcement. In this case, the courts, the Zimbabwe Republic Police, prosecution, Officer Commanding Criminal

Investigations Department (CID) and foreign institutions worked together to convict senior police officers.

The judiciary highlights state capacity through the establishment of anticorruption mechanisms like IECMS and anticorruption courts. The US\$3,8 million Integrated Electronic Case Management System (IECMS) is designed to enhance transparency by reducing corruption in the litigation processes through removing the interface between litigants, their representatives and judicial officers [52]. *Statutory Instrument* 153 of 2023 ordered the use of the IECMS for filing documents, scheduling hearings and even attending court virtually. Some of the beneficiaries in the training of IECMS include serving judicial officers, members of the ZPCS, the Zimbabwe Republic Police officers, legal practitioners, officers serving in the Attorney General department, members of the National Prosecuting Authority, members of the Zimbabwe Anti-Corruption Commission and personnel working in the Ministry of Justice, Legal and Parliamentary Affairs [[53].

However, its incapacity is heavily reflected through that, as highlighted by Muparadzi and Mukonza [42], the digitalisation of the judiciary through UECMS is heavily reliant on auxiliary infrastructure of information and communication technologies, the level of education and awareness of citizens, which is still lacking in Zimbabwe. Even though on paper, the judiciary has the supposed political will to eradicate corruption as note in *S v Mudawari* HH 270/90 where the point was made that bribery and corruption are viewed with thorough disapproval. More so, its willingness to eradicate corruption is reflected in its establishment of specific anticorruption courts in both the High court and Magistrates Court [30], the training of presiding officers of the anticorruption courts [30] and deterrent decisions like *Vengesai v S* HH 330-23.

Yet political willingness is questionable in court decisions that span for years dwelling on technicalities alone. This is reflected in its insistence on procedural technicalities in court as noted in the *Zimbabwe Anti-Corruption Commission v Mangwiro* Judgment No. SC 11/2022 wherein the merits of the case were not heard apart from the first verdict. The original review judgment by the Labour Court on 24 February 2017 addressed procedural issues, such as the improper constitution of the Disciplinary Committee, and remitted the matter to a properly constituted Disciplinary Committee. However, subsequent applications by the applicant were procedurally defective and focused on issues like condonation and leave to appeal, rather than addressing the substantive merits of the case. The Supreme Court ultimately struck off the composite application due to a defective ground of appeal, preventing the merits from being heard.

VII. DISCUSSION OF FINDINGS

The evolution of the judiciary toward more stringent penalties reflects a growing intolerance for corruption. The imposition of custodial sentences for public officers and high-profile individuals underscores the judiciary's commitment to deterrence and public confidence. However, separate existing studies by Munjeyi [29] denote that the public still believes that bigger fish are yet to be prosecuted. Therefore, the current robust application of the laws has not sufficiently ensured public trust or confidence.

The analysis shows that judicial oversight of anticorruption institutions is crucial to the assurance of accountability that transcends hierarchical boundaries. Cases such as *S v Taranhike* and *S v Maseko* reflect the court's watchfulness in preventing scapegoating and promoting fair prosecution. Scapegoating is an organizational strategy for shifting blame to a member of the organization [53]. True justice and accountability can only be achieved when the real culprits have been apprehended and it is only then that public trust can be retained.

However, the limitation of political will and institutional capacity are reflected when priority is given to procedural technicalities at the expense of substantive justice. Cases like *Zimbabwe Anti-Corruption Commission v Mangwiro* undermine judicial effectiveness when technicalities impede substantive justice. More so, digital transformation, exemplified through IECMS, are also hampered by infrastructural deficiencies and digital literacy. As noted by Poshai and Vyas-Doorgapersad [41], successful adoption of digital technologies in the judiciary must be preceded by investments in technology to ensure just outcomes and public trust.

Zimbabwe's judicial system, thus, to ensure the effective combating of corruption requires a multifaceted approach, anchored in independence, strengthened by adaptability and robust enforcement, but challenged by internal corruption, infrastructural deficits, and legal culture. Sustained progress will require not only institutional reforms and technological investment but also a shift in legal culture and political will, ensuring that anti-corruption efforts are inclusive, substantive, and resilient.

VIII. CONCLUSION AND RECOMMENDATIONS

The 2003 Vienna Declaration on the Role of judges established that judges act as a catalyst for law reform and social change, contributing to progress and sustainable human development [25]. The Judiciary in Zimbabwe has made strides in paralleling its efforts to foster economic growth, through hampering corruption in its courts. Through judicial precedent, the courts in Zimbabwe have solidified their intolerance for corruption.

Firstly, the courts of law and its precedent coincide with Yong Shik Lee's his disciplinary parameters of law which extends even to binding judicial precedent. The judiciary also ensures effective regulatory design through economic growth oriented regulatory objectives. This is in terms of section 164, which confers judicial independence to ensure 'rule of law and democratic governance'. The organisation of its law, legal framework and institutions create fertile ground for anticorruption efforts through IECMS, judicial review and independence. Adaptability to social and economic condition by the judiciary is reflected through IECMS and stringent judgement of corruption in response to the corruption pandemic. In terms of regulatory compliance, general regulatory compliance by the public in general and specific regulatory compliance of a particular law is encouraged through persecution of high-ranking public officials and continued adjudication of corruption cases. Lastly, Lee [7] notes that quality implementation is affected by state capacity and political will as reflected in the investment of US\$3,8 million to establish IECMS, the creation of anticorruption courts and the courts' clear abhorrence of corruption and deterrent judgments. Despite its challenges,

its efforts are commendable and worthy of recognition in the greater fight for a corrupt free Zimbabwe.

A. Recommendations

- Creation of Independent Judicial Review Bodies. The creation of a completely independent judicial review bodies to monitor and thwart undue influence from the executive or military [54]. Ariotti, Dietrich & Wright [55] notes that, judicial autonomy, once enforced, is strongly associated with sustained growth because independent courts improve property rights protection and lower transaction costs associated with capital investment. The current judicial institution is not completely divorced from the executive and thus prone to undue influence from the branch.
- Incentivising Whistle Blowers. Lee [7] notes that to improve specific regulatory compliance of such laws as anticorruption laws, in the presence of conflicts of interests among different groups (beneficiaries and victims), a government should strive to devise the implementation of law in such a way as to reduce the perceived loss and provide compensation to the losing groups. The proposed Whistleblower and Witness Protection Bill should include provisions for incentivising whistleblowers.
- Recognition of Corruption-Free Society as a Right through constitutional amendments. The recognition of the right to a corruption-free society through an understanding of corruption as a human rights violation. This is supported by scholars that support move of anti-corruption policy away from a narrow focus on corruption as an economic crime to be sanctioned under criminal law, to a comprehensive understanding and approach designed to respect, protect and fulfil human rights, and promote societal well-being [56].

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