Corruption is the abuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority. This can mean not only financial gain but also non-financial advantages.

We are all deeply concerned about the spread of corruption, which is a virus capable of crippling government, discrediting public institutions and private corporations and having a devastating impact on the human rights of populations, and thus undermining society and its development, affecting in particular the poor[1]. The caveat to all these approaches and specific techniques to combat corruption is that the highest levels of government must be strongly committed to pursuing anti-bribery and anti-corruption strategies and initiatives vigorously and persistently. Political will is a critical starting point for sustainable and effective anti-corruption strategies and Programs. Without it, governments' statements to reform civil service, strengthen transparency and accountability and reinvent the relationship between government and private industry remain mere rhetoric.

That commitment must be visible, forceful, and convincing. It must also enlist the legislative and judicial branches of government, the business community, and civil society as strong and equally committed parties. Without this commitment and increasingly widespread public support, any anti-corruption strategy and program will fail.

Corruption is the primary threat to good governance, sustainable economic development, democratic process and fair business practices.

Corruption is a crime that is sophisticated, challenging to investigate and prosecute as it is usually conducted secretly with no direct eye witnesses. It sometimes

[1] www.oecd.org/site/adobecdanti-corruptioninitiative

involves high level persons with resources at their disposal who will do anything to prevent being caught and prosecuted.

An example of how entrenched corruption can affect the country in a negative way was revealed in the Chiluba Theft Case where two members of parliament called him a thief. In response to allegations he decided to take them to court for criminal defamation. Before the trial concluded, Chiluba was removed from office. When he left office, evidence emerged that he was a thief. It was revealed that he held a London account from which people were paid and this included the Chief Justice of the country. This in itself illustrates how corruption impedes prosecution of financial crime because here the Chief Justice was receiving payment from the president so what real work could be done?

The Chiluba case also demonstrated how the president was working with a financial institution called access financial services as a result of corruption, the state was compromised because private citizens were dictating how the state should be run.

Another case study involved the granting of exclusive rights to operate lottery activities in Zambia to Western Investors. This was to be facilitated by a Special purpose vehicle registered in Ireland. Zambia agreed to amend its Tax legislation in order to confer concessions on the investors.

The Government's grant of exclusivity to run lottery operations and to grant tax concessions in relation thereto was counter –intuitive. The statutory definition of lottery activities was far reaching and extended to corporate promotional schemes and church raffles. Moreover, there were existing lotteries in Zambia which were performing reasonably well in their own context.

The rights were granted despite advice from the Ministry of Legal affairs to the contrary. The justification for agreeing to grant tax incentives for lottery business particularly in developing countries is not apparent.

Subsequently the Zambian government was sued by the western investors for $144million for not immediately closing all lottery activities in breach of the concession.

The matter was dealt with through Arbitration in London which lasted five years and the claim was dismissed.

During the preparatory stage, the Zambian team discovered a document which was made by three parties and styled as MOU. These parties were identified as group A, company B and group C. Group A was defined as a group of Zambian Nationals, having major activities related to the development of the Zambian economy, including financial services, natural resources exploration and generally speaking, leading entrepreneurial activities with regard to national projects (the group members were not identified but they were represented by a Mr faustin Kabwe; in relation to unrelated matters , he has since been found liable in damages by the High Court in London in the sum of US40 million for conspiracy to defraud the Republic of Zambia, together with, among others former President Chiluba and the former Director general of the Zambian Secret Services and he has been convicted in the Zambian Criminal on the similar charges and sentenced to terms of imprisonment)

Group B was defined as a Company which, having cooperated with Group A had ' w*on the government public tender for the privatization of 100% of* ***X'***

Group C was defined as *'a multinational group with holdings and activities in more than three continents. Its activities range from trading to real estate, banking, high-tech, telecommunications, nation-wide power supply, population management etc'*. (no further information was provided about this Group or its activities, save that it was stated that *'GC has active offices in 11 countries around the world'* and its representative for the purpose of the MOU was the same Mr. Daniel Israel.

A separate document disclosed that Group A was *'Faustin Kabwe and Associates'*; Group B was *'Socomer represented by Andre Annicq'*; Group C was *'Israel Daniel and his Group'*; and that **X** was *'the State Company which is called Ndola Lime'*.

SOCOMER was a Belgium Company which had successfully bid for the Ndola Lime Company, whose lime production was critical to the production of copper. It had no, experience in lime production.

In its privatisation bid, it beat bids from African Companies which had lime production experience.

SOCOMER also covenanted in its Tender documentation that no Zambian was involved in the company or its bid and covenanted further that it would retain its shares in the SPV which would acquire Ndola Lime for 3 years.

In contradiction to and contravention of the covenants made in order to procure the tender, the Memorandum of Understating revealed that the shares in the SPV would be held from the outset by SOCOMER for and on behalf of the Zambia Group (A). This was confirmed by a statement obtained from Socomer's representative, Mr. Robert Standaert, that *'it was never Socomer's intention to have any interest in the SPV which would acquire Ndola Lime Company'*.

The MOU disclosed further that the Zambians and SOCOMER did not have the funds to complete the acquisition of Ndola Lime.

It disclosed that Group C, would provide the finance to complete the purchase of Ndola Lime and it would acquire a 100% interest in the SPV, 49% of which it would transfer to Group A.

By the MOU Group A covenanted to Group C as follows:

i) *'Group A* ***will cause the Government to grant Group C an exclusive licence to operate instant lotto gaming in Zambia*** *and mainly in the main cities'*;

ii) *'Group A will cause the Government to grant Group C a non-exclusive licence (including the respective frequencies) to operate and commercialize cellular services in Zambia and mainly in the cities';*

iii) *'Group A undertakes to take all the required measures to ensure the grant of the lotto and cellular licenses to Group C in terms and conditions which satisfy Group C';*

iv) *'Group A will prevent B from entering into any undertaking which might have any impact on* ***X*** *and or its shareholding, directly or indirectly, without Group C's prior written consent';*

iii) *'Group A informs Group C that Canadian Bank Note ('CBN') is trying to establish in Zambia activities in the field of on-line Lotto. Group A will furnish Group C all respective information including the terms of CBN's offers and or requests as well as other comprehensive details concerning the CBN'S negotiations with government*

iv) *‘Generally speaking it is clearly understood that one of Group A’s most important on going roles is to ensure the interface with the local authorities, as well as their active support and cooperation, on all levels and at all times, concerning all activities and or potential activities, whether published or not, as well as to ensure the authorities protection and positive attitude and cooperation with Group C’s different activities’*.

A draft Memorandum of Understanding (‘MOU2’), prepared by Group C for Socomer to sign and subsequently handed over to Zambia by Socomer’s representative, Mr Standaert, expressly stated:

> *‘Prior to Group C’s transfer of the Required Investment* [the purchase price for Ndola Lime] *to [the SPV], B undertakes to issue to the government and or any other entity, At Group C’s demand, an official written confirmation declaring that B owns [the SPV’s] shares*
>
> *It is clearly understood that B’s declaration will be given despite and regardless of the fact that B will not own any more [the SPV’s] shares’*

Within the time provided in the MOU, the Irish Company represented by Mr. Israel obtained the exclusive right to operate the lottery in Zambia

While there were separate and distinct transaction documents for the privatization of Ndola Lime and for the operation of the lottery, this Memorandum of Understanding tied the transactions together.

The MOU revealed an agreement to confer valuable rights in relation to State owned assets and operations on Western Investors to the prejudice of Zambia.

Moreover, the MOU disclosed the grant of rights in conflict with the State privatization disclosure requirements, namely participation by Group A (the Zambians) initially as the beneficial owners of the new shares, subsequently diluted to a 49% holding, notwithstanding Socomer's disclosure that there was no Zambian participation. It also revealed that the covenant by Socomer not to divest itself of its shares for a period of 3 years was a sham, as it never intended that it should be the true owner of the shares.

Moreover still, the MOU contained the clearest covenant to peddle influence and to disclose confidential government information to an alien commercial party.

In short, the MOU demonstrated a perversion of the privatization process, to the detriment of Zambia and for the benefit of Western Investors.

In the Zambian criminal courts, during the course of cross-examination, Mr. Kabwe, the signatory to the MOU on behalf of Group A, identified Group A as the Zambian Intelligence Service.

The facts of this Case Study speak for themselves. The facts graphically demonstrate the need for vigilance and care in the preparation, execution and performance of large scale transactions in some African countries where weaknesses in government structures and unscrupulous businessmen ruthlessly exploit such vulnerabilities for their own commercial benefit to the detriment of the State and its people.

In conclusion the fight against corruption is one that has to be undertaken by all. At national level the government, private sector, citizens, and civil society must work together. Also important are partnerships at regional and global levels. If we can all work together corruption can be beaten so that we can eradicate poverty and foster inclusive development for all.

PAPER PRESENTED

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