

# COMMISSIONS WATCH

## ZIMBABWE ANTI-CORRUPTION COMMISSION

[17th July 2019]

### POWERS OF ARREST FOR ZACC OFFICERS: WHAT IT MEANS

Over the years the Zimbabwe Anti-Corruption Commission [ZACC] has been at the receiving end of insults and derision from the general public, which felt it was doing less than it should to contain corruption. In an attempt to strengthen ZACC by giving its officers more powers, on 28th June, the Minister of Justice, Legal and Parliamentary Affairs gazetted Statutory Instrument 143/2019, the Criminal Procedure and Evidence (Designation of Peace Officers) (Amendment) Notice, 2019 (No. 3) [\[link\]](#), which designates ZACC's officers as "peace officers" for all purposes under the Criminal Procedure and Evidence Act. In this Commissions Watch we shall call the Amendment Notice "SI 143".

If SI 143 is legally valid – and we shall deal with that question below – it will give officers of ZACC powers of arrest and will enhance ZACC's capacity to fight against corruption in Zimbabwe. As the new chairperson of ZACC, Mrs Justice Loice Matanda-Moyo, said shortly after the SI was gazetted:

*"Recently, ZACC was given arresting powers. This came as exciting news. Without arresting powers, our job was difficult as we were depending on police officers. When ZACC officers met the criminals, they could not arrest the suspects but had to wait for police officers, and while they waited the criminals would just run away and never be found."*

One might observe incidentally that the Minister seems not to have consulted ZACC before publishing SI 143, since it came as "exciting news" to ZACC's chairperson.

#### Unpacking the Statutory Instrument

SI 143 does not explain the legal consequence of making ZACC officers "peace officers", and to understand it one must look at the Act under which it was made, the Criminal Procedure and Evidence Act.

#### **Peace officers and their powers**

The Criminal Procedure and Evidence Act [\[link\]](#) gives law enforcement powers to what it calls "peace officers", a broad class of officials including police officers, prison officers, immigration officers and traditional leaders. The Act allows the Minister of Justice, Legal and Parliamentary Affairs to designate other persons as peace officers, and that is what he has done for ZACC's officers in SI 143.

Under the Criminal Procedure and Evidence Act peace officers have the following powers:

- to arrest without warrant anyone they see committing or attempting to commit a crime or whom they reasonably suspect of doing so [section 25 of the Act]
- to arrest persons on the authority of a warrant of arrest issued by a judge or magistrate [section 34]
- to demand the name and address of anyone suspected of committing a crime or who may be able to give evidence regarding a crime [section 26]
- to search anyone they have arrested and to take their fingerprints [sections 41 and 41D]

### **Limits of peace officers' powers**

Although the powers of peace officers are broad, they are not unlimited:

- **Arrest must be for a proper purpose:** Peace officers should not arrest people automatically even if they have reasonable grounds to believe they have committed a crime. Persons may be arrested to ensure they appear in court and stand trial, or to stop them committing a crime or interfering with the evidence; but if an arrest is done for some other purpose, e.g. to intimidate or punish them, then it is illegal. The power of arrest, in other words, must be exercised carefully and reasonably.
- **Power of search:** Under the Criminal Procedure and Evidence Act only police officers are allowed to enter premises and search for evidence. Other peace officers cannot do so. Even if ZACC's officers are designated as peace officers, therefore, they will not have general powers of search – though it must be pointed out that the Schedule to the Anti-Corruption Commission Act states that they can enter premises and require public officers or their agents to answer questions – but they cannot search the premises.

### **Is the Designation of ZACC's Officers as Peace Officers Legal?**

On the face of it SI 143 seems perfectly legal. The Criminal Procedure and Evidence Act empowers the Minister of Justice to publish statutory instruments designating anyone as peace officers, and that is what he has done in SI 143. The SI seems a reasonable exercise of the Minister's power because, to judge from the chairperson's excited remarks quoted at the beginning of this bulletin, ZACC's officers need to be able to arrest suspects.

On the other hand, there are grounds for saying that the SI is illegal:

- Section 255 of the Constitution, which sets out ZACC's functions, states in subsection (3):  
*"The Government must ensure, through legislative and other means, that the Zimbabwe Anti-Corruption Commission has power to recommend the arrest and secure the prosecution of persons*

*reasonably suspected of corruption, abuse of power and other improper conduct which falls within the Commission's jurisdiction."*

This provision would have been worded differently if the constitution-makers had envisaged ZACC's officers being given powers of arrest rather than merely recommending that persons be arrested.

- ZACC is a constitutional commission and its functions are laid down in the Constitution. It is possible to extend those functions through section 321 of the Constitution, which states that "An Act of Parliament may confer additional functions on a Commission"; but SI 143 is not an Act of Parliament even though it is made in terms of one.
- Even if it were legal to designate ZACC's officers as peace officers it should not be "for all purposes", because that would empower them to arrest people for crimes unrelated to corruption. This is too wide. The Schedule to the Anti-Corruption Act, which gives ZACC additional powers, sets out a long list of crimes for which ZACC may recommend prosecution; the suggestion is that those and those alone are the crimes with which ZACC must concern itself.

### **Conclusion**

SI 143 is yet another of the statutory instruments published recently to give effect to important government programmes – in this case the anti-corruption drive – whose legality is open to doubt. Ministers who need legislation to underpin their policies would be better advised to approach Parliament and persuade it to pass an appropriate Act of Parliament, rather than resorting to statutory instruments which are open to legal challenge.

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