



UN CONVENTION
AGAINST CORRUPTION
CIVIL SOCIETY REVIEW:
ZAMBIA 2012

Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 160 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group, which met for the first time in June-July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption" and to strengthen that participation by measures such as "enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the CoSP secretariat on their compliance with the UNCAC, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, using the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption, funded by the UN Democracy Fund (UNDEF), Transparency International (TI) has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process. This aims to support the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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Introduction

Anti-corruption conventions are written international agreements signed by States Parties which establish international frameworks of agreed rules and standards for countering corruption, in addition to serving as an expression of high-level political commitment. These conventions are intended to produce better policies and practices in and among member states in the prevention, detection, investigation, and sanctioning of acts of corruption. Most of the anti-corruption conventions are premised on five main pillars: 1) Prevention, 2) Criminalisation, 3) International Cooperation, 4) Asset Recovery, and 5) Monitoring Procedures.

The UNCAC, is a universal legal instrument, is very detailed and comprehensive. It deals with most aspects of corruption from both the supply and demand sides. One of the important measures to combat corruption in the UNCAC is the criminalisation of certain practices, including bribery, embezzlement, trading in influence, abuse of functions and illicit enrichment. The UNCAC also criminalises indirect but related offences, such as concealment of illegal proceeds and obstruction of justice. Criminalisation provisions cover both the offering and accepting of bribes, favours, misappropriations and diversions.

The UNCAC contains both mandatory provisions, which are binding on the states that ratify, and non-mandatory or optional provisions which the states may implement. Generally, however, it is good practice for States Parties to align their national laws with the agreed-upon international benchmarks. Two of the three purposes of the UNCAC are to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; and to promote integrity, accountability and proper management of public affairs and public property.

Zambia signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and ratified it on 7 December 2007.

This report reviews Zambia's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the United Nations Convention against Corruption (UNCAC). The report is intended as a contribution to the UNCAC implementation review process currently under way covering those two chapters. Zambia was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. A draft of this report was provided to the government of Zambia.

Scope. The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damage (Article 35) and mutual legal assistance (Article 46).

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information; as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Zambia as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

Methodology. The report was prepared by Transparency International Zambia (TIZ) with funding from UNDEF. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using guidelines and a report template designed by Transparency International for the use of CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of

good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33, 35 and 46(9)(b) and (c).

I. Executive summary

Zambia is a State Party to the UNCAC, as well as to the Southern African Development Community (SADC) Protocol against Corruption¹ and African Union (AU) Convention on Preventing and Combating Corruption.²

Zambia has enacted some new legislation in the recent past to strengthen its anti-corruption legal regime. However, a quick analysis of the laws indicates that the country has not completely adhered to some provisions of the UNCAC.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Zambia.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	Yes
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Unknown

Although some CSO were invited to provide input, many stakeholders were excluded from the review process in Zambia.

Availability of information

Zambia has no freedom of or access to information law in place. As such, all the requests that were made could not be said to have been legally binding on the state. During the parallel review process, requests for certain information made to the Anti-Corruption Commission (ACC) and the Director of Public Prosecutions Office yielded either negative responses or no response at all. The main obstacles to obtaining the necessary information related to lack of government data collection and legal barriers. For example, some provisions of the State Security Act, Chapter 111 of the Laws of Zambia, run contrary to the spirit of access to information. There was also clear unwillingness on the part of government to allow access to the information required.

Implementation and enforcement of the UNCAC

Some attempt has been made to strengthen the Anti-Corruption legal framework and acknowledgement must be made regarding criminalisation of bribery and foreign bribery, money

¹ Zambia signed the SADC Protocol against Corruption on 14 August 2001 and ratified it on 8 July 2003.

² Zambia signed the AU Convention on 3 August 2005, ratified it on 30 March 2007 and deposited the instrument of ratification on 26 April 2007.

laundering, protection of whistleblowers, and mutual legal assistance. Some of the laws enacted and repealed in order to comply with the UNCAC in Zambia include the Forfeiture of Proceeds of Crime Act No. 19 of 2010 that makes Zambia put in place mechanisms for complying with chapter V of the UNCAC on assets recovery.

However, despite the revision of the main anti-corruption law by promulgating the Anti-Corruption Act No. 38 of 2010, there are some genuine issues of concern which the new law has failed to address. The Act, while progressive and a good attempt at strengthening the anti-corruption legislation, leaves out completely or waters down two corrupt practices: the abuse of office and illicit enrichment.

In terms of enforcement, it is clear that while some efforts have been made to enforce the new laws enacted in 2010 that are in line with UNCAC articles, these have not been fully enforced. For example, the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 has not been implemented³.

Recommendations for priority actions

- Reform the judiciary system as a whole to ensure its independence and efficiency
- Introduce the offenses of embezzlement, illicit enrichment and abuse of office
- Improve the capacity of law enforcement agencies for the effective implementation and enforcement of existing laws.
- Develop a law on access to information and enforce it to promote greater transparency and accountability.
- Promptly enact a law effectively providing for the protection of witnesses, victims and whistleblowers.
- Ensure systematic follow up of corruption allegations, particularly those highlighted by the Office of the Auditor General in its annual reports.
- Collect and publish statistics and other information on corruption cases.
- Improve the relationship between government and civil society when it comes to information sharing and revise the Non-Governmental Organisations' Act No. 16 of 2009.
- Provide for effective and efficient training of officials involved in anti-corruption activities.

II. Assessment of the review process

A. Conduct of process

The Zambian UNCAC review process was to a large extent carried out at the exclusion of many stakeholders. Some CSOs, such as TI Zambia, were involved in the process but some others, such as Jubilee Centre, were not invited to input the review process, even though they express their willingness to participate and contribute. The failure to adequately involve civil society may be because the country wasn't fully prepared for the review process when it took place.

It is crucial to note from the outset that the government did not make public any information pertaining to the focal point of the review process. However, TIZ was part of the team invited by government to prepare the self-assessment to assess compliance of Zambia with regards to chapters III and VI of the UNCAC, in a workshop held from 20-25 March 2011. TIZ was also nominated to sit on the Technical Committee of the UNCAC team

The self-assessment report has not yet been published by the government. It is also important to note that the draft report was not made available even to those NGOs who were part of the self-

³ Section 59 of the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 provides that "The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act", however, the regulations have not been made yet.

assessment process. Efforts by TIZ to access the draft report to assist in the preparation of this parallel review report were met with resistance from government.⁴

The government agreed to a country visit, which was undertaken by Italy and Zimbabwe in July 2011. TIZ was one of the institutions visited. However, it was not possible to get information on how many other institutions, especially civil society groups, were visited.

It is not yet known whether the government will publish the final review report. Efforts to get a straightforward answer from the government, in particular from the ACC⁵, have not been successful. The ACC has indicated that it will communicate this information in its own time.

B. Availability of information

TIZ had access to a number of statutes. In addition, TIZ contacted three government entities in order to answer the questionnaire and prepare the report. The institutions contacted were the ACC, the Office of the Director of Public Prosecutions and the Ministry of Justice.

In the absence of an access to information law, the requests to access information made were not legally binding on the state and yielded either negative responses or no response at all. This demonstrated clear unwillingness on the part of government to allow access to the information required.

A number of other challenges or obstacles to obtaining the necessary information were encountered. These included the lack of government compilation; For example, the last time Zambia had a concluded case reported in a law volume was in 2006. Legal barriers were also encountered; for example, some provisions of the State Security Act, Chapter 111 of the Laws of Zambia, run contrary to the spirit of access to information. These provisions have, in most cases, been used by public officers to refuse requests for information. In summary, relevant statistical information is not fully accessible partly because it has not been compiled by the government. Some information is available, but only to authorities and public officials of the judiciary and the law enforcement agencies.

At this stage, it is important to mention that the difficulty in accessing the necessary information has not only been a challenge during the process of conducting the parallel review, but was also a barrier to the official self-assessment and review. While it is true that during the government's UNCAC review process, the team managed to answer most of the questions under chapter III of the UNCAC, the same cannot be said about chapter IV, because most information pertaining to this was not readily available. This was in spite of the fact that some institutions that were key in providing the necessary information were part of the self-assessment team.

In the absence of official information about cases, TIZ largely relied on that generated by the media, especially the private media in Zambia.

III. Implementation and enforcement of the UNCAC

A. Key issues related to the legal framework

This section covers Zambia's compliance with the mandatory provisions of UNCAC chapter III on Criminalisation and Enforcement, and chapter IV on International Cooperation.

⁴ In a meeting held between the author herein and the ACC Director General, Col. Godfrey Kayukwa and the Secretary to the ACC Mathews Mbewe in August 2011, the Commission categorically refused to provide the draft assessment report, saying they had no authority to do so as the report was being handled by Cabinet Office and not the ACC.

⁵ The ACC was formed in 1980 through the Act of Parliament No. 14 of 1980. This was amended through the 1996 Anti-Corruption Commission Act No. 42. This was later repealed and replaced by the Anti-Corruption Act No. 38 of 2010. The act mandates the ACC to carry out its activities using a three-pronged approach: education; prevention; and investigation and prosecution.

1. Areas showing good practice

UNCAC Articles 15 and 16: Bribery of national public officials and bribery of foreign public officials and officials of public international organisations. Bribery of national public officials is criminalised in Section 19 of the Anti-Corruption Act No. 38 of 2010.⁶ It addresses both active and passive forms of corruption – active corruption refers to the promising, offering or giving of bribes; and passive corruption is the receiving or taking of bribes or other forms of corruption. The act reflects a sound position that the crime of corruption should cover both the payment as well as the receipt of bribes, and thus promotes symmetric punishment. Both the bribe-givers/payers and the bribe-takers are mentioned, and sanctions and penalties prescribed.

However, the definition of “public officer” leaves out some elected officials, for example, councilors and the office of the president. “Public officer” in Act No. 38 of 2010 means “any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part time, paid or unpaid, includes a member of Parliament, and ‘public office’ shall be construed accordingly”.

Bribery of foreign public officials is provided for in Section 25 of the Anti-Corruption Act. This is a new provision in the Zambian Anti-Corruption legislation and, as such, implementation is still lacking.

UNCAC Article 23: Laundering of proceeds of crime. The Prohibition and Prevention of Money Laundering Act was enacted in 2001 and amended in 2010. Further, with a view to implementing the UNCAC, the Forfeiture of Proceeds of Criminal Act No. 19 of 2010 was enacted to provide for the confiscation of the proceeds of crime, the deprivation of any person of any proceed, benefit or property derived from the commission of any serious offence and to facilitate tracing of any proceed, benefit and property derived from the commission of any serious offence.

UNCAC Articles 32 and 33: Protection of witnesses, experts and victims; protection of reporting persons. The Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 was enacted to provide for the disclosure of conduct adverse to the public interest in the public and private sectors. It sets a framework within which public interest disclosures shall be independently and rigorously dealt with. Hence, the act establishes procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees. Moreover, the act safeguards the rights, including employment rights, of persons who make public interest disclosures and provide a framework within which persons who make a public interest disclosure shall be protected. The Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 is new on Zambia’s statute books and, as such, has not yet been implemented.

UNCAC Article 46 (9) (b) & (c): Mutual legal assistance. Section 73 of the Anti-Corruption Act No. 38 of 2010 provides that mutual legal assistance is provided to requests relating to offences under this act. Zambia already enacted relevant legislation, the Mutual Legal Assistance in Criminal Matters Act, Chapter 98 of the Laws of Zambia, in April 1993. Even though this law was adopted long before the UNCAC was promulgated, it acts as a good example of Zambia’s commitment to fighting international crime. Data on the implementation of the law are, however, not available.

⁶ **Section 19:** “(1) A public officer who, by oneself, or by or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.”

UNCAC Article 26: Liability of legal persons. Section 19 (Bribery of public officials) and Section 20 (Private Bribery) of the Anti-Corruption Act No. 38 of 2010 apply to legal and natural persons.

2. Areas suggested for improvement

UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official. There is no separate criminal offence of embezzlement in Zambian legislation. Strangely, not even the Anti-Corruption Act No. 38 of 2010 for Zambia uses the word “embezzlement” in its 43 pages. The Zambian law does not distinguish between embezzlement and theft. The authority for the above position is to be found in the landmark case of Paul Watson Katembele vs. The People.⁷

UNCAC Article 20: Illicit enrichment. The repealed Anti-Corruption Commission Act No. 46 of 1996 contained the offence of illicit enrichment in Section 37. When the Anti-Corruption Act was being debated in the Zambian National Assembly in October 2010, the removal of this offence brought about a lot of discussions and misunderstandings, both within and outside the house of National Assembly.

The Anti-Corruption Act No. 38 of 2010 is conspicuously mute on illicit enrichment as a punishable offence. The government had two arguments to justify the removal of the abuse of authority of office clause from the Zambian anti-corruption legislation.

- First, the government argued that the former clause shifted the burden of proof from the prosecution to the defendant, which was interpreted to be in conflict with the Zambian Constitutional provision on presumption of innocence. There are a number of other provisions on the Zambian statute books, including the Penal Code Act itself, that seemingly place the burden of proof on the accused.⁸ Suffice to say that even the Zambian Constitution recognises that laws can be enacted which seemingly place the burden of proof on the accused.⁹
- Second, the government argued that Section 99¹⁰ of the Penal Code, Chapter 87 of the Laws of Zambia, on abuse of authority of office was sufficient and captured the offence of illicit enrichment. However, Section 99 largely treats the offence of abuse of authority of office as a misdemeanour. A misdemeanour at law is a less serious offence. We would argue that the offence of abuse of authority of office cannot be deemed to be a less serious offence. The provision under the ACC Act of 1996 was better, as it did not only provide for abuse of authority of office but also for being in possession of unexplained property. As such, Section 37 of the repealed ACC Act gave the prosecutor more powers to bring about an arrest if a public official failed to account for what he or she possessed.

In the view of TIZ, the silence of the ACC Act on illicit enrichment was a step backwards in the fight corruption.

B. Key issues related to enforcement

⁷ (1977) Z.R. 90 (S.C.): “(i) The distinctions which prior to the Theft Act, 1968, existed in England between larceny, embezzlement and fraudulent conversion do not exist in Zambia, where all three cases are covered by sections 265 et seq of the Penal Code which deal with theft; and (ii) The facts found amounted to embezzlement in England and theft under our law.”

⁸ For example, Section 85 of the Penal Code provides: “85. (1) Any person who, without lawful authority or excuse, **the proof whereof shall lie upon him**, has in his possession or in or upon any premises occupied by him any offensive weapon or any offensive material is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding seven years.”

⁹ Article 18 (12) of the Constitution: “Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of (a) paragraph (a) of clause (2) [which states the presumption of innocence] to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts.”

¹⁰ 99: (1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanour. If the act is done or directed to be done for purposes of gain, he is guilty of a felony and is liable to imprisonment for three years.”

This section attempts to evaluate the enforcement of UNCAC-related offences in Zambia. It provides an overview of the enforcement mechanism in place.

1. Statistics

TIZ made several requests for information for the completion of this review report, but these efforts yielded no positive results. Formal requests for information were made to the ACC on three occasions, but no response was received despite several follow-up enquiries both by telephone and e-mail. This experience is clear evidence of how difficult it is for citizens to gain access to certain information from public institutions. It is worth repeating that relevant statistical information is not fully accessible partly because it has not been compiled by the government. Some information is available, but only to authorities and public officials of the judiciary and the law enforcement agencies.

Table 2: Statistics ACC investigations and prosecutions

Year	# of reports	# of investigations	# of convictions
2004-2008 ¹¹	8452 ¹²	2261 ¹³	53
2009 ¹⁴	2073	658	17

2. Cases

Cases involving military commanders

In 2004 the government filed charges against several former military commanders including Lieutenant Generals Wilford Funjika, Sande Kayumba, Geojago Musengule and Christopher Singogo, who were charged in separate cases.

Funjika case. According to news reports, on 31st October 2007, Funjika was found guilty and sentenced to two years in prison, but his sentence was suspended because of ill health. He was also ordered to pay back ZMK 111 million (US \$30,000) that he received as a kickback.¹⁵ This case was reviewed two months later by the High Court which reportedly sentenced Funjika to nine months imprisonment with hard labour.¹⁶

Kayumba case. According to a human rights report, on 3rd March 2009, Kayumba was convicted of corruption and sentenced to seven years' imprisonment with hard labour. His accomplices, former air force chief of logistics brigadier general Andrew Nyirongo and base executive Amon Sibande, were also reportedly convicted of corruption in the same case and given the same sentence.¹⁷ On May 4, Kayumba was convicted of abuse of authority in another case and sentenced to two years' imprisonment with hard labour.¹⁸

Musengule case. According to a human rights report, on 2nd March 2009, Musengule was convicted for irregularly awarding several business contracts to Base Chemicals and sentenced to 16 years' imprisonment with hard labour. His accomplice, Base Chemicals Zambia Limited chief executive officer Amon Sibande, was sentenced to three years' imprisonment.¹⁹ The Lusaka magistrates' court reportedly convicted them on seven counts of abuse of authority of office, corrupt practices by a public officer and corrupt practices with a public officer contrary to the Anti-Corruption Commission (ACC) Act number 42 of 1996. On 16 March 2012, the Lusaka High Court upheld the

¹¹ ACC Strategic Plan, 2009-12.

¹² Out of which 4,040 were corruption related. 4,412 cases which were not corruption related were referred to other relevant agencies for administrative action

¹³ Of which 2,044 were successfully investigated and concluded

¹⁴ US Department of State, 2010 Human Rights Report: Zambia, 8 April 2011, p. 19 (<http://www.state.gov/documents/organization/160521.pdf>)

¹⁵ Ibid; The Post Newspapers Zambia, 29 January 2008, "Funjika pays back over K111m" (<http://www.lusakatimes.com/2008/01/29/funjika-pays-back-over-k111m/>)

¹⁶ Lusaka Times, 11 March 2008, "Funjika jailed" (www.lusakatimes.com/2008/03/11/funjika-jailed/)

¹⁷ 2009 Human Rights Report: Zambia, *op.cit.*; Lusaka Times, 9 March 2011, "Gen Kayumba sentenced to 7 years imprisonment" (<http://www.lusakatimes.com/2009/03/03/gen-kayumba-sentenced-to-7-years-imprisonment/>)

¹⁸ 2009 Human Rights Report: Zambia, *op.cit.*

¹⁹ 2009 Human Rights Report: Zambia, *op.cit.*

judgment. Musengule reportedly said he would appeal against the judgment to the Supreme Court.²⁰

Singogo cases. According to two human rights reports, on 12th January 2009, Singogo was convicted of embezzlement and abuse of authority and sentenced to six years' imprisonment with hard labour.²¹ He was also convicted by the Lusaka magistrates' court on a second abuse of authority charge on 26th February and sentenced to an additional five years' imprisonment with hard labour for giving Nassim Cleaning Services a contract for cleaning services at the Zambia Air Force. It was alleged that between 12 January 2001 and 30 November 2003, Singogo, being a public officer, abused his authority of office by awarding a cleaning contract to Nasim Cleaning Services where he was a co-shareholder and director with his sister, Evelyn Namukonda Sakala.²² Singogo appealed against both sentences. The second conviction was quashed by the Lusaka High Court, who reportedly considered that Singogo was not a public officer at the time of his arrest and conviction and that the lower court also erred in law in convicting him.²³ The other case is still pending.

Cases involving government officials

Bulaya case. Kashiwa Bulaya, former permanent secretary at the Ministry of Health, was charged with abuse of office and theft and convicted on 21st February 2007 on three counts of corruption and abuse of authority of office and sentenced to 5 years imprisonment.²⁴

According to a news report, the court found that while Bulaya was permanent secretary, he disregarded tender procedures and corruptly engaged Butico A1, a Bulgarian firm, to supply a drug called Elixir 9 at a cost of over K4 billion. The court also established that Bulaya received ZMK 116,55,000 from Butico A1 chief executive officer as an inducement or reward for engaging his company to supply the drugs to the Ministry and K913, 431,000 for supplying the Elixir 9. The Lusaka High Court upheld the judgment on 26th December 2008.²⁵

Former President Chiluba case. On 17th August 2009, Magistrate Jones Chinyama acquitted former president Chiluba of embezzling 2.5 billion kwacha (\$500,000) in public funds. At the same hearing the magistrate convicted two Chiluba accomplices, Faustin Kabwe and Aaron Chungu, of embezzlement in the same case and sentenced them to five years in prison. On 24th August, TFC Director Max Nkole appealed the Chiluba case to the High Court. On 25th August, President Banda dismissed Nkole and named ACC Chairperson Godfrey Kayukwa acting TFC director, and Director of Public Prosecutions Chalwe Mchenga withdrew Nkole's appeal. On 19th August, Chiluba appealed for an unprecedented reinstatement of his political immunity. On 23rd September, Vice President Kunda asserted that the government would not appeal Chiluba's acquittal.²⁶

On 13th August 2010, High Court Judge Evans Hamaundu dismissed a petition to register in the country a 2007 London High Court judgment of 23 million UK pounds (\$46 million) against former president Fredrick Chiluba and seven others. Hamaundu ruled that Zambian law did not allow foreign judgments to be registered directly, although some previous foreign judgments have been registered.²⁷

Regina Chiluba case. According to a human rights report, in March 2009 former president Chiluba's wife Regina was convicted of theft and sentenced to three-and-a-half years' imprisonment in a case stemming from items she illegally received from her husband while he served as

²⁰ The Post Newspapers Zambia, 18 March 2012, "Musengule goes in" (http://www.postzambia.com/post-read_article.php?articleId=25908)

²¹ US Department of State, 2009 Human Rights Report: Zambia, 11 March 2010 (<http://www.state.gov/j/drl/rls/hrrpt/2009/af/135983.htm>)

²² The Post Zambia, 30 July 2011, "High Court quashes Singogo's jail term" (http://www.postzambia.com/post-read_article.php?articleId=22445)

²³ The Analyst, 28 July 2011, "Ex-defence chief acquitted of graft charges" (<http://julius-theanalyst.blogspot.de/2011/07/ex-defence-chief-acquitted-of-graft.html>)

²⁴ OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, www.oecd.org/dataoecd/16/20/47468296.pdf

²⁵ Lusaka Times, 27 December 2008, "Bulaya jailed 5 years" (www.lusakatimes.com/2008/12/27/bulaya-jailed-5-years/)

²⁶ 2009 Human Rights Report: Zambia, *op.cit.*

²⁷ *Ibid.*

president. On 7th December 2010, the Lusaka High Court overturned Regina Chiluba's conviction, and the prosecution declined to appeal the case.²⁸

Nyirongo case. According to a news report, in February 2009 former minister of lands Gladys Nyirongo was convicted of corrupt practices and abuse of authority and sentenced to four years' imprisonment with hard labour. On 8th October 2010, the High Court upheld her conviction but reduced her sentence to two years' simple imprisonment. Nyirongo appealed to the Supreme Court.²⁹

According to a human rights report, on 13th May 2009, the ACC announced that it was investigating allegations of embezzlement of more than 35.7 billion kwacha (\$7.14 million) at the Ministry of Health by 32 ministry officials.³⁰ In 2010, the government reportedly arrested seven Ministry of Health (MOH) officials in connection with the alleged embezzlement.³¹ The case remains pending.

In its half-year financial report released in November 2010, Alstom, the power and transport systems giant, stated that one of its subsidiaries in the hydro business had been formally charged in France for alleged illegal payments concerning operations in Zambia, and that it was under investigation by the World Bank and European Investment Bank in connection with these allegations as well.³² According to a report in December 2010, Alstom works in Zambia through its affiliate COMELEX Zambia Ltd. and the allegations concern possible bribes paid to Zambian officials in the water and power sector earlier this decade.³³ It seems that this case is still under investigation in Zambia.³⁴

3. Areas with deficiencies

Insufficient or late implementation of legislation. The Forfeiture of Proceeds of Criminal Act No. 19 enacted in 2010 would work more effectively if the Anti-Corruption Act No. 38 of 2010 had not been watered down to remove the offence of "illicit enrichment". This is because it is very difficult for prosecutors to prove that the proceeds in question are products of crime. Further, the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 has not been implemented to date.

Concerns regarding the Anti-Corruption Commission. The ACC is a vital institution in Zambia and as such, it should be an autonomous institution, both in fact and in terms of public perception. However, Section 5 of the Anti-Corruption Act of 2010 provides that the Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority "except as otherwise provided in this Act". In addition, the Zambian president has been given the power to singlehandedly appoint the Commissioners of the ACC, the Director General and the Deputy Director General.

Interference by the executive arm of the government. Zambia was recently embroiled in a "battle of words" between those in government (especially the executive) and those in the opposition as well as governance NGOs. This was because of allegations about the government's apparent interference in the acquittal in 2009 of former president, the late Fredrick Chiluba, by the courts of law. According to a news report, on the day of the acquittal of the former head of state – but before the judgement was delivered – the executive, through the president issued a statement thanking all Zambians for accepting Chiluba's acquittal. Some quarters of Zambian society feared that there had been interference by the executive into the affairs falling into the jurisdiction of the

²⁸ *Ibid.*

²⁹ *Ibid.*; Lusaka Times, 30 August 2010, "Regina's appeal case adjourned" (www.lusakatimes.com/2010/08/30/reginas-appeal-case-adjourned/)

³⁰ *Ibid.*

³¹ 2010 Human Rights Report: Zambia, 8 April 2011, *op.cit.*

³² Alstom, Half-year ended 30 September 2010 (www.alstom.com/assetmanagement/DownloadAsset.aspx?ID=ae372f8d-645e-463c-b69a-6961dc15c032&version=de0aedcbb51a4147acfdb37072bfb6f1.pdf)

³⁴ Zambia Daily Mail, 28 March 2012, "ACC probes ex-ministers over World Bank bribery scam" (www.daily-mail.co.zm/?p=307)

Judiciary.³⁵ According to the Zambian Constitution the president is given powers to appoint judges of both the High Court and Supreme Court, including the Chief Justice, subject to ratification by Parliament.³⁶

Lack of skills and training to investigate corruption cases. It is true that Zambia has some expertise to deal with corruption cases after investigations have been conducted. However, there is still a question as to whether the country's officials have sufficient skills and training to competently investigate corruption cases. An anti-corruption task force was formed in 2002 by the late president Levy Mwanawasa to investigate graft during the administration of former president Frederick Chiluba. The Task Force was created to bring together the expertise from different bodies, including the private sector, to deal with complicated cases of corruption. But the task force was disbanded in 2009.³⁷

Inadequate resources. Lack of adequate resources has always been a challenge to the fight against corruption in Zambia. For example, there was a time in 2010 when the ACC had literally no resources for its operations as it was not provided with its monthly allocations³⁸. This led to a almost complete paralysis of this important institution.

IV. Recent developments

Zambia has enacted some specific anti-corruption legislation and policies in the past three years. Some of these include the National Anti-Corruption Policy (NACP) launched in 2009 which led to the National Anti-Corruption Policy Implementation Plan for a five-year period until 2014. The NACP, which is the first ever comprehensive policy on corruption in Zambia, provides a framework for developing ways and means of preventing and combating corruption in a comprehensive, coordinated, inclusive, and sustainable manner. It acknowledges that corruption is a complex, cross-cutting problem, and that tackling it requires a multi-faceted approach. The policy provides for the participation and involvement of all sectors, institutions, and individuals in tackling corruption. It identifies the institutionalisation of integrity programmes in both public and private institutions through establishment of integrity committees, as a good implementable strategy to enhance good governance. It identifies, and provides for, the need for coordination and harmonisation of the various good governance reforms and programmes, although it does not provide for re-orientation and strengthening of governance institutions. The NACP Implementation Plan has been put in place to actuate the legal, institutional and social measures as envisaged by the policy.

In terms of legislation, the country has in the recent past enacted the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010, the Anti-Corruption Act No. 38 of 2010, the Plea Negotiations and Agreements Act No. 20 of 2010, the National Prosecution Authority Act No. 34 of 2010, and the Forfeiture of Proceeds of Criminal Act No. 19 of 2010.

Zambia conducted its general elections on 20 September 2011, in which the then opposition Patriotic Front (PF) party emerged victorious after beating the former ruling party, the Movement for Multiparty Democracy. The hopes of Zambians have been reinvigorated as the new PF government has promised to fight corruption. Specific promises contained in the PF manifesto would address some of the problems identified in this report:

- Ensure that members of the ACC supervisory board are ratified by the National Assembly;
- Re-instate the abuse of office provision in the Anti-Corruption Commission Act;
- Ensure that the ACC submits periodic reports to the National Assembly for consideration and direction;

³⁵ The Post Newspaper Zambia, 18 October 2009, "Lifuka accuses Rupiah of demagoguery over Chiluba's acquittal" (http://new.postzambia.com/Joomla/post-print_article.php?articleId=616).

³⁶ Article 93 and 95 of the Zambian Constitution.

³⁷ Reuters, 30 October 2009, "Zambia disbands anti-graft task force" (<http://af.reuters.com/article/topNews/idAFJQE59T0LN20091030>)

³⁸ Interviews with Senior ACC Management

- Enhance the capacity of the ACC to prosecute white collar crime by establishing a specialized wing;
- Increase budgetary allocation to the ACC;
- Introduce stiff penalties for corruption offences;
- Domesticate international protocols on the fight against corruption;
- Review and amend the Anti-Corruption Commission Act to achieve the above.
- Strengthen the process of appointing judges, particularly with regard to their independence from the executive.

Further, the PF government has promise to enact freedom of information legislation.³⁹

V. Recommendations for priority actions

1. Reform the judiciary system as a whole to ensure its independence and efficiency
2. Introduce the offences of embezzlement, illicit enrichment and abuse of office
3. Improve the capacity of law enforcement agencies for the effective implementation and enforcement of existing laws.
4. Develop a law on access to information and enforce it to promote greater transparency and accountability.
5. Promptly enact a law effectively providing for the protection of witnesses, victims and whistleblowers.
6. Ensure systematic follow up of corruption allegations, particularly those highlighted by the Office of the Auditor General in its annual reports.
7. Collect and publish statistics and other information on corruption cases.
8. Improve the relationship between government and civil society when it comes to information sharing and revise the Non-Governmental Organisations' Act No. 16 of 2009.
9. Provide for effective and efficient training of officials involved in anti-corruption activities.

³⁹ "FoI Bill will be priority – Lubinda", Ernest Chanda, *the Post Newspaper Zambia*, 1 October 2011 (http://postzambia.com/post-read_article.php?articleId=23295).

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