



National Integrity Systems

Transparency International

Country Study Report

Zambia 2003

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Acknowledgements

I wish to express my gratitude to the following people for all the help they extended to me:

My Research Assistant, Edna Mutalama
Ms. Precious Mweemba and Mrs Francesca Willima of UNZA Law School for typing the manuscript
Yvonne Chibiya, Programme Officer TI Zambia
Ms. Christine Munalula, Executive Director of TI-Zambia
Agness Bwembya, Secretary at TI-Zambia
Justice Valentine Chileshe, Investigator-General
Mr. Mukelabai Mukelabai, Director of Public Prosecutions
Mr. Fred M. Siame, Auditor-General
Dr. Joshua Kanganja, Chairman of the Public Service Commission
Members of the Public Service Commission
Dr. Kalombo Mwansa, Deputy Secretary to the Cabinet
Mrs Elsie Sikanyika, Board Secretary/Legal Counsel, Zambia National Tender Board
Ms. R. Wandu, Acting Director, Anti-Corruption Commission
Mrs Ngandu, Deputy Director, Human Resources, Anti-Corruption Commission
Judge Phillip Musonda, Industrial Relations Court
Mr. Fanwell Chembo, Executive Director, Zambia Independent Media Association
Ms. Sekelabaka Mwaanga, State Advocate
Mr Phil Mason, Anti-Corruption Coordinator, Governance Department, DFID
Dr. Inge Amundsen, Research Director, Chr. Michelsen Institute

I would also like to thank the Royal Norwegian Embassy for funding the research.



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Zambia

Executive Summary

Corruption has in the last decade become so rampant that it has almost become part of Zambian culture. It has affected all sectors of society including the judiciary and has had devastating consequences. It has undermined democratic institutions, aggravated the economic crisis, discouraged investment, led to human rights violations and worsened the poverty situation in Zambia. The lack of integrity among the political leadership has been a major cause of corruption. The study of the National Integrity System (NIS) in Zambia has come up with the following findings and recommendations.

First, there is no comprehensive national strategy to fight corruption. Such a strategy must be adopted as a matter of urgency.

Second, although the general legal framework for fighting corruption exists it requires to be enhanced in some areas. For example, there is need for legislation to protect whistle-blowers, to regulate political party funding and elections expenditure.

Third, the anti-corruption institutions lack capacity to effectively fight corruption. They lack the necessary facilities, equipment or operational funds for their work. They do not offer competitive conditions of service to attract qualified manpower. All of them have serious manpower shortages and their personnel lack specialized skills.

Fourth, there is little formal co-ordination among the different institutions fighting corruption. Although they do refer clients to each other there are no follow-ups and there is no systematic co-ordination of their responsibilities.

Fifth, the lack of political will to fight corruption in the last decade has been the major factor that has undermined efforts to combat corruption successfully. Anti-Corruption institutions have been rendered powerless and irrelevant through, *inter alia*, deliberate under-funding and the failure to punish those exposed as being corrupt in numerous reports of the Auditor-General, the Press and the Public Accounts Committee. Recent revelations show that corruption started right from the presidency to the lowest ranking public service workers, including the courts. The Chief Justice has been forced to resign upon revelations that he had been receiving bribes from President Chiluba through the Zambia Intelligence Service from 1998 to 2001.

Sixth, there seems to be ready acceptance of corruption by the public. There is, therefore, need to intensify public awareness about the evils of corruption so that there is zero-tolerance for corruption.

Seventh, although there is legislation that prohibits public officials from accepting substantial gifts, there is no monitoring mechanism to ensure that the rules are complied with. Gifts given to Ministers and public officials need to be recorded in a register. The law must prescribe the maximum value of gifts/hospitality permitted. Moreover, there should be a mechanism for monitoring gifts as well as assets of political leaders and public officials, and sanctions should be clearly stipulated for defaulters. The Anti-Corruption Commission (ACC) should be given the monitoring responsibility.

Eighth, the rules on conflict of interest need strengthening. Political leaders, parliamentarians and public officials should not be allowed to run businesses, or practise their professions while still in office. They should place their business interests in blind trusts. There should be an enforceable code of conduct for public officials. There should also be restrictions on post ministerial, parliamentary and public service employment. This should be monitored by the ACC.

Ninth, the Auditor-General's office has proved ineffective in checking abuse of public funds. It lacks organisational autonomy and adequate professional staff. Not only should

it be provided with adequate funding but it should also be self-accounting and should recruit and have control over its own staff. The Office must be detached from the Civil Service and should have power to prosecute or sanction erring public officers.

Tenth, the ACC has not been effective in curbing corruption. It requires more qualified personnel. Its staff must be exposed to specialized training and be well remunerated. It should be adequately funded, be self-accounting and have power to prosecute offenders without the DPP's consent.

Eleventh, the change in the composition of Parliament offers the prospect of more effective parliamentary oversight of government operations. For the first time in Zambia's history, Parliament has the opportunity to be really independent of the Executive. But MPs lack capacity to effectively discharge their functions. They need training and also access to qualified staff who could facilitate their work.

Twelfth, the Ombudsman's office, has been moribund. It should be an office of parliament, its proceedings must be held in public and it should have enforcement power. It must be given sufficient resources to enable it to decentralize, recruit adequate staff, offer competitive conditions of service, publicize itself and carry out operations.

Thirteenth, the installation of the New Deal Administration has breathed new life into the anti-corruption fight. Its emphasis on good governance, the rule of law and zero tolerance for corruption has provided the necessary political will to galvanise the anti-corruption institutions.

Lastly, donors have a crucial role in helping Zambia build a credible NIS through provision of funding and technical aid.

Country Overview

Zambia, with a population of ten million people, is a unitary state with a Republican form of Government. The Constitution divides the powers of government among three organs of government: the executive; the legislature; and the Judiciary. The doctrine of separation of powers is implemented to some extent, but there are a lot of overlaps among the organs. For example, all Ministers are members of the National Assembly, Ministers and other executive officials enact legislation in the form of statutory instruments. Moreover, each organ is given the power of limited interference in the affairs of the other organs in order to create checks and balances.

Zambia has an Executive President, directly elected by the people at intervals of five years. Zambia has had three Presidents since independence, the current President, Levy Mwanawasa, having been elected on 27th December, 2001. The President is the Head of State and Government, as well as Commander-in-Chief of the Defence Force. All executive power is vested in him. The Constitution and other laws vest enormous powers in the President, which are not¹ amenable to effective checks and balances. Among the powers vested in him are:

- to constitute and abolish offices in the Public Service;
- to negotiate and sign international agreements and delegate the power to do so;
- to initiate legislation;
- to establish and dissolve Government Ministries and departments;
- to appoint virtually every important office-holders in the Public Service, statutory corporations and parastatals, such as Judges of the High Court and Supreme Court, the Chief Justice, the Deputy Chief Justice, the Auditor-General, the Director of Public Prosecutions (DPP), the Attorney-General, the Solicitor-General, the chairperson and commissioners of the Electoral Commission, the Human Rights Commission, the Drug Enforcement Commission (DEC), the Anti-Corruption Commission (ACC) and the Commission for Investigations, top Army, Air Force, Police and Zambia National Service Officers, the Governor and Deputy Governor of the Bank of Zambia, the Commissioner-General of the Zambia Revenue Authority, Permanent Secretaries, the Director-General of the ACC and the DEC Commissioner, etc.;
- to sign bills into law;
- to nominate up to 8 members of Parliament whom he can remove at any time;
- to dissolve the National Assembly;
- to declare war or a State of Emergency, etc.

The Cabinet, consisting of the President, Vice-President and Cabinet Ministers², plays an advisory role. Cabinet Ministers superintend Ministries under the direction of the President.³ There are also Deputy Ministers in Ministries and in the nine Provinces.⁴ All Ministers are appointed by the President from amongst members of parliament (both elected and nominated) in his sole discretion.

Ministers are policy makers but implementation of policy is done by Civil Servants. The top Civil Servant is the Secretary to the Cabinet, appointed by the President subject to ratification by the National Assembly.⁵ The Permanent Secretary is the top Civil Servant and also controlling officer in each Ministry and Province.

The police, the Attorney-General, the DPP, the Solicitor-General, the Defence Force, the ACC, the Drug Enforcement Commission, the Human Rights Commission, Local government, the Electoral Commission, the Civil Service, the Prison Service, Service

Commissions such as the Public Service Commission, the Teaching Service Commission, etc, all fall under the Executive branch.

There is a unified Central Police Force, which is headed by the Inspector-General of Police (IG). The Police Service is highly centralized. The President appoints the IG, the Commissioner and Assistant Police Commissioners.

There is a unicameral legislature with 159 members [i.e. 150 elected members, 8 nominated members + the Speaker]⁶, tasked with making law, approving the budget and overseeing the operations of the government.⁷

There are 30 registered political parties, eleven of which contested presidential and parliament elections in December 2001. Currently, the opposition have a slight majority of seats in the National Assembly. Eight parties have representatives in the Assembly as follows: MMD 67; UNIP 13; UPND 47; HP 2; PF 1; FDD 12; ZRP 1 and one Independent MP. There are six vacancies.⁸

The main function of the judiciary is to interpret the law. Article 91(1) of the Constitution provides that the Judicature shall comprise: the Supreme Court of Zambia; the High Court; the Industrial Relations Court (IRC); the Local Courts; and such lower courts as may be prescribed by an Act of Parliament. The Supreme Court is the final court of appeal and comprises the Chief Justice, Deputy Chief Justice and 7 other judges.⁹ It has jurisdiction to hear and determine appeals in civil and criminal matters.¹⁰

The High Court has, except in labour matters as stipulated by the Industrial and Labour Relations Act¹¹, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by the Constitution or any other law.¹² It has an establishment of 30 judges albeit only 23 positions are currently filled.

The IRC has jurisdiction in all industrial relations matters.¹³ It consists of a chairman, Deputy chairman and not more than ten members as the Minister of Labour may appoint.¹⁴

The Subordinate Courts are established in each district. Each subordinate court ordinarily exercises jurisdiction only within the limits of the district for which it is constituted.¹⁵ There are different classes of magistrates, starting from the highest to the lowest as follows: Principal Resident Magistrate; Senior Resident Magistrate; Resident Magistrate; Magistrate Class I; Magistrate Class II; and Magistrate Class III. Only the first three categories are professional magistrates (i.e. trained lawyers admitted to the Bar). It is Subordinate Courts that handle the bulk of criminal trials. Such courts, for example, try all corruption cases.

Local Courts handle matters involving customary law and they rarely deal with criminal trials or statutory law.

The courts have power to review both legislative and executive actions.

The main TV and Radio Broadcasting Corporation is the Zambia National Broadcasting Corporation (ZNBC), owned by the Government. There are a number of independent commercial, religious and community radio stations, whose coverage is limited to particular districts, except for Radio Christian Voice, which operates on Short-Wave Band. Trinity Broadcasting Network (TBN), a private TV station, provides Christian programming. Pay television is provided by Multi-choice (Z) Ltd and CASAT Technologies, but these do not have local content.

The government owns two daily Newspapers, the Times of Zambia and the Zambia Daily Mail and their sister Sunday papers. There is only one independent daily, the Post Newspaper and some independent weeklies, such as the National Mirror, Today, The People, the Independent, and the Monitor (twice a week).

Corruption Profile

There are three types of corruption in Zambia: petty; political; and grand.

Petty Corruption

Petty corruption is the most visible and widespread type. This is corruption on a small scale and mostly affects the Police Service¹⁶, the courts, immigration¹⁷, Zambia Revenue Authority¹⁸, Passports Office, Department of National Registration, and the Pensions Fund.¹⁹ Workers in these institutions demand bribes in order to perform their work or to overlook regulations or to decide a case in favour of the applicant. The results are that those who cannot afford to pay the bribes are denied services they are entitled to, or are deprived of their rights. Another result is that the state loses revenue. Furthermore, it lowers the quality of services offered by those who demand bribes. Another consequence is that the people lose confidence in government institutions, as such institutions are considered untrustworthy and lacking in integrity.²⁰

Figure 1 shows the official statistics of institutions most prone to corruption.

Figure 1 Statistics showing the Number of Complaints by Sector 1996-2000.

Sector	1996	1997	1998	1999	2000
Banks	9	9	3	5	11
Cabinet Office	0	1	0	0	0
Churches	2	1	0	1	1
Councils	47	73	61	29	46
Courts	48	64	65	30	69
Defence and Security	2	9	3	1	3
Drug Enforcement Commission	0	0	1	1	8
Hospitals and Clinics	13	4	8	2	6
Immigration Department	22	16	15	16	14
Ministers and MPs	27	6	14	10	8
Ministries	61	62	44	34	36
National Parks and Wild Life Services	9	2	3	1	1
National Registration Department	19	2	10	40	7
NGOs & Independent Bodies	10	6	3	1	2
Other Government Departments	40	46	67	44	78
Parastatals	57	49	48	37	48
Passport and Citizenship	13	5	5	2	6
Poachers	32	0	1	0	0
Prisons	7	3	6	0	4
Private citizens/Companies	84	96	59	37	88
Schools/Institutions of Higher Learning	20	20	25	10	20
State House	1	0	10	91	3
Zambia Police	103	128	125	19	195
Zambia Revenue Authority	45	24	23	19	30

Source: Anti-Corruption Commission, Annual Report for the Year 2000 [Appendix L, p.39].

Grand Corruption

Grand corruption has also been prevalent in Zambia. It involves large amounts of money. It manifests itself in several forms: those involved in the procurement of goods and services demanding kickbacks in order to award contracts; misappropriation of public funds; kickbacks in the privatisation of state-owned enterprises; government officials obtaining kickbacks for signing loan agreements or for authorizing development projects. Among the major cases of grand corruption that have been exposed include:

- President Chiluba and the Chief of Intelligence, Xavier Chungu, misappropriating or misusing at least \$ 52 million through a Zambia National Commercial Bank Zamtrop Account in London.²¹ The account was used to meet Chiluba's and Chungu's private and personal expenses as well as to bribe individuals. Among those bribed was the Chief Justice, Mathew Ngulube, who received US \$168, 000 from 1998 to 2001. Other beneficiaries of these stolen funds were Chiluba's children, his friends and their children. They also included lawyers, journalists, companies and politicians.²² Some of the master minds of this scam, including Chungu, have since been arrested and charged with theft and abuse of office.²³
- In 2001, three Ministers diverted a sum of K2 billion from the National Assembly account to the MMD Convention. A tribunal established by the Chief Justice under the Parliamentary and Ministerial Code of Conduct Act found the Minister of Works and Supply, Godden Mandandi and the Minister of Home Affairs, Peter Machungwa, guilty. The Minister of Finance, Katele Kalumba, who had authorised the transfer of funds, was surprisingly let off the hook.
- The privatisation of the mines was undertaken by a team appointed by the President outside the provisions of the Privatisation Act. This illegal entity sold Luanshya Mine to the Binani Group, an Indian scrap metal dealer with no mining experience, contrary to the provisions of the Privatisation Act. Binani failed to run the mine, stripped it of its assets, got huge loans from the state owned Zambia National Commercial Bank, which nearly led to the collapse of the Bank when Binani defaulted. The mine has since been closed and thousands of workers have been rendered unemployed and have been living in poverty. Luanshya has now become a ghost town.²⁴
- The theft of \$90 million, which was given by the Bank of Zambia to Meridien Bank to save it from collapse. The money was, with the connivance of top political and public officials, transferred to the Bahamas. Meridien Bank was liquidated, resulting in thousands of depositors losing their money and employees losing their jobs. The Bank of Zambia has, to date, not recovered the US\$90 million. The culprits were not arrested as they had the protection of the political authorities.²⁵
- The loss of \$100 million by the state owned Zambia National Oil Company (ZNOC), through importation of oil feedstock under dubious arrangements. ZNOC has since been liquidated.²⁶
- The irregular award in 1997 of a maize supply contract to a Canadian company, Carlington Sales Ltd. Although US \$7 million was paid to the company by the government, the maize was never supplied.²⁷
- The misappropriation, theft and misuse of billions of kwacha belonging to the Presidential Housing Initiative (PHI) by the President and his adviser for Press, Richard Sakala.²⁸
- The sale of ZCCM copper and cobalt to an Israeli company at below the world prices, resulting in Zambia losing about US \$150 million.
- The disappearance of proceeds from the privatization of state owned enterprises amounting to millions of dollars. Contrary to the requirements of

the Privatisation Act the funds were not deposited in a privations trust fund account at the Bank of Zambia.²⁹

Political Corruption

Political corruption is rampant in Zambia, particularly in the context of elections. First, the abuse of public resources by the ruling MMD in its election campaigns has been common.³⁰ Besides use of state vehicles and other related public resources³¹, government leaders always begin a ritual of donations to schools, community projects and charitable organizations and other causes in areas where elections are scheduled to take place. President Chiluba made sure he donated something to every constituency in which a by-election was taking place. For example, during the 26th September 2000 Chifubu by-election Chiluba made donations amounting to K160 million to various churches in the constituency.

The abuse of state resources was also evident during the December 27, 2001 elections and was condemned by election observers.³² The ruling party, for example, used public resources amounting to K 40 billion from the ZAMTROP Intelligence account to purchase 300 vehicles and 5000 bicycles for its campaign.³³

Second, the Presidential discretionary fund [slush fund] was a major source of political corruption. The President used it to buy political support, to induce opposition leaders to defect to the ruling party, to fund compliant NGOs, to fund his campaign for an unconstitutional third term of office, and to finance operations of the ruling party.

Although in 2001 Parliament allocated K12 billion from to the Presidential slush fund, in reality he drew K120 billion from the National treasury.³⁴

The new President must be commended for dispensing with the Slush Fund in the 2002 budget.

Third, during election campaigns almost all the parties distribute gifts such as Chitenge materials, salt, cash, bicycles, fertilizer, mealie-meal, etc, in order to induce voters to vote for them.

Causes of Corruption

Among the major causes of corruption in Zambia are:

- poor conditions of service in the Public Service;
- weak internal financial controls and lack of a code of conduct for public service workers;
- weak enforcement of anti-corruption legislation owing to incapacity of relevant institutions;
- lack of public revulsion to corruption/acceptance of corruption by the public;
- wide discretion conferred on public officials in allocating rents (i.e. benefits or favours), with little or no accountability of these officials;
- absence of ethical leadership by the political leaders, as they tend to place personal and private interest above national interest;
- political patronage as political power is associated with employment privileges and other ancillary advantages. There is a mutually beneficial clientele-patron relationship between political leaders on one hand, and civil servants and others, on the other. The political leaders strive to maintain their status as patrons in order to maintain and increase their power, and in the process, loyalty, rather than competence, is the most important criteria used in recruiting individuals for employment and promotional opportunities. Accountability and transparency are not encouraged in this type of relationship;³⁵

- socio-cultural norms which require public servants to subvert the principles of objectivity and fairness in favour of loyalty to one's family members, clan and friends;
- the exploitation and abuse of African customs regarding exchange of gifts, to extort bribes from persons seeking employment or any public services from public officials;
- absence of political will to fight corruption.

Effects of Corruption

Among some of the devastating effects of corruption in Zambia have been:

- worsening of the economic crisis resulting in mass poverty and destruction of local industry;
- serious violations of human rights;
- foreign investment has not been forthcoming;
- people have lost confidence in political leaders and government institutions;
- governance institutions have been seriously undermined;
- elections have not been free and fair thereby denying the nation quality leadership;
- poor service delivery by government institutions;
- withholding of vital donor aid.

The National Integrity System

Executive

The executive branch is the most powerful of the three branches of government in Zambia. The Constitution vests all executive power in the President,³⁶ who is elected directly by the people every five years. He is the head of state and government as well as Commander-in-Chief of the Defence Force. The President has enormous power, which is not subject to any meaningful checks and balances. For example, he appoints most constitutional office holders such as the Chief Justice, Deputy Chief Justice, judges of the Supreme Court and High Court, eight nominated members of Parliament, the Attorney-General, the Director of Public Prosecutions, the Solicitor-General, the Auditor-General, The Secretary to the Cabinet, the Chairman and Commissioners of the Electoral Commission, the Commission for Investigations, the Human Rights Commission, etc. In addition, he appoints senior commanders in the Defence Force and the Police (the Inspector-General, the Commissioner of Police and Deputy Commissioners). He also appoints the heads of, and commissioners of, the Anti-Corruption Commission and the Drug Enforcement Commission. He has power to suspend and dismiss most of his appointees.³⁷

The President also has power to create and abolish offices in the Public Service as well as to create and abolish Government ministries subject to the approval of the National Assembly. He can dissolve the National Assembly, pardon or reprieve offenders, negotiate and sign international agreements, accredit, receive and recognise ambassadors and appoint ambassadors, plenipotentiaries, diplomatic representatives and consuls. He is also empowered to sign bills and issue proclamations as well as to initiate legislation.³⁸

The President also effectively controls the national purse as the Legislature's role in the budget process is severely limited.³⁹

The President enjoys immunity from both civil and criminal proceedings in respect of any act done or omitted to be done during his tenure. The immunity from criminal proceedings continues after he vacates office, for acts done by him in his personal capacity while he held the office of president. However, the National Assembly can, by resolution, lift this immunity if it determines that it would not be contrary to the interests of the State to do so.⁴⁰

Pursuant to this provision the National Assembly in July 2002 voted unanimously to lift former President Frederick Chiluba's immunity in order to facilitate corruption investigations against him. Prior to the Assembly's decision, President Mwanawasa had addressed a special session of the Assembly during which he disclosed serious acts of corruption by the former president.⁴¹

Chiluba's bid to have parliament's decision to lift his immunity quashed was dismissed by the High Court on 16th August 2002.⁴² He has since appealed to the Supreme Court.

The Constitution provides for the impeachment of the president by the National Assembly where he has committed any violation of the Constitution or any gross misconduct. The process may be initiated by way of written notice being given to the Speaker signed by not less than one-third of all MPs. The notice must contain particulars of the allegations against the President and must propose the setting up of a tribunal to investigate the allegations. The Speaker is then obliged to table the motion before the National Assembly for consideration within seven days of the notice if Parliament is sitting, or if it is not sitting, he must summon the Assembly within twenty-one days of the notice.⁴³ The motion to proceed with an investigation must be supported by the votes of at least two thirds of all the Members of the Assembly. Once Parliament has passed the motion the Chief Justice must appoint a judicial tribunal comprising a chairman and at least two other members, all of whom are judges or former judges, to investigate the allegations. The tribunal is required to report its findings to the National Assembly. If, after investigations,

the tribunal finds that the allegations are not substantiated then the impeachment proceedings must stop.

However, if it finds the allegations substantiated the National Assembly may, on a motion supported by the votes of not less than three quarters of all of its members, resolve to remove him the President from office. The President must vacate office on the third day following the passage of the resolution.

This provision is intended to check presidential excesses. It is a power that should not be exercised lightly and hence the large majorities required for the relevant motions to pass. Thus, if the president abuses his power or engages in corruption, albeit he may not be prosecuted because of the immunity, he can be impeached by Parliament. But this is only possible if Parliament is independent and is not controlled by the President.

In 2001 there was an abortive attempt by Parliament to impeach President Chiluba on allegations of corruption, abuse of office and violation of the Constitution. A motion, signed by 65 MPs, calling for the setting up of a judicial tribunal to investigate the President, was presented to the Speaker as required by article 37(1) of the Constitution. However, the Speaker failed to act on the motion in order to protect President Chiluba.⁴⁴ Parliament was then in recess. The Speaker did not convene parliament within 21 days as required by the Constitution. In fact, Parliament remained in recess for seven months. It was only convened for a short session prior to dissolution in preparation for the December 27, 2001 General and Parliamentary elections, when the threat of impeachment had died.

This is a classic example of how well intentioned provisions of the Constitution can be subverted by individuals who lack integrity. The checks and balances envisaged by the Constitution become illusory and a big joke in such circumstances. In this case the Speaker put his loyalty to the President above the national interest.

Cabinet

The Constitution provides for a Cabinet, comprising the President, Vice-President and Cabinet Ministers.⁴⁵ There are 23 ministries. The function of the Cabinet is to formulate government policy and to advise the President with respect to government policy and with respect to such other matters as may be referred to it by the President.⁴⁶ However, the President is not bound by the advice of Cabinet, although he is required to consult it on some matters, such as the declaration of war or the declaration of a full state of emergency.⁴⁷ Ministers are in charge of running Ministries or departments under the direction of the President.⁴⁸

There are also Deputy Ministers in Ministries and in the nine Provinces. In fact, the head of each Province is a Deputy Minister.⁴⁹ However, Deputy Ministers have limited power. For example, they cannot deputise for Cabinet Ministers when the latter are absent at their Ministries. All Ministers and Deputy Ministers are appointed by the President from amongst members of parliament (both elected and nominated) in his sole discretion. They serve at the President's pleasure and can, therefore, be dismissed at any time.

Ministers are policy makers but implementation of policy must be done by Civil Servants. The top Civil Servant is the Secretary to the Cabinet, appointed by the President subject to ratification by the National Assembly.⁵⁰ The top Civil Servant and also controlling officer in each Ministry is the Permanent Secretary. Permanent Secretaries are appointed by the President in his sole discretion. No qualifications are stipulated for the job, thereby providing opportunities for the appointment of unsuitable personnel. In practice some of the people appointed as Permanent Secretaries have been nothing but ruling party cadres with no relevant qualifications or experience to run ministries. This has contributed to the gross abuse of public funds, as revealed in numerous reports of the Auditor-General. The internal financial controls in ministries have virtually broken down not least because of the low calibre of the Permanent Secretaries appointed on purely political criteria.

The police, the Attorney-General, the Director of Public Prosecutions, The Solicitor General, the Defence Force, Governance Institutions such as the Anti-Corruption Commission (ACC), the Drug Enforcement Commission (DEC), the Human Rights Commission, the

Electoral Commission (ECZ), the Civil Service, and the Prison Service also constitute part of the Executive Branch.⁵¹

Service Commissions

The Constitution establishes the Judicial Service Commission and empowers Parliament to establish other Service Commissions.⁵² In this connection, under the Service Commissions Act the following Commissions are established:- the Public Service Commission; the Teaching Service Commission; and the Police and Prisons Service Commission.⁵³ A Commission consists of a chairman and not less than three nor more than six other members. All members are appointed by the President and serve for a period of two years. See also pages 19-20, Legislature.

The President may dismiss a member only for inability to discharge the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour. No procedures are laid down for removal.⁵⁴ Thus, members of commissions lack security of tenure and basically serve at the pleasure of the President. The Service Commissions Act grants members of Commissions immunity from legal suits or proceedings for any act done or attempted to be done in the *bona fide* execution of their duties. The immunity is similar to that enjoyed by judges.⁵⁵

The main functions of these Commissions are to appoint, promote and discipline public officials in their respective areas of competence. However, what they exercise is delegated power. This is because power to appoint persons to hold or act in any office in the Public Service, the Teaching Service, the Zambia Police Force or the Zambia Prison Service, including power to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to dismiss any such person, is vested in the President.⁵⁶ The Service Commissions Act requires the President to consult the appropriate Commission before appointing or disciplining the following officers:

- Permanent Secretary, Deputy Permanent Secretary, Inspector-General of Police, the Commissioner of Prisons; and
- Ambassador, High Commissioner or Principal Representative of Zambia in another country.⁵⁷

With regard to lower level personnel, the powers of the President to appoint or discipline officers are, unless otherwise provided by a statute, exercised by the appropriate Commission acting in the name of the President.⁵⁸

The President is empowered to give to a Commission or to a public officer to whom the functions or powers of such Commission are delegated such general directions with respect to the exercise of the functions of the commission as he may consider necessary and the Commission or that public officer must comply with those directions.⁵⁹

It is clear from these provisions that the President's powers over the Public Service are overwhelming. Not only does he appoint and dismiss members of Commissions but also controls the operations of the Commissions. Even where the President is required to consult Commissions before appointing or disciplining top officials he is not bound by the advice rendered by the Commissions.⁶⁰ This considerably reduces presidential accountability.

Accountability of Public Officials to the Citizens

Chapter 3 of the Constitution⁶¹ guarantees civil and political rights. Article 28(1) permits any person who alleges that any of his guaranteed rights has been, is being or is likely to be contravened in relation to him, to apply to the High Court for redress.

The High Court is empowered to make such orders, issue such writs and give such directions, as it may consider appropriate for the purpose of enforcing or securing the enforcement of the right in question.⁶² There have been several cases where citizens have sued the government.⁶³ However, these are insignificant given the widespread nature of civil and rights violations. Few citizens sue the government because:

- of ignorance of human rights by the majority of the citizens;
- fear of government officials as a result of lack of political consciousness;
- prohibitive cost of litigation. Most people are too poor to afford the court fees, to pay for investigations and to pay lawyers to represent them;
- the bill of rights is couched in highly technical language that the ordinary person cannot understand without the assistance of a lawyer;
- court proceedings (especially civil cases) take a long time to conclude;
- restrictions on *locus standi*. Only the victim of a human rights violation can sue. Public interest litigation is not permitted.

Apart from suing government officials on the basis of the Bill of Rights citizens can challenge actions by government officials, which are contrary to the law or are not sanctioned by law. Judicial review of executive action is well established in Zambian law.

Quite apart from resorting to court action to challenge administrative decisions, aggrieved individuals can utilise administrative remedies. Service regulations permit those dissatisfied with a decision made by an officer to appeal to his superior for redress in accordance with the chain of command existing in a particular department or ministry.⁶⁴ Furthermore, under the Commission for Investigations Act, complaints can be made to the Commission against public officers who abuse their power or authority or practise nepotism, etc.

Similarly, the Human Rights Commission is empowered to investigate human rights violations as well as maladministration of justice and make appropriate recommendations for redress.⁶⁵

Reports of the Commission for Investigations and the Human Rights Commission indicate that people have been utilizing these institutions to challenge decisions made by individual members of the Executive.⁶⁶

A shortcoming of the current law is that the Constitution does not guarantee the right to administrative justice. A useful model is the provision found in the Constitution of Malawi. Section 43 provides that every person shall have the right to:

- lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his rights, freedoms, legitimate expectations or interests are affected or threatened; and
- be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests if those interests are known.

Procedures for the Monitoring of Assets, including Disclosure Provisions for Government Ministers

Article 34(5) of the Constitution requires a presidential candidate to make a statutory declaration of his assets and liabilities, which is open to public inspection. The Chief Justice keeps the records.

All Ministers and Deputy Ministers⁶⁷ are required to conduct themselves, during their tenure of office in accordance with the Parliamentary and Ministerial Code of Conduct Act.⁶⁸ Part II of the Code of Conduct requires Ministers and Deputy Ministers and Members of Parliament, *inter alia*:

- to disclose their pecuniary interest on any matter before the National Assembly or any of its committees;⁶⁹
- to declare their interest in Government Contracts to the Chief Justice.⁷⁰

Part III of the Act, which applies only to Ministers, Deputy Ministers and the Speaker, requires these officers to submit to the Chief Justice an annual declaration of assets, liabilities and income within:

- thirty days after appointment; and
- thirty days after each anniversary of their appointment to the office concerned.⁷¹

The annual declaration should fairly state:

- the value of the assets (other than personal and household effects) and liabilities of the officer as at the date of declaration;
- the total income of the officer, together with his income from each source, for the twelve months preceding the declaration date.

Breach of Part II of the Code results in loss of a Parliamentary seat, and consequently, loss of the Ministerial position.⁷²

Unfortunately, there is no formal mechanism for verifying the accuracy of the statutory declaration of assets by Presidential candidates, Ministers and Deputy Ministers.⁷³

Section 16 of the Code of Conduct provides that an allegation that a person holding Ministerial office has breached the provisions relating to declaration of assets may be made to the President by any person in writing. The President is then required to furnish a copy of the complaint to the Minister concerned.⁷⁴ However, the Act does not prescribe any sanctions should the allegations turn out to be true. Presumably, the President should take some action against the Minister concerned.

A Minister or Deputy Minister will lose his position if he breaches provisions under part II, i.e. fails to disclose pecuniary interest in any matter before the Assembly, fails to declare interest in Government contracts, is involved in dishonesty activities, fails to make a declaration of assets or files a false declaration under section 10.⁷⁵

Three Ministers and one MP have so far lost their parliamentary seats after they were found guilty of stealing public funds by judicial tribunals set up by the Chief Justice under the Parliamentary and Ministerial Code of Conduct Act.⁷⁶

Occasionally, the press has accessed the statutory declarations and published their contents. But there has been no attempt to verify the accuracy of the declarations or to monitor such assets.

Procedures for the Monitoring of Assets, including Disclosure Provisions for High Level Officials

There is no legislation that requires public officials to disclose their assets.⁷⁷ But under section 37 of the ACC Act, the ACC can investigate any public officer where there are reasonable grounds to believe that such public officer:

- has abused or misused his office, position or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;
- maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments.

If, after investigation, a *prima facie* case is established the officer concerned may, unless he gives a reasonable explanation, be charged with having or having had under his control or in his possession of pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused his offices. The onus is on him to give a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or into his possession.⁷⁸

In practice few cases involving high-level public officials have been brought before the courts. A number of Permanent Secretaries and heads of Public Corporations have been investigated by the ACC but few of them have been charged with an offence for a number of reasons.⁷⁹ According to the ACC, there was no political will to fight corruption during

the Chiluba presidency.⁸⁰ On at least two occasions, President Chiluba used the Attorney General to stop the ACC from prosecuting certain officials.⁸¹ Under the Constitution, the Attorney General can give directions to the DPP in matters involving the public interest. Under the ACC Act, the ACC can only prosecute with the consent of the DPP.

Furthermore, it was very difficult for the ACC to investigate top-level officials because few people were willing to volunteer information to the Commission for fear of victimization. Moreover, the Commission lacked adequate staff and funding, to conduct investigations. Some cases required investigators to travel abroad but this could not be done in the absence of resources.⁸²

Conflict of Interest Rules for High Level Officials

Although there is no code of conduct for public officials some statutes require board members and staff of statutory corporations to declare any pecuniary or other interest they or their spouses may have in a government contract or a matter that is being considered by the corporation in question. For example, section 13 of the ACC Act provides that if any person is present at a meeting of the Commission or any Committee at which any matter is under consideration, and in which matter that person or his spouse is directly interested in a private capacity, that person shall declare such interest and shall not, unless the Commission or the Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Such a disclosure of interest must be recorded in the minutes of the meeting.⁸³ Failure to make such a disclosure is an offence that attracts a fine of up to 5000 penalty units.⁸⁴ Similar provisions are found in the Privatisation Act,⁸⁵ the Zambia National Tender Board Act,⁸⁶etc.

The Privatisation Act requires political leaders and public officers to publicly disclose their intention to bid for the purchase of shares in a state owned enterprise.⁸⁷

Conflict of Interest Rules for Ministers

Section 5 of the Parliamentary and Ministerial Code of Conduct Act bars any Member from speaking in the National Assembly or in a Committee thereof unless he or she has disclosed the nature of that interest to the Assembly or Committee.

Section 6 of the Act requires Members who have an interest in government contracts to make a declaration to the Chief Justice of their interest in relation to the contract, specifying the nature and extent of their interest. A Member is deemed to have an interest in a contract if:

- he will derive any material benefit, whether direct or indirect, from the contract; or
- one party to the contract is a firm or body corporate and he has a material interest, whether direct or indirect, in the firm or body corporate.⁸⁸

Gifts and Hospitality for Public Officials

Under Order 79 of the General Orders, which apply to the Civil Service, officers are forbidden to give or to receive valuable presents whether in the form of money, goods or passages except with the specific approval of the responsible officer of a Ministry or Province concerned except in respect of:

- an officer permanently leaving the service; or
- the family of an officer who dies in the service.

An officer who infringes this Order commits misconduct. Moreover, officers who receive gifts abroad are required, as a matter of practice, to report such gifts to their superiors upon return. But there are no registers to record gifts and there is no monitoring mechanism.

Furthermore, what constitutes a valuable gift or present is not defined. According to the Public Service Commission (PSC), the nature of the gift is more important than the amount of the gift. In its view, few Civil Servants, if any, do receive valuable gifts because of the nature of their work. The chairman pointed out that in his 15 years service as a senior Civil Servant he has never received a valuable present.⁸⁹

However, the Commission's view does not reflect reality. Corruption is rampant in the Civil Service because, among other things, civil servants routinely solicit or accept gifts from members of the Public who deal with them. Thus, food suppliers, for example, provide valuable gifts to those who sit on tender committees.⁹⁰

Rules and Registers Concerning Gifts and Hospitality for Ministers

Section 4(e) of the Parliamentary and Ministerial Code of Conduct Act prohibits MPs, Ministers included, from soliciting or accepting transfers of economic benefit other than:

- benefits of nominal value, including customary hospitality and token gifts
- gifts from family members.

However, there is no register for registration of gifts. Moreover, the legislation does not prescribe the maximum value of allowable gifts or hospitality. Ministers have been known to receive gifts of significant value even from non-relatives. No Minister has ever been punished for soliciting or accepting gifts of significant value.

Post Ministerial and Post Public Service Employment

There are no restrictions on post-ministerial and post-public service employment. The Public Service Commission indicated that such restrictions would be highly undesirable because of the extremely low pensions retired officers get. They would be reduced to poverty if such restrictions were imposed.⁹¹ It is not surprising that many former Permanent Secretaries have, after leaving office, taken up employment with companies in the private sector. No study has been undertaken to determine whether or not the Permanent Secretaries had prior connections with the companies they joined after leaving the public service. But given the small size of the Zambian economy and the dominance of the State in the economy (award of contracts, regulation of companies, etc), it is more likely than not that the former Permanent Secretaries had dealt with these companies when they were still in government. For example, in early 2002 a former Permanent Secretary in the Ministry of Finance, Stella Chibanda, took up a job with the World Bank in Washington upon being retired by President Mwanawasa. The World Bank has been working closely with the Ministry of Finance since 1991.

Legislature

The legislative power of the Republic is vested in Parliament, which consists of the President and the National Assembly.⁹² The National Assembly consists of 150 elected members, 8 nominated members and the Speaker.⁹³ Its main function is to enact law. However, it has a major role in terms of providing checks and balances to the other organs of Government, particularly the Executive. In fact, Article 51 of the Constitution makes the Cabinet and Deputy Ministers collectively accountable to the National Assembly. Among the ways in which the National Assembly holds the executive accountable are:-

- through questions put to Ministers by MPs;⁹⁴
- through reviews of performance and current operations of Government Ministries and Departments, state-owned enterprises and other public bodies conducted by House and Sessional Committees; these bodies and institutions are required to submit annual reports of their activities and accounts to the Assembly;
- through motions submitted by Backbenchers, which give members an opportunity to debate government policy on a matter of public concern.

Most of the business of the House is conducted through Departmental, Select and Adhoc Committees.⁹⁵

The National Assembly has power to ratify appointments made by the president of certain constitutional office holders such as judges of the superior courts, the Director of Public Prosecutions, the Solicitor-General, the Attorney General, the Auditor-General, and the Investigator-General. In addition, the Assembly is required to ratify the appointment of the chairman and commissioners of the Electoral Commission, the Anti-Corruption Commission, the Human Rights Commission, the Drug Enforcement Commission, members of the Commission for Investigations, the Governor and Deputy Governor of the Bank of Zambia. Through this process the Assembly can ensure that those appointed to the various positions have the requisite qualifications, experience and integrity. Thus, the president may be constrained from abusing his power of appointment thorough this device.

Another mechanism of control is the power vested in the Assembly to impeach the President for violating the Constitution or for gross misconduct.⁹⁶

National budget

A major role the National Assembly plays relates to controlling the raising and spending of public funds. In this connection Article 117 of the Constitution empowers the National Assembly to approve the budget. The Minister of Finance normally presents the budget to the Assembly in the last week of January. The approved estimates of expenditure are then included in an Appropriation Bill.

But there are significant categories of public expenditure that do not require legislative approval. Expenditures charged on the general revenues of the Republic by the Constitution do not require approval by the National Assembly.⁹⁷ These are:

- salaries and allowances for the Chief Justice, Deputy Chief Justice, Judges of the High Court and Supreme Court, the Attorney-General, Investigator-General, Solicitor-General, DPP, Secretary to the Cabinet and Auditor-General, etc.⁹⁸
- all debt charges for which the Government is liable.⁹⁹

Donor funds and foreign loans do not also require legislative approval. In 2002 donor funds accounted for 42% of the national budget.

Rules Concerning Gifts and Hospitality for Parliamentarians (MPs)

Parliamentarians who infringe section 4(e) of the Parliamentary and Ministerial Code of Conduct Act may lose their seats if found guilty by a judicial tribunal set up by the Chief Justice after receipt of a complaint from members of the Public.

Furthermore, section 22 of the National Assembly (Powers and Privileges) Act makes it an offence punishable with a fine not exceeding ten thousand penalty units or to imprisonment of up to three years or both, for an MP to demand, accept, or receive directly or indirectly any gift, bribe, or reward as an inducement for him to vote in a particular manner on any Bill, Resolution, matter or issue submitted to the National Assembly.

No MP has ever been charged with receiving illegal gifts or hospitality. In fact there is no public register for recording gifts. Moreover, there no restrictions on post legislature employment. In fact MPs are allowed to do other work or run businesses while in office.

It is fair to say that the National Assembly has in the past failed to make the executive branch accountable to it for a number of reasons. First, the ruling party has overwhelmingly dominated the Assembly. In the 1991 landmark elections the MMD won 125 out of 150 seats. In the 1996 elections the MMD won 131 seats out of 150. In addition, the President appointed an additional 8 Nominated Members. Party discipline required that MMD MPs support the government to the hilt in all deliberations in the National Assembly. Consequently, passing the budget or laws was very easy for the government. Secondly, the front bench consisted of an average of 65 Ministers and Deputy Ministers. Under the doctrine of collective responsibility these officials were bound

to support the government unflinchingly in the Assembly. Thirdly, the National Assembly is relatively weak in relation to the Presidency. For example, the President can dissolve the National Assembly at any time, can fire nominated MPs at any time, and appoints the Clerk of the National Assembly. Moreover, the Assembly cannot, by a vote of no confidence, remove the President or any Minister from office. Even the Assembly power to ratify presidential nominations is limited in the sense that the third nomination is binding whether the Assembly approves or not. Fourthly, the Assembly and its committees have no power to compel executive officials to take corrective action. For instance the Public Accounts Committee cannot take action against public officers who misuse funds. It can only make recommendations, which are invariably ignored. Fifthly, the power of impeachment of the President granted to the National Assembly is in practice ineffectual as the requirements are impossible to meet in practice. This is worsened by the partisanship of the Speaker, who in 2001 frustrated an impeachment motion against then President Chiluba by refusing to convene the Assembly as required by the Constitution. In fact the Assembly was not convened for seven months!

Electoral Commission

Article 76(1) of the Constitution provides for the creation of an autonomous Electoral Commission to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review constituency boundaries. The composition and operations of the Commission are stipulated in the Electoral Commission Act 1996 and the Electoral Act and the regulations made thereunder.

It comprises a chairman and not more than 4 other members, who are all on full-time.¹⁰⁰ The members of the Commission are appointed by the President subject to ratification by the National Assembly.¹⁰¹ They serve for a period of seven years subject to renewals and ratification by the National Assembly.¹⁰² The President may remove a member who becomes insane or bankrupt from office.¹⁰³ The chairperson must be a person who has held or is qualified to hold, high judicial office or "any other suitably qualified person."¹⁰⁴ But no academic or professional qualifications are laid down for the other commissioners.¹⁰⁵

The Commission appoints the Director, who is the Chief Executive Officer of the Commission and is responsible for the management and administration of the Commission and the implementation of the decisions of the Commission.¹⁰⁶ The Commission also appoints other supporting staff. There were 79 officers employed by the Commission of which 9 were seconded officers against an establishment of 158 as at June 2001.¹⁰⁷

One of the major functions of the Electoral Commission is the registration of voters and the conduct of elections in every constituency. The registration of voters is conducted in the months preceding the Presidential and Parliamentary once every five years.¹⁰⁸ In 2001 the Electoral Act was amended to provide for continuous registration of voters. However, this is yet to be implemented as the government has not given the Commission sufficient funds to commence the exercise.

To be eligible for registration as a voter one must be a Zambian citizen, at least 18 years old and be in possession of a National Registration Card (NRC). In the December 2001 elections only 2,604,761 voters out of an estimated 4,687,997 eligible voters were registered. This represented only 55 per cent of eligible voters. The disenfranchisement of 45 per cent of voters has a serious impact on democratic governance, which, *inter alia*, requires popular participation, particularly in the election of political leaders. It also raises serious issues of accountability of elected officials when a large number of eligible voters do not participate in elections. Reasons for the low number of registered voters include: lack of capacity by the Department of National Registration to issue NRCs to those eligible; late release of funds by the government to the Electoral Commission; complexity of the registration process; voter apathy; long distances to registration centres, etc.

Despite the legal guarantee of the independence of the Commission, in reality it enjoys little autonomy, as it is dependent on government for funding. It is not funded directly by Parliament. The executive has sought to undermine the Commission through inadequate and late release of funds to the Commission. For example, in the financial years 1996 to

2000 the Commission's income was allocated a total of K67,757,865,909 of which only K47,379,943, 277 was released by the Ministry of Finance. The government has released only K300 million out of K12 billion it needs to start continuous voter registration.¹⁰⁹

Moreover, the commission lacks financial autonomy despite being an autonomous institution. Since its establishment as an autonomous Commission in 1996 it continues operating as a normal government department with a head of expenditure reflected in the Estimates of Revenue and Expenditure. As a result it receives Government funding on a monthly basis and is thus subject to normal treasury controls like any other government department. It employs the government accounting system. This contributes to the inefficiency of the Commission as the Government machinery moves very slowly.¹¹⁰ The President must approve all gifts or transfer of funds to the Commission.

The current Commission does not enjoy the confidence of all stakeholders as it allegedly partisan and incompetent. The last elections it conducted on December 27, 2001 were a total fiasco and have raised questions about the legitimacy of the current government.¹¹¹ They were marred by corruption: vote buying; treating; abuse of public resources by the ruling party; multiple voting; breach of observation of election regulations by the ECZ personnel; flagrant biased coverage by the government owned media. Opposition parties were often prevented from having election rallies by the Police acting pursuant to the Public Order Act, which requires prior police permission for all public meetings or rallies. The Zambia State Intelligence Service also allegedly played an active party in manipulating the election outcome in favour of the ruling party.

Political Parties

Zambia has more than 30 registered parties, most of which just exist on paper. The major ones are the ruling MMD, UPND, FDD, UNIP, Heritage Party, National Citizens Coalition (NCC) and the Zambia Republican Party (ZRP). Eleven political parties contested the December 27 2001 elections. Political parties are registered under, and are regulated by, the Societies Act.¹¹² Under this Act the Registrar of Societies has discretion whether to register an organisation or not. Moreover, the Minister of Home Affairs can ban any organisation he considers to be operating against the public interest.

There are no rules on political party funding and the law does not compel political parties to publish their accounts or to disclose their sources of funding. Furthermore, election expenditure is not regulated. Electoral regulations prohibit the use of government resources during election campaigns. Only the President and Vice-President are permitted to use government transport during elections.¹¹³ Furthermore, the Regulations prohibit corruption in the electoral process.¹¹⁴ The High Court can invalidate parliamentary election results on account of corruption by the winner or his agents.¹¹⁵ Since the December 2001 elections the High Court has invalidated elections results in five constituencies, four of which involved sitting Ministers of the MMD. The full bench of the Supreme Court is empowered to invalidate presidential election results if there is evidence of corruption by the winner.¹¹⁶ President Mwanawasa's election is currently being challenged in the Supreme Court by three losing presidential candidates who have alleged, *inter alia*, that he relied heavily on illegally obtained public resources to win the election.

Political parties in Zambia are generally weak. Most of them are identified with a particular individual rather than a set of policy positions. There are no serious ideological differences between them. That explains why defections of both grassroots members and leaders from one party to the next occur on a daily basis. The major recipient of defectors after elections is the ruling party as it can offer its supporters jobs, contracts and other perquisites, which the opposition parties cannot. Most of the parties do not practice internal democracy and show a high degree of intolerance towards those with dissenting views. Some parties have never held conventions to elect the leadership. Even some of those parties that have held conventions do not adhere to their own constitutions and electoral rules.

The opposition parties often fail to work together, even to advance their common interests. For instance, they lost a chance to win the last elections because they fielded ten presidential candidates. The combined opposition vote was 71 per cent as opposed to

Mwanawasa's 29 per cent. Even in Parliament, the opposition failed to use their initial two-seat majority to elect a Speaker and Deputy Speaker of their choice. They also broke ranks when the ratification of the Minister of Legal Affairs, George Kunda, as Attorney General came before the House. Weak political parties have to a large extent contributed to voter disillusionment as manifested in the low number of registered voters and the persistent low voter turn out at elections.

One of the reasons contributing to the weakness of political parties is lack of funds for operations. Zambia is a vast country. To be effective, a political party must have grassroots structures in all the nine provinces. This requires huge amounts of money. The state does not provide funds to political parties. Opposition political parties have serious difficulties in raising funds given the fact that 80 per cent of the people live in abject poverty. Moreover, even those willing to contribute to political parties are afraid of government reprisals. On the other hand, the ruling party has no such difficulties and often illegally dips into state coffers to fund its activities and election campaigns. Thus, the playing field is far from fair.

In light of the foregoing it is fair to say political parties have not fulfilled their functions such as representing citizens interests by making the government accountable. Since they generally do not observe internal accountability and transparency it is difficult to see how such parties, when in power, can observe and promote good governance.

Supreme Audit Institution

The office of the Auditor-General (AG) is created under Article 121 of the Constitution. The President, subject to ratification by the National Assembly, appoints the AG.¹¹⁷ No qualifications are laid down for this position. The current Auditor-General is an Agricultural Economist.¹¹⁸ The supporting staff are seconded to the AG's office by the Public Service Commission. Article 121(6) of the Constitution guarantees the independence of the AG by providing that in carrying out his work he is not subject to the direction or control of any other person or authority. His security of tenure is guaranteed. Article 122 of the Constitution provides for retirement of the AG at the age of 60. He can only be removed from office for inability to perform the functions of his office, whether arising from infirmity of body or mind or for incompetence or for misbehaviour. The National Assembly can only dismiss the AG if a Judicial Tribunal of three members appointed by the Assembly so recommends.¹¹⁹

It is the duty of the AG to:

- satisfy himself that the moneys expended have been applied to the purpose for which they were appropriated by Parliament and that the expenditure conforms to the authority that governs it;
- to audit the accounts relating to the general revenues of the Republic and the expenditure of moneys appropriated by Parliament, the National Assembly, the Judicature, the accounts relating to the stocks and stores of the Government and the accounts of State owned enterprises and statutory corporations; and
- to audit the accounts relating to any expenditure charged by the Constitution or any other law on the general revenues of the Republic.¹²⁰

In doing his work the AG has access to all relevant books, records, reports and other documents.¹²¹ The audit of government accounts is done annually. The Auditor-General is required to submit his report to the President, not later than 12 months after the end of each financial year. The President must in turn, not later than seven days after the first sitting of the National Assembly next the receipt of such report, cause it to be laid before the National Assembly.¹²² Special audits may, however, be conducted on some institutions whenever necessary.

Unfortunately, audit reports are always late, sometimes by several years. Some government institutions have not been audited for several years. The AG blames the Constitution for the delays. He says that the Constitution requires the Office to audit the accounts after the end of the previous budget year. The budget year is from January to

December and the new budget must be approved between January and March. Currently, the Office is processing the audit report for the year 2000. In the AG's view, therefore, the Office is up to date.¹²³

The usefulness of the reports is therefore questionable as they deal with events that occurred in the past. The abusers of public funds may have died, retired, resigned or been transferred to other departments.¹²⁴

Constraints

The work of the Auditor-General has been undermined by a number of factors. First, funding has been grossly inadequate. The Office has been receiving a fraction of the funds it needs to operate. For example, in 1999 the Office proposed a budget of K8.8 billion including an amount of K805,773,300 in respect of donor funding for the year 2001. However, this was reduced to K3.149 billion in the Appropriation Act.¹²⁵ Even under the New Deal government, funding to the Office continues to be below its operational needs. In this year's budget the Office has been allocated K8,744, 497, 578 as against its request of K13.5 billion.¹²⁶ Part of this amount, that is, KK3,800,000,000 is a grant from NORAD.¹²⁷ The budget of the Office is determined by the Ministry of Finance and often bears no relation to the plan of operation prepared by the AG. This limits the scope of the investigations the Office can conduct. Thus, the Auditor-General cannot really fulfil his constitutional duty to monitor public expenditure.¹²⁸

Second, the Office has a serious staff shortage on account of poor conditions of service. Although the established staff establishment is 220 there are only 158 professional staff in place. The situation is compounded by the fact that the Office often does not have resources to contract out services to private audit firms unless the project being audited incorporates a budget for audit.¹²⁹

Third, the Office lacks functional independence. Although the AG himself is independent the rest of the staff are not. As they are part of the Civil Service they do not owe their loyalty to the Auditor-General. The staff are employed, promoted, upgraded and disciplined by the Public Service Commission. The Public Service Management Division at Cabinet Office determines their conditions of service. The AG can only make recommendations.¹³⁰

Lastly, the Auditor-General has no power to sanction officers who have misused, misapplied or embezzled public funds. It can only make recommendations to the appropriate authorities for corrective action to be taken. As a result its Audit Reports are always ignored with impunity. In its latest Report on the Accounts for the year ended 31st December 2000, the Auditor-General's Office notes:

"In paragraph 13 of the Report of the Auditor General for the financial year ended 31st December 1999 mention was made on the weaknesses in the internal control systems. A review of the government financial operations and a test check of the accounts for the year under review revealed that the weaknesses have continued unabated in that generally there were serious weaknesses in the management and internal control systems and no significant improvement had been made. As evidenced in this Report, there were instances of misapplication and misappropriations of funds; poor record keeping; failure to submit expenditure returns, failure to issue accounting guidelines e.g. on the use of election funds, census exercise, ASIP Funds etc; release of funds in excess of the total authorised provisions by the Ministry of Finance and Economic Development, and rampant disregard of financial and stores regulations. There were instances where Government was committed to huge expenditure without any budget provision having been made in the Estimates of Revenue and Expenditure for the year. There was also disregard of established tender procedures in the procurement of goods and services. In other cases authority of the Zambia National Tender Board was sought in retrospect contrary to Tender Regulations. Other controlling officers insisted on single sourcing for suppliers even on services, which normally require competitive tendering.

There were also instances where large sums of public funds and Government revenue were expended without the authority of Parliament; Treasury Bills and Promissory Notes were issued in settlement of loans; payments made through bank transfers without proper authority and supporting documents; goods and services not delivered and rendered were paid for; and payment of compensations claims without establishing their authenticity; etc. These accounting irregularities point to loss of control over public finances and a general disregard for established Government accounting principles and practice.¹³¹

Relationship between the Auditor-General and Parliament

The President submits the AG's reports to the National Assembly. If the President fails to lay the report before the National Assembly, the AG is required to submit the Report to the Speaker, who must then lay it before the National Assembly.¹³²

The AG's report is first examined by the Public Accounts Committee, which then presents a report to the whole Assembly for debate and adoption. The AG assists the Committee and provides advice during its deliberations.¹³³ The Committee can summon witnesses, question them and demand explanations. But it does not have power to punish erring officers. This is left to the executive, which is required to submit an a Treasury Minute or Action Taken Report to the National Assembly after six months, outlining what measures it has taken to correct the anomalies pointed out.¹³⁴ The Executive routinely ignores the Reports. The AG has complained that, "(T)here is ... lack of action to correct the mistakes and no sanctions are taken against erring officers."¹³⁵

The Public Accounts Committee has not improved probity in government for a number of reasons. First, the reports of the Auditor-General often come years late. By that time, those named in the Reports as having abused public funds may no longer be working for the government or the particular department or may have been retired.

Second, the Committee has no power to compel the executive to take corrective measures. The Executive is supposed to respond to issues raised in the Reports of the Public Accounts Committee through Treasury Minutes. The latest Report of the Auditor-General shows that the executive branch has not implemented recommendations of the Committee stretching back to 1991. In paragraph 145 of the 2000 Audit Report the Auditor General states that-

"In the Audit Report for the financial year ended 31st December 1999, mention was made of 157 issues that were still outstanding. Although the Committee of Officials from the Office of the Auditor-General, Office of the Clerk of the National assembly and Ministry of Finance and Economic Development met to resolve outstanding issues during the course of 2001, the report of this Committee's resolutions on the outstanding issues mentioned in the Report of the Auditor-General on the accounts of the Republic for 1999 had not been published as at the time of publishing this report. At the time of preparing this Report, the Ministry of Finance and Economic Development had not prepared the Treasury Minute on the report of the Auditor General on Accounts of the republic for the financial year ended 31st December 1999."¹³⁶

Third, the calibre of members of the Committee is often questionable. Appointment of members to Committees of the National Assembly is the prerogative of the Speaker. There are no proper objective criteria for appointments of members.

Fourth, the overwhelming dominance of the ruling MMD in Parliament ensured that they formed the majority of the members of all Committees. It made little difference that the chairman of the Public Accounts Committee was from the opposition. A committee so composed could not take the government to task for fear of embarrassing the President and the ruling party.

Fifth, the National Assembly itself has been implicated in many financial scandals. During the Chiluba era the Assembly was one of the conduits for funnelling public resources to the MMD as the K2 billion saga and the prosecution of former Minister of Works and Supply Godden Mandandi for stealing K250 million from the National Assembly, showed.¹³⁷

Sixth, the role of the National Assembly in approving the national budget is undermined by the fact that not all public expenditures are declared in the official budget. According to Article 117(5) of the Constitution, where expenditure has been incurred without the authorization of Parliament in any financial year, the Finance Minister must, on approval of such expenditure by the appropriate Committee of the National Assembly, introduce in the Assembly, within thirty months after the end of that financial year or, if the Assembly is not sitting at the expiration of that period, within one month of the first sitting of the Assembly thereafter, an Excess Expenditure Appropriation Bill, for the approval by Parliament of such expenditure. Since Parliament is presented with a *fait accompli* its role is reduced to merely rubberstamping the unauthorised expenditure.

Furthermore, funds provided by donors are not always declared in the official budget as some of these funds are released well after the budget has been approved by the Assembly.¹³⁸

Judiciary

The judicature is created under part VI of the Constitution. It is organised in a hierarchical structure starting from the highest to the lowest as follows:

- the Supreme Court;
- the High Court;
- the Industrial Relations Court;
- the Subordinate Courts;
- the Local Courts.¹³⁹

The judicature is autonomous and is administered in accordance with the Judicature Administration Act.¹⁴⁰ The head of the Judiciary is the Chief Justice but the day-to-day management of affairs of the Judiciary is in the hands of the Chief Administrator, who is appointed by the President subject to ratification by the National Assembly. He is the controlling officer of the Judicature, who is at the level of a Permanent Secretary.

The Supreme Court, which is the final court of appeal in Zambia, comprises nine judges appointed by the President subject to ratification by the National Assembly. The Chief Justice and his deputy, who are members of this Court, are appointed by the President in his sole discretion subject to ratification by the National Assembly. To qualify for appointment as a Supreme Court judge one must have practised law for at least fifteen years after admission to the Bar.

The High Court has an establishment of 30 judges, with 26 in post. High Court judges are appointed by the President on the recommendation of the Judicial Service Commission and are subject to ratification by the National Assembly. To qualify as a judge one must have practised law for at least ten years after admission to the Bar. The same applies to the Chairman and Deputy Chairmen of the Industrial Relations Court.

However, a person who does not possess the requisite experience may be appointed to any of the offices if the President or the JSC, as the case may be, is satisfied that he is worthy, capable and suitable to be appointed as such.¹⁴¹

Magistrates, Local Court Justices and the supporting personnel are appointed by the Judicial Service Commission¹⁴², an independent body chaired by the Chief Justice established under article 123 of the Constitution and the Service Commissions Act.¹⁴³ The Commission is responsible for appointments, promotion, discipline and removal of judicial personnel on behalf of the President. The law lays down no qualifications for magistrates and Local Court Justices. Lay magistrates, who constitute the bulk of the magistracy, attend a two-year Magistrate's Diploma course at the National Institute for Public Administration (NIPA). Professional magistrates¹⁴⁴ have law degrees and are admitted to the Bar. However, Local Court Justices have no legal training whatsoever. They are assumed to have knowledge of customary law, acquired through experience.

Independence of the Judiciary

Article 91 (2) of the Constitution provides that judges, magistrates and Local Court Justices shall be independent, impartial and subject only to the Constitution and the law. Furthermore, article 92(3) states that the judicature shall be autonomous. The Judicature Administration Act and the Judicial Code of Conduct Act of 1999, reinforce these provisions.

Removal

Magistrates and Local Court Judges can be removed from office by the JSC. But no elaborate procedures are laid down for this.¹⁴⁵ It is generally easier to dismiss them than Judges of the Superior Courts.

The tenure of Superior Court Judges is protected by the Constitution. Retirement age is fixed at sixty-years. But the President may extend a Judge's tenure for a period up to seven years after attaining retirement age.¹⁴⁶ This may compromise judicial independence as a Judge nearing retirement may wish to please the Executive Branch so that he can have his tenure extended.

Article 98(2) provides that a Superior Court Judge may be dismissed only for inability to perform the functions of office, whether arising from infirmity of body or mind, incompetence or misbehaviour. The dismissal can only be effected after a judicial tribunal consisting of three persons, appointed by the President, after investigations, so recommends.¹⁴⁷

Recruitment and Career Development

In recent years the JSC has been advertising vacancies in the High Court and IRC. It has been interviewing applicants and making recommendations to the President. Before the candidates are ratified by the National Assembly a Parliamentary Committee on Ratifications interviews the candidates and also other stakeholders such as the Law Association of Zambia, the Anti-Corruption Commission, the Drug Enforcement Commission, the Zambia Police Service, the Zambia Security Intelligence Agency, etc. This process is intended to ensure that only suitable candidates with integrity are appointed.

But it can only work if the National Assembly is independent of the Executive. This was not the case from 1991 to 2001 when the MMD overwhelmingly dominated the National Assembly.

Promotions of High Court Judges to the Supreme Court are made by the President without recourse to the JSC, although the National Assembly must ratify such promotions. The President is not required by law to consult anyone. The same applies to the appointment of the Chief Justice and his Deputy.

Judicial Review of Executive and Legislative Actions

Article 28(1) of the Constitution empowers the High Court to review actions of public officials, which violate the bill of rights. Moreover, the principle of judicial review of administrative action is firmly established in Zambia.¹⁴⁸ Public officials must act in accordance with the law and the Constitution, otherwise their actions will be declared invalid or *ultra vires* by the courts. Among the remedies courts can issue are writs of mandamus, certiorari, declarations, prohibition, injunctions and damages. Cases of corruption outside the electoral process are handled at first instance by magistrates.

The courts have dealt with many cases involving the president, Ministers and other executive officials, wherein plaintiffs have alleged abuse of power by the officials concerned,¹⁴⁹ departure from established law, failure to follow principles of natural justice, and violation of the bill of rights.¹⁵⁰

Courts also have the power to invalidate legislation which is in conflict with the Constitution. This is because the Constitution is the supreme law of Zambia and "if any other law is inconsistent with this Constitution that other law shall, to the extent of the

inconsistency, be void."¹⁵¹ The Constitution binds all persons and all Legislative, Executive and Judicial Organs of the State at all levels.¹⁵² For example, in *Christine Mulundika and Seven others v. The People*,¹⁵³ the Supreme Court declared invalid sections 5 and 7 of the Public Order, which gave the police unlimited discretion to allow or not to allow public assemblies, because they conflicted with the freedoms of expression and assembly guaranteed under articles 20 and 21 of the Constitution. In another case, *Dr. Ludwig Sondashi, MP v. The Attorney General and the Speaker of the National Assembly*¹⁵⁴ the High Court quashed a decision of the National Assembly to suspend the applicant because of some remarks he had made to the press in the wake of the abortive coup army attempt of October 1997. The Court held that his constitutional right to freedom of expression had been violated.

The High Court is empowered to determine Parliamentary election petitions while the full bench of the Supreme Court has power to determine presidential election petitions.¹⁵⁵

Constraints Facing the Judiciary

The judiciary has been operating under very difficult conditions. Poor funding, uncompetitive conditions of service and a severe shortage of well-trained staff have undermined judicial independence.¹⁵⁶ In fact, the judiciary's share of the national budget is only 0.4 per cent. It does not have financial autonomy. Bureaucrats in the Ministry of Finance determine its budget. Even the money approved by Parliament is rarely released in full.¹⁵⁷ In most cases it has only been able to carry out operations because of the Court fees which it retains.

The Judiciary has not been able to recruit sufficient staff because of poor conditions of service. Magistrates and Local Court Justices are poorly remunerated and their conditions are linked to the Civil Service. They work in deplorable conditions, thereby making them highly vulnerable to corruption.¹⁵⁸ There have been several cases of magistrates and local court justices being investigated or prosecuted for corruption.¹⁵⁹ The support staff such as Court Clerks, interpreters, registry clerks, secretaries, marshals, etc, are on Civil Service Conditions of Service, which are extremely poor.

The requirement of ratification of presidential nominees by Parliament has been ineffective because of the ruling MMD's overwhelming dominance of the National Assembly. Moreover, the public has had no role in the appointment process.

Only one judge has been dismissed in the last three decades. In 1997 a Judge (Kabazo Chanda) was suspended after he released criminal suspects who had been held in police custody without trial for what Judge Kabazo considered to be unjustifiably long periods. A tribunal consisting of three Judges was set up but it was not furnished with logistics to enable it start investigations in a timely manner, prompting the Judge to resign after being on suspension for over 12 months.¹⁶⁰

The President sets salaries for High Court and Supreme Court judges, thereby enabling him to influence superior court judges. In 1996, for example, when Mr. Chiluba's election as President was being challenged by the opposition in the Supreme Court he awarded two salary increases exceeding 320 per cent to the judges within a period of nine months.¹⁶¹ At the same time, Magistrates and Local Court justices were denied an increment, which led to a national-wide strike by magistrates. In 2002 President Mwanawasa, who is facing three petitions challenging his election as president in the Supreme Court, awarded big salary increment to judges of the Supreme Court and High Court. Other judicial officers were again left out.

Apart from being starved of operational funds, the judiciary has also been subjected to verbal attacks by high-ranking members of the Executive after it passed decisions the Executive did not like. For example, when the Supreme Court in the case of *Christine Mulundika and 7 others v. Attorney General* declared sections 5 and 7 of the Public Order Act unconstitutional, the Chief Justices and other members of the Court were attacked by the Vice-President, Ministers, the Inspector General of Police and high ranking MMD officials.¹⁶² Subsequently, vicious attacks on the Chief Justice's integrity were carried out in *The Confidential*, a private newspaper, which were linked to the President and high-ranking MMD and government officials. The Chief Justice was falsely accused of having

raped a cleaner in his Chambers.¹⁶³ The objective of these attacks was to intimidate the judiciary.¹⁶⁴

The judiciary is enmeshed in corruption, particularly at the lower levels and among the supporting staff. Recent press reports have revealed that the Chief Justice received US \$168,000 in bribes from the former President over a three-year period.¹⁶⁵ He has been forced to resign under public pressure.

The courts can contribute to the fight against corruption if prosecutors present cases to them. Although the ACC investigated many Ministers and top Civil Servants during the Chiluba era, none of them was charged with corruption and brought before the courts.¹⁶⁶ It is only since the coming to power of President Mwanawasa in January 2002 that prosecutions for corruption have commenced against former Ministers (Mandandi,, Sata) and top Public Officials (Richard Sakala, former Presidential Assistant for Press, Xavier Chungu, the former Director-General of Zambia State Intelligence Service, Attan Shasonga, former Ambassador to Washington).¹⁶⁷

Civil Service

Civil Servants are spread in twenty-five government ministries. The Head of the Civil Service is the Secretary to the Cabinet appointed by the President, subject to ratification by the National Assembly. He is assisted by the Deputy Secretary to the Cabinet, also appointed by the President. Permanent Secretaries, who are appointed by the President, are the top Civil Servants in each Ministry.

Lower level officials and middle management positions up to Deputy Permanent Secretary are appointed, promoted and disciplined by the Service Commissions acting in the name and on behalf of the President.¹⁶⁸ A Department or Ministry that wants to recruit staff must inform the Public Service Commission, which will then take up the matter. Transfers of personnel within ministries are effected by Permanent Secretaries but the Public Service Commission in consultation with the Secretary to the Cabinet makes inter-ministerial transfers. Ministers have no power to transfer Civil Servants and in fact have no say in the recruitment, deployment, and promotion of civil servants.¹⁶⁹ The staff in the Civil Service can rise to any level up to Deputy Permanent Secretary, depending on qualifications, experience, and competence, etc.¹⁷⁰

Public Service Reform Programme (PSRP)

Since 1993 the Public Service Management Division, the Public Service Commission and the Management Development Division at Cabinet Office have been implementing a far-reaching Public Service Reform Programme aimed at re-organizing and restructuring the Civil Service. The ultimate goal of the Public Service Reforms is to improve the quality, delivery, efficiency and cost effectiveness of public services. This is to be achieved through creating a lean, streamlined, efficient and responsive Civil Service. It is meant to completely transform the Public Sector, including adoption of professional ethics whereby public accountability, transparency, punctuality, innovativeness, and responsibility will become the hallmark of the Civil Service.¹⁷¹ Since the start of the programme twenty-two ministries out of twenty-six have been restructured and 3,037 Civil Servants have been separated from the Civil Service.¹⁷² The programme also involves moving towards performance-based contracts for senior public officers, which will have set targets. Renewals of contracts will depend on performance. Lower level officials will be given job descriptions and promotions will depend on fulfilment of assigned targets.¹⁷³

As regards financing of the PSRP, the government allocated amounts of K116 billion, K80 billion, and K74 billion in the National budgets for the 1998, 1999 and 2000 financial years, respectively. However, these allocations were not released in full. Only amounts totalling K76.8 billion and K48.3 were released for 1998 and 1999 respectively, leaving balances of K39.2 billion in 1998 and K31.7 billion in 1999. The full allocation of K74 billion for 2000 was released. Donors pledged a total amount of K40 billion in 1998 and 1999, in addition to the budgetary provisions.¹⁷⁴

Staff Recruitment, Promotion and Discipline

Following the restructuring of Ministries, recruitment of personnel in the Public Service is now supposed to be done on merit. Interviews are conducted by a panel of outsiders to ensure that only those qualified are employed. This has not always been the case, particularly with regard to diplomatic postings where loyalty to the MMD has been the primary consideration. President Mwanawasa has demanded that Civil Service Examinations be re-introduced so that only those that are competent can get appointed or promoted. These were scheduled to begin in June 2002, funds allowing, but have not yet started (as of February 2003).¹⁷⁵

General Orders regulate the appointment, promotion, transfer, discipline and conditions of service for public workers.

As a matter of fact, General Order 211 provides that a candidate for appointment to any post in the public service may be required to pass a qualifying examination before being appointed. General Order 213 mandates Civil Service Obligatory Examinations as a prerequisite for admission to the permanent and pensionable terms. But professional and technical officers are exempted from sitting the Civil Service Obligatory Examinations.¹⁷⁶

The procedure for disciplining civil servants is very long and involved. An erring official must be warned in writing at least three times before disciplinary procedures are commenced and sanctions can be applied.¹⁷⁷ Moreover, it is often difficult to discipline public officials who misappropriate or misuse public funds or ignore tender procedures because the Auditor-General's Reports are released late.¹⁷⁸ The General Orders are terribly outdated and have not been reviewed for over two decades.

The Constitution bars civil servants from participating in partisan politics by requiring those who want to run for political office (e.g. as MP) to first resign their position.¹⁷⁹ However, there is no provision in the Constitution which guarantees the independence of the Civil Service. Zambia can learn valuable lessons from the Malawian Constitution which has elaborate provisions concerning the independence of the Civil Service under section 193.¹⁸⁰

In the recent past Civil Service neutrality has not been scrupulously observed. Public officials who are MMD members have often been fielded as candidates in Parliamentary elections without first being required to resign their jobs. Conversely, opposition supporters who have contested elections have routinely been dismissed from their government jobs.

A glaring case of Civil Servants participating in active politics was that of District Administrators (DAs), most of whom held leadership positions in the MMD. President Chiluba appointed DAs to spearhead his unsuccessful third term campaign.¹⁸¹ During elections DAs were openly campaigning for ruling party candidates. A court order obtained by the Civil Servants Union of Zambia and the Law Association of Zambia¹⁸² requiring DAs to refrain from engaging in partisan politics prior to the December 2001 elections was ignored with impunity.¹⁸³ Many DAs did not have proper qualifications for the job. They were only answerable to the President, and not to the Provincial Permanent Secretaries, who were supposed to be their superiors.¹⁸⁴

However, President Mwanawasa has ordered DAs holding party positions to choose between being Party officials and being Public Officials. All but one have given up their party positions and have chosen to be Civil Servants.

A further problem is that Permanent Secretaries, who are appointed by the President, serve at his pleasure. The lack of security of tenure therefore seriously compromises their political neutrality. They basically have to dance to the tune of the politicians if they want to keep their jobs. This is what has led to the breakdown of the internal financial controls in ministries and also a situation where Ministers and the president have been handling cash and awarding contracts, contrary to established tender procedures.¹⁸⁵

Accountability of Civil Servants

There are a number of measures intended to encourage probity and accountability of civil servants.

Senior officials can review actions of their subordinates. Sometimes, a tribunal or committee may review decisions made by individual officers.

The Anti-Corruption Commission Act prohibits public officers from accepting gifts unless they are 'casual gifts'. A "casual gift" is defined as "any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of that person's services, or as gesture of goodwill towards that person and includes any inexpensive seasonal gift offered to staff or associates by public and private bodies or private individuals on festive or other occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part IV."¹⁸⁶

The General Orders also prohibit public officers from giving or receiving valuable presents.¹⁸⁷ However, because of the poor conditions of service in the Public Sector, these rules on gifts are rarely, if at all, enforced. There is no register of gifts and no monitoring of gifts occurs as there is no mechanism thereof. What is worse is that there is no Code of Ethics for Civil Servants.

The Commission for Investigations Act¹⁸⁸ empowers the Commission to receive and investigate complaints of mal-administration or abuse of office or authority against an officer in the Public Service.¹⁸⁹ The General Orders also prohibit such practices. However, in practice nepotism is common in the Public Service.¹⁹⁰

Members of the public can lodge complaints of corruption against Public Servants with their superiors, the Anti-Corruption Commission, the Police, the Commission for Investigations,¹⁹¹ the Service Commissions, the Police Complaints Authority, and the President. They may also take the matter to court.¹⁹²

Police and Prosecutors

Zambia Police Service

The Zambia Police Service is created under article 103 of the Constitution but detailed provision for its organisation and operations is made in the Zambia Police Act. The Constitution requires it to be nationalistic, patriotic, professional, disciplined, competent and productive. Police officers must be Zambian citizens of good character.¹⁹³ The functions of the police are:

- to protect life and property;
- to preserve law and order;
- to detect and prevent crime;
- to co-operate with the civilian authority and other security organs established under the Constitution and with the population generally.¹⁹⁴

The Police Force has about 16,000 officers and is divided into a number of branches: the Regular Police; the Mobile Unit; the Paramilitary Unit and the Special Branch. The President appoints the Inspector-General of Police, Commissioner and Deputy Commissioner of Police. These officers serve at the President's pleasure. The Inspector-General has, subject to the orders and directions of the President, superintendence, direction and control of the Force.¹⁹⁵ The President is empowered to determine the numbers of the various ranks set out in the First Schedule as he thinks fit.¹⁹⁶

There is no security of tenure for the Inspector-General of Police and the other senior officers who serve at the President's pleasure. This is illustrated by the fact that the job of Inspector-General of Police has changed hands four times in the last ten years. President Chiluba, upon assuming office in 1991 fired the incumbent Inspector-General, Zunga Siakalima and replaced him with Darius Kalebo. Kalebo was subsequently fired and replaced by Francis Ndhlovu in 1995, who in turn was fired and replaced by Simon Ngangula in 2000. In June 2002 President Mwanawasa removed Ngangula and replaced him with Francis Musonda.

The Police Force has not been effective in combating crime and crime levels have been escalating. Their role in the fight against corruption has been minimal as the bulk of corruption cases are handled by the Anti-Corruption Commission. In fact, police have in the past harassed journalists who have exposed corruption by the President and other government leaders, by arresting and charging such journalists with offences such as breach of the State Security Act, defamation of the President, and criminal defamation.¹⁹⁷

The Police have constantly been accused of being partisan, lacking professionalism and conducting selective arrests at the behest of politicians of the ruling party.¹⁹⁸ In politically sensitive cases, the police have in the last ten years been reluctant to arrest MMD officials and cadres who have committed criminal offences, such as assault occasioning actual bodily harm. But they have been quick to arrest opposition leaders and members, even on trumped up charges. For example, in 1997 the Police arrested the former President Kenneth Kaunda and Dean Mungomba, leader of ZADECO (an opposition political party), on suspicion of involvement in the 1997 abortive coup by soldiers. The State dropped the charges (entered *a nolle prosequi*) just before the commencement of the treason trial in 1999, after the detainees had spent months in prison, as treason is not a bailable offence. There was no probable cause for the arrests as they were politically motivated.¹⁹⁹

The few police officers that have tried to be impartial and to act professionally in cases involving politicians have found themselves demoted, retired, or transferred to remote stations. The MMD under Chiluba had a deliberate policy of recruiting MMD cadres into the Police Force. Thus, the Police Force under Chiluba was so politicised that it ceased to be a professional Force but instead became an "MMD militia".

The police do not enjoy the confidence of the public for a number of reasons. First, they are generally perceived as being tools of the ruling party, used to suppress its opponents. Second, the police are the main violators of human rights. There have been numerous reports of police torture of suspects, police brutality in breaking up opposition meetings and demonstrations, extra-judicial killings of suspects, arbitrary arrests and hostage-taking, selective application of the law such as the Public Order Act (which regulates public meetings and processions) and false imprisonment.²⁰⁰

Third, police have shown gross incompetence and inefficiency in dealing with crimes as few crimes are solved. They are often accused of not showing up when victims of crime call them. There are still many unsolved murder cases involving prominent politicians.²⁰¹

Fourth, the police has many bad eggs that are either corrupt or consort with criminals. The most notorious are those who man roadblocks, which are conducted frequently throughout the country. Traffic police often extort bribes from motorists. Some police officers have been tried for participating in armed robberies.²⁰²

However, it has to be recognised that the police face many constraints in their work. First, the police lack independence as the law does not protect the tenure of the police chiefs. Moreover, the Inspector-General under the Police Act is subject to the directions and instructions of the President and the Minister of Home Affairs.

Second, the Police Service does not have sufficient manpower to cover the whole country effectively. For example the ratio of police officers to people in Lusaka is 1 to 551.²⁰³

Third, police are not well trained in the law, investigative techniques and human rights. The older police officers' level of education is also very low. It is only in the last seven years that the Police has made the Grade 12 certificate the minimum qualification for entry into the Force. It has also started attracting university graduates. It has also been exposing its officers to human rights training through workshops and also introduced human rights courses at Lilayi Police Training School.

Fourth, the funding to the police has always fallen far short of its requirements. As a result, police lack adequate transport, fingerprinting equipment, Crime laboratories and operational funds.

Fifth, the police are demoralised because of very poor conditions of service. They are among the lowest paid public service workers. A police officer's salary is in the range of K120,000-K370,000 (US\$25-63) per month. Furthermore, most of them live in very poor accommodation, lacking basic facilities such as sanitation, water and electricity. This

contributes to a high incidence of corruption in the police force. Statistics compiled by the ACC showing the number of complaints authorised by sector from 1996 to 2000 show that the police were the worst affected by corruption: 103 in 1996; 128 in 1997; 125 in 1998; 91 in 1999; and 195 in 2001.²⁰⁴

Director of Public Prosecutions

Article 56 of the Constitution creates the office of Director of Public Prosecutions (DPP), who is appointed by the President subject to ratification by the National Assembly.²⁰⁵ He must have the qualifications of a High Court Judge with a bias towards criminal law.²⁰⁶

His functions are to:

- institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person;
- take over and continue any such criminal proceedings as have been instituted by any other person or authority.
- discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted.

The DPP may delegate his powers to such public officer or class of public officers as he may specify.²⁰⁷ In this connection all prosecutors, even those from the ACC, the DEC, the Zambia Revenue Authority, the Zambia Wildlife Authority and National Pension Scheme Authority are formally appointed by and operate under the supervision of the DPP. He may also authorise private legal practitioners to conduct prosecutions.

Thus, the DPP's office is a key institution in terms of good governance. It acts as a check on the police and other investigative agencies by ensuring that investigations are conducted in accordance with the law and the principles of human rights.²⁰⁸ The Constitution guarantees the independence of the DPP by providing that he shall not be subject to the direction or control of any other person or authority,²⁰⁹ and that the powers shall be vested in him exclusively. In addition the DPP enjoys security of tenure similar to that of High Court judges.²¹⁰

Apart from appointing prosecutors the DPP can, under the Criminal Procedure Code, enter a *nolle prosequi*, and issue fiats.²¹¹

Weaknesses

The DPP's office has under-performed, particularly in the area of combating corruption and curbing human rights abuses by the police. The DPP's independence is undermined in several ways. First, the office is seriously under-funded²¹² and lacks suitable accommodation.²¹³ It has only one vehicle for use by advocates throughout the country, and has no equipment such as photocopiers and computers. In the last three to four years things had got so bad that phones had been disconnected, stationery had been in short supply and the Office could not service some of the Provincial criminal sessions for six months or more.²¹⁴ It has no specific budget to facilitate court attendance by witnesses, as a result of which accused persons are discharged on account of non-attendance at trial of witnesses. In 2001, for example, such cases increased by 40%.²¹⁵ The DPP has no offices in Eastern, Northern, Luapula, North-Western and Western Provinces.

Second, there is a severe shortage of staff because of poor conditions of service. Out of an establishment of 49 lawyers only 16 posts are filled; 33 posts are vacant. This has inevitably led to serious delays in the disposal of cases and congestion in Remand prisons.²¹⁶ As a result, the DPP is forced to rely for prosecutions in the magistrates' courts (where the bulk of criminal trials take place) on police prosecutors, who are not lawyers by training. In 2001 there were 319 police prosecutors.²¹⁷ The DPP prosecutes only 20% of the cases, the Zambia Police 60% and the ACC, DEC, Immigration Department and Zambia Wildlife Authority, the remaining 20%.²¹⁸

Third, the fact that the police and other investigative agencies handle 80 per cent of the criminal prosecutions in the country defeats the principle of checks and balances. It is undesirable that the same institution that investigates should be the institution responsible for the decision to prosecute. This is because the investigative authority inevitably takes a position as to the guilt of the suspect, and without any improper motive are often inclined to shut their mind to the evidence pointing the other way.²¹⁹

Fourth, the existence of a variety of institutions with overlapping prosecutorial responsibility is a major shortcoming. There is an inherent danger of conflicts over jurisdiction arising between them. It also compromises the effectiveness of the prosecution service because of lack of utilisation of financial and other resources owing to the duplication of efforts between them.²²⁰

Fifth, the DPP's office does not have a comprehensive training programme for its staff. As a result there are few Advocates with specialized training in key areas such as prosecution of corruption, fraud, violence against women and children, drug trafficking, money laundering and environmental offences.²²¹

Sixth, the DPP's institutional autonomy is illusory. The police prosecutors are not accountable to the DPP, but to the Police Command or to whichever organization employs them. The Zambia Police Force, or each of the other organisations prosecutors are appointed from, is responsible for their recruitment, training, promotion, discipline and salaries.²²² The police are amenable to political manipulation because, as noted already, the police chiefs lack security of tenure. Often, police prosecutors commence prosecution of politically sensitive cases on instructions from the Police Command, without first consulting the DPP. In some cases, prosecutors are instructed by the police command not to submit case dockets to the DPP when he asks for them.²²³ Moreover, the DPP does not have much control on the State Advocates working under him. They are seconded from the Ministry of Legal Affairs, which is responsible for their welfare, discipline and career progression. As if this is not enough, the operational resources (money, vehicles) are under the control of the Permanent Secretary, Ministry of Legal Affairs.

Seventh, there is no coordination in the prosecution service between the DPP's office and Public prosecutors in the Zambia Police Force and other investigative agencies of the Government.²²⁴

Eighth, the DPP's Office is highly centralised. It has representation in only four of the country's nine provinces.

Ninth, there is constant political interference in the work of the DPP.²²⁵ The Constitution requires the DPP to refer any matters involving general considerations of public policy to the Attorney General. He is required to act in accordance with the directions issued by the Attorney General,²²⁶ a presidential appointee with no security of tenure, who is also Minister of Legal Affairs. Thus, politicians can act through him to interfere with the work of the DPP.²²⁷ Recently, the Minister of Works and Supply instructed Police to arrest and charge Michael Sata, a former Minister, MMD National Secretary and presently an opposition leader, with theft of two motor vehicles. The case was dismissed for insufficient evidence.²²⁸

Public Procurement

The Zambia National Tender Board Act regulates public procurement and the regulations made there under.²²⁹ The Act establishes the Zambia National Tender Board (ZNTB) and entrusts it with the regulation and control of the procurement of goods and services for the government and parastatal bodies.

The Board Comprises a chairman and twelve other members of whom seven are *ex-officio* as follows:

- Secretary to the Cabinet;
- ZIMCO Director-General;
- ZCCM Ltd Chairman;

- Bank of Zambia Governor;
- Permanent Secretaries, Ministries of Finance & Works and Supply.²³⁰

The President, who also has power to remove any of them from the Board, appoints all the members, including the chairman.²³¹ Except for *ex officio* members, Board members serve for a period of two years subject to re-appointment.²³² The Board is empowered to formulate rules and regulations governing the procurement of goods and services for the government and parastatal bodies (including local authorities). Apart from formulating such rules the Board may on behalf of the Government and parastatal bodies:

- advertise locally and abroad tenders for the procurement of goods and services;
- regulate the procedures relating to the award of contracts; and
- formulate the conditions under which any rules and regulations governing the procurement of goods and services may be varied or waived.²³³

It may also establish committees and delegate to any such committee such of its functions as it may think fit.²³⁴

The Act establishes a management team to manage the Board and also creates an Inspectorate Unit, whose functions are to monitor all contracts placed by the Board, any committee established by the Board, any government department or any parastatal body.

Under subsidiary legislation the Board has delegated many of its functions to Tender Committees at various levels as it meets only ten times a year to transact business.²³⁵

The most important committee is the Central Tender Committee (CTC) which meets once a week and runs the day-to-day affairs of the Board. It comprises the:

- Permanent Secretary (PS), Ministry of Finance (chairman);
- Deputy Secretary to the Cabinet;
- PS, Ministry of Works and Supply;
- PS, Development Planning;
- Director, ZNTB;
- Managing Director, Zambia State Insurance Corporation;
- Managing Director, Zambia Electricity Supply Corporation;
- General Manager, Bank of Zambia;
- Company Secretary, ZCCM;
- Secretary, ZNTB.

The regulations also establish provincial tender committees, chaired by the Provincial PS, tender committees in all ministries chaired by the respective PS, parastatal tender committees chaired by the Chief executives, and city, municipal or district tender committees. The functions of the various committees are to invite and accept tenders relating to the procurement of goods, works and services for the institutions concerned. However, the CTC's jurisdiction extends to all government ministries, parastatals and Local authorities.

Part IV of the regulations sets out the financial thresholds for the various tender committees.²³⁶

Figure 2 Procurement Thresholds for Government Ministries, Departments, Provinces, Municipalities, Schools and Health Boards.

Approved Purchase Limits	Approving Authority
Procurement Unit Not Established	
<ul style="list-style-type: none"> Informal procurements - values from K5 million up to K30 million Above K30 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Procurement Unit Established	
<ul style="list-style-type: none"> Values from K5 million up to K30 million (informal tenders) Above K30 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Certified Procurement Units	
Category A	
<ul style="list-style-type: none"> Values from K30 million up to K200 million (formal tenders) Above K200 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Category B	
<ul style="list-style-type: none"> Values from K30 million up to K500 million (formal tenders) Above K500 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Category C	
<ul style="list-style-type: none"> Values from K30 million up to K1.2 billion (formal tenders) Above K1.2 billion (formal tenders). 	Tender Committee Central Tender Committee

Figure 3 Procurement Thresholds for Parastatal Bodies (other than Municipalities).

Approved Purchase Limit	Approving Authority
Small Parastatal Bodies (Without Tender Committee)	
<ul style="list-style-type: none"> Values up to K5 million (informal tenders) Values above K5 million 	Chief Executive Central Tender Committee (ZNTB)
No Procurement Units	
<ul style="list-style-type: none"> Values from K5 million to K30 million (informal tenders) Above K30 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Uncertified Procurement Unit	
<ul style="list-style-type: none"> Values between K5 million up to K30 million (informal) Above K30 million (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)
Certified Procurements Units	
Category A	
<ul style="list-style-type: none"> Values from K30 million to K200 million (formal tenders) Above K200 million 	Tender Committee Central Tender Committee (ZNTB)
Category B	
<ul style="list-style-type: none"> Values from K30 million to K1.2 billion (formal tenders) Above K1.2 Billion (formal tenders) 	Tender Committee Central Tender Committee (ZNTB)

Controlling officers and Chief Executives of parastatals are required to ensure that procurement of goods or services in their institutions is in accordance with provisions of the ZNTB Act. The ZNTB is empowered to take appropriate corrective punitive measures against controlling officers or parastatal executives who fail to execute this duty.²³⁷

Where the Board is satisfied that an employee of the government or parastatal has caused financial loss by his recklessness, misconduct or wilful default such person may be surcharged with the amount of such loss or any part thereof.

In order to foster transparency in the operations of the Board, a duty is cast on Board members as well as members of committees to disclose any interest they or their spouses may have in a matter either directly or indirectly before the Board or Committee. Unless the Board otherwise directs, such a person is prohibited from taking part in any consideration or discussion of, or vote on any question touching upon such matter.²³⁸

Immunity from legal suit is granted to anyone performing functions prescribed under the Act.²³⁹

Competitive bidding

The ZNTB has produced procurement guidelines for different categories of goods and services viz:

- Part 1: Formal tenders in procurement of goods and services.
- Part III: Formal Tenders in the Procurement of Consultancy Services.
- Part III: Formal Tenders in the Procurement of Works.
- Part IV: Informal Tenders.
- Part V: General Conditions of Contract.

The rules require competitive bidding for all major procurements. However, there are a few exceptions. For small purchases, three quotations must be obtained. Where specialized services are required (e.g. for legal expertise), the Tender Board may use selective tenders, i.e. may approach those with relevant skills without issuing an advertisement in the media.²⁴⁰

Single Sourcing

Although ordinarily tenders are advertised widely in both the electronic and print media, there is provision in the regulations for special formal tenders. These are not advertised in the Gazette or in any other publication for which tenders are invited from nominated firms. A tender committee can authorise special formal tenders or negotiations where:

- there is an emergency declaration in force;
- it is in the interest of public order, public safety or public security;
- building works of a specialised or complex nature are involved, or equipment to be obtained is highly specialised;
- the goods and services to be obtained are of a personal or professional nature;
- services are to be rendered by an educational or training institution;
- evidence is furnished that there are no other competing institutions or organisations in respect of the goods or services to be supplied or rendered and that the supplier is the sole franchise holder;
- the goods or services to be supplied or rendered are to be used in, or are in the nature of, research work;
- equipment to be supplied is technical and is of a nature that requires standardization and inter-changeability of parts; or

- there has been no acceptable tender from all formal tenders previously invited.²⁴¹

This tender method is the most prone to corrupt practices because of lack of competition. In most cases justifying circumstances are claimed that do not really exist usually to cover up, and permit corruption.²⁴² For example, between 28th December 1999 and 7th January 2000, the Ministry of Works and Supply bought 80 X \$ WD 3000cc diesel propelled twin cab motor vehicles worth US \$1, 880,000 for use by District Administrators without following tender procedures. They just obtained quotations from four car dealers. Although Seebro International was awarded the contract for the supply of the vehicles, Marunouchi Motors offered a lower price than the other bidders (its bid price was US \$ 1,648,000). There was no formal contract with the supplier and the vehicles delivered were not only the wrong type (they were petrol and not diesel propelled, and were of 2800 capacity and not 3000 cc capacity as per specification), but delivered several months late in small batches.²⁴³

Ineffectiveness of Legislation and the ZNTB

The public procurement system in the last ten years left a lot to be desired. Generally there was simply no accountability and transparency in public procurements because of the weaknesses in the legislative framework as well as lack of political will to implement the rule of law. First, the ZNTB lacked independence as it was filled with presidential appointees who served at the president's pleasure. In order to have tighter control over the operations of the Tender Board, the President appointed the Minister for Presidential Affairs, a very close associate, to be Chairman of the Board. The Tender Board moved to State House as a result of this appointment. This facilitated gross interference by politicians in the procurement of goods and services. Recent revelations show that the PHI, which was until recently, run by President Chiluba's Special Assistant for Press, completely ignored tender procedures.²⁴⁴

For instance, in his Report on the PHI the Auditor General noted that, "PHI operated outside the normal corporate environment in that tendering procedures in the procurement of goods and services were either not followed or deliberately ignored. The sourcing and disbursement of funds were also not consistent with normal financial regulations and practice."²⁴⁵

Another example involves the importation of oil feedstock by ZIMOIL, a parastatal, in which the state lost over \$100 million. Tender procedures were totally disregarded. ZIMOIL has now been liquidated.²⁴⁶

A third example involves the selection by government in 1997 of a Canadian company, Carlington Sales Limited, to source maize for Zambia. Despite a payment of \$7 million made to the company no maize was delivered. Tender procedures were not followed in this case as well.²⁴⁷

Further, reports of the Auditor General reveal many cases where conflict of interest provisions have been disregarded. For example, in 1993 the Managing Director of the Zambia Flying Doctor Service was arrested by the ACC for soliciting and receiving a 10% bribe as commission from a company that he awarded a contract to supply aviation spare parts to the Zambia Flying Doctor Service. He was convicted.²⁴⁸

Second, the Tender rules and procedures are not publicly accessible, thereby reducing transparency and accountability of public procurement. This is compounded by the fact that procurement decisions are not made public. The law does not mandate publication. The results are just posted on the Notice Board at the ZNTB offices. However, there are plans to publicise the procurement decisions more widely in future.²⁴⁹

Third, sole sourcing, instead of being an exceptional measure, has been widely used. This method is normally used where the tender is for spare parts for some equipment already in possession from the manufacturer and when the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee. Single sourcing may also be permitted in emergencies such as in response to natural disasters.²⁵⁰

Fourth, the law does not provide a procedure enabling unsuccessful bidders to request a review of procurement decisions. The ZNTB has recommended to the government the creation of a tribunal to consider appeals.²⁵¹

Fifth, the law does not mandate blacklisting of companies proved to have bribed in a procurement process. This serves as an encouragement to companies to continue offering bribes to public officials.²⁵²

Sixth, there is no Code of Conduct for public procurement officers. There is in fact no mechanism for monitoring the assets, incomes and life-styles of public procurement officers.

However, the Board Secretary indicated that the ZNTB is developing a Code of Conduct for staff in conjunction with the ACC.²⁵³

Ombudsman

The Commission for Investigations, chaired by the Investigator-General.²⁵⁴ is established under article 90 of the Constitution and the powers, functions and procedures of the Commission are regulated by the Commission for Investigations Act.²⁵⁵

The President in consultation with the Judicial Service Commission appoints the Investigator-General.²⁵⁶ He must be qualified to be appointed a Judge of the High Court.²⁵⁷ Apart from the Investigator-General, there are three other Commissioners, who are appointed by the President subject to ratification by the National Assembly. No qualifications are laid down for the Commissioners.

The Investigator-General enjoys the same security of tenure as a High Court Judge. He retires at the age of sixty-five years. The Investigator-General may only be removed from office for incompetence or inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.²⁵⁸ The President can dismiss the Investigator-General only if a judicial tribunal appointed by the Chief Justice acting on a resolution of the National Assembly, so recommends.²⁵⁹

Commissioners serve on contract for three years subject to re-appointment for one more term. But they do not enjoy security of tenure and may be removed from office by the President for inability to discharge the functions of their office or for misbehaviour.²⁶⁰ There is no requirement for a tribunal to be constituted for purposes of investigating allegations against a commissioner.

The council appoints a Secretary and other members of staff of the Commission.²⁶¹ The Commission deals with complaints of abuse of power such as arbitrary decisions, omissions, improper uses of discretionary powers, decisions made with bad or malicious motives or those influenced by irrelevant considerations, unnecessary or unexplained delays, obviously wrong decisions, misapplication and misinterpretation of laws, etc.

It has jurisdiction to inquire into the conduct of any person to whom the Act applies in the exercise of his office or authority, or in abuse thereof:

- whenever so directed by the President; and
- unless the President otherwise directs, in any case in which it considers that an allegation of mal-administration or abuse of office or authority by any such person ought to be investigated.²⁶²

The Commission has jurisdiction over the following:

- any person in the service of the Republic;
- the members and persons in the service of a local authority;
- the members and persons in the service of any institution or organisation, whether established by or under an Act of Parliament or otherwise, in which the Government holds a majority of shares or exercises financial or administrative control;

- the members and persons in the service of any Commission established by or under the Constitution or any Act of Parliament.²⁶³

However, the Commission has no power to investigate complaints against:

- the President;
- any decision of any court or of any judicial officer in the exercise of his judicial functions;
- any decision of a tribunal established by law for the performance of judicial functions in the exercise of such functions; or
- any matter relating to the exercise of the prerogative of mercy.²⁶⁴

A complaint or allegation may be made by any individual, or by any body of persons whether incorporate or not either in writing or orally and must be addressed to the Secretary of the Commission.²⁶⁵ The Commission can only consider a complaint or allegation if it is made within a period of two years from the date on which the facts giving rise to any such complaint or allegation became known to the person making the complaint or allegation. However, the Commission may in its absolute discretion receive complaints or allegations not made within the said period.²⁶⁶

The Commission is barred from conducting investigations under the Act concerning any allegation or grievances where the complainant or the person aggrieved has, or has had at any material time, the right or opportunity of obtaining relief or seeking redress by means of:

- an application or representation to any executive authority; or
- an application, appeal, reference or review to or before a tribunal established by or under any law; or
- proceedings in a court of law.²⁶⁷

But the Commission may conduct an investigation where it is satisfied that, in the particular circumstances of the case, it would be unreasonable to expect the complainant or the person aggrieved to resort to or to have resorted to any of the foregoing means without fear, or undue hardships, expense or delay.²⁶⁸

The Commission may refuse to conduct, or may decide to discontinue, an investigation where it is satisfied that:

- the complaint is trivial, frivolous, vexatious or not made in good faith; or
- the inquiry would be unnecessary, improper or fruitless.²⁶⁹

Although the Commission is obliged to inform the complainant of its decision not to conduct an investigation, or to discontinue an investigation, it is not bound to give any reasons therefor.²⁷⁰

The Commission is empowered to act notwithstanding any provision in any written law to the effect that an act or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision shall be challenged, reviewed, quashed or called in question.²⁷¹ Furthermore, section 23 of the Commission for Investigations Act provides that no investigation, proceeding, process or report of the Commission shall be held bad for any error or irregularity of form or be challenged, reviewed, quashed or called in question in any court save on the ground of lack of jurisdiction.

The Commission has extensive powers of investigation, which are similar to those of the High Court. For example, section 12 provides that where it appears to the Commission that any inquiry is likely to be frustrated or prejudiced by an action taken or about to be taken by any person to whom the Act applies, the Commission may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of conducting any investigation, and any such order, writ or direction shall have the same force as an order, writ or direction of the High Court.

Furthermore, section 13 gives the Commission power to summon witnesses and to examine witnesses under oath. The Commission may, by warrant, order the arrest of any person who, having reasonable notice of the time and place at which he is required to attend before the Commission, fails to do. Under section 14 the Commission can during its inquiry require any person who in its opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document, and no obligation to maintain secrecy or other restriction upon the disclosure of information, whether imposed by law or otherwise, shall apply to the disclosure of information for the purposes of an investigation under the Act. The government is not entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

However, the Commission may be denied access to documents or witnesses where the President certifies that the giving of any information, or the production of any document:

- might prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
- might involve the disclosure of the deliberations of the Cabinet or any sub-committee of the Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest.

The Commission is entitled, by warrant, to enter upon any premises and thereon carry out any inspection for the purposes of an investigation but it may be denied access by the President on the same grounds as those pertaining to witnesses or documents above.²⁷²

The proceedings of the Commission are conducted in camera.²⁷³ The procedure is informal. The Commission is required to report to the President, on every investigation it has conducted. The report should contain:

- a summary of the evidence taken together with the conclusions and recommendations of the Commission;
- a statement of any action that has been taken by any person whose conduct is under investigation or by the department or authority of which such person is a member or in which he is employed, to correct or ameliorate any conduct, procedure, act or omission that is adversely commented on in the report;
- where any person has suffered loss or injury as a result of any alleged misconduct, mal-administration or abuse of office or authority by any person whose conduct is under investigations, and the Commission has found allegations to be true, the Commission may in its recommendations state that compensation should be paid to the person who has suffered such loss of injury or to any dependent of such person, and shall determine the sum which it recommends as compensation.²⁷⁴

The president may take such decision in respect of the matter investigated or being investigated into by the Commission as he thinks fit.²⁷⁵ The Commission is required to communicate the President's decision to the affected party.²⁷⁶ According to the Investigator-General, the President accepts most of the Commission's recommendations. Few cases are in fact reported to the President.²⁷⁷ The Commission uses quiet diplomacy to persuade erring officers to mend their ways. Most officers co-operate with the Commission.²⁷⁸

The Commission is required to submit an annual report on its operations to the National Assembly. But this Report should not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation has been or is about to be made.²⁷⁹ It is this Report which is published for public consumption. The Secretary is required to inform the complainant of the result of the investigation.²⁸⁰

Cooperation with Other Institutions

The Commission does not have a formal coordination mechanism with other institutions. But it does cooperate informally with other law enforcement agencies in terms of referral of cases to the appropriate agency where it lacks jurisdiction. Other agencies also refer appropriate cases to the Commission. Since there is no formal mechanism for exchange of information there is no follow up on the progress of a case that has been referred to another agency.²⁸¹

In practice, the Commission has not had much of an impact on governance for a number of reasons. First, it lacks enforcement power and must rely on the President or other officials for enforcement of its recommendations. Second, the Commission has been grossly under-funded by government over the years. This has resulted in the Commission scaling back its operations, as it often has no operational funds. In 1998 for example, the Commission was not able to conduct Provincial tours because of lack of roadworthy vehicles and sufficient funds.²⁸² It received 968 cases out of which it declined 139, completed only 131 and brought forward 696 to 1999; 2 were withdrawn or abandoned.²⁸³ One reason for the poor funding is that the Commission does not determine its own budget. The Commission submits its funding proposal to a Budget committee in the office of the Vice President, under which the Commission falls, which in turns makes recommendations to a Cabinet Budget Committee, which has the final say. Even though Parliament must approve the national budget this is just a formality as Parliament just rubberstamps the budget presented by the Executive. The funding woes of the Commission are aggravated by the fact that even the funds approved by parliament are released erratically every month, thereby making it difficult for the Commission to plan its activities. It appears the activities of the Commission do not figure highly on the government's list of priorities.

Some donors have tried to help the Commission but the aid has largely been ineffective. For instance, in 2001 the UN gave the Commission some vehicles but these vehicles could not be put to good use because there was no money for running costs. Similarly, the UN has given the Commission some computers as the Commission wants to computerise its operations. However, the computers are not being used because the staff have not been trained in the use of computers.²⁸⁴

Third, not many Zambians are aware of its existence because it operates *in camera*. This is slowly changing as donors, such as the Friedrich Ebert Stiftung have been assisting it with funds to have publicity seminars for public service workers in the provinces.²⁸⁵

Fourth, the Commission does not have a full compliment of staff. For example, it has only one lawyer instead of three and only two investigators out of five.²⁸⁶ It has failed to recruit qualified staff because of poor conditions of service. In 1998 it had only 1 Assistant Principal Legal Counsel, and two Investigations officers, a Secretary, a Deputy Secretary and 15 other supporting staff.²⁸⁷ There was no Legal Officer.

Lastly, the Commission is not readily accessible to the people. Its officers are based in Lusaka. It has tried to mitigate this by establishing receiving centres in provincial capitals with the assistance of Provincial Permanent Secretaries. These Centres receive complaints on behalf of the Commission and once ten or so complaints have been collected an investigator travels to the Province concerned.²⁸⁸ Although this is commendable, there is clearly need to have officers permanently stationed in the provinces to deal with complaints in a timely manner.

The Commission has proposed some reforms to make it more effective among which are:

- to hold its sessions in public in order to enhance transparency and increase its public profile;
- vesting the Commission with enforcement power along the lines of the Norwegian Ombudsman;
- that the Commission should be an agency of Parliament and not the President as is the case at the moment; and

- to decentralise its operations to the provinces.²⁸⁹

Investigative/Watchdog Agencies

Anti-Corruption Commission (ACC)

The ACC is created under section 4 of the Anti-Corruption Commission Act (ACC Act). It is the main body tasked to combat corruption in Zambia. Under section 9 of the ACC Act, the main functions of the Commission are:

- to prevent and take necessary and effective measures for the prevention of corruption in public and private bodies;
- to receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the DPP, prosecute those suspected of involvement in corruption;
- to investigate any conduct of any public officer which, in the opinion of the Commission, may be connected with, or conducive to, corrupt practices;
- to disseminate information on the evils and dangerous effects of corruption on society; and
- to enlist and foster public support against corrupt practices.

The ACC Act establishes the Commission as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name.²⁹⁰ It is an autonomous body which, in the performance of its duties, is not subject to the direction or control of any person or authority.²⁹¹

The Commission comprises the Chairperson and four other Commissioners, all appointed by the President, subject to ratification by the National Assembly.²⁹² The Chairperson must be a person who has held or is qualified to hold high judicial office.²⁹³ Qualifications for the other Commissioners are not specified. The Commissioners serve on part-time basis.

The Directorate of the Commission is headed by the Director-General, who is appointed by the President subject to ratification by the National Assembly.²⁹⁴ He is responsible for the management and administration of the Commission and implements the Commission's decisions. The other officers of the Commission, including the Deputy Director-General, the Secretary and other staff of the Commission are appointed by the Commission.²⁹⁵

The Director-General and his deputy are required to be qualified to be appointed Judges of the High Court.²⁹⁶

Commissioners serve for a term of three years subject to renewal. There are no provisions for removal of Commissioners except if:

- they miss three consecutive meetings without reasonable excuse;
- they become bankrupt; or
- they become insane or are declared to be of unsound mind.²⁹⁷

The Director-General vacates office at the age of sixty-five years. He may be removed from office for inability to perform the functions of his office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour. The procedure for removal is designed to secure the tenure of the Director-General by making it difficult to remove him. First, the National Assembly must resolve that the Director-General ought to be investigated, by resolution supported by the votes of not less than two-thirds of all MPs. Second, the Speaker sends a copy of the Resolution to the Chief Justice, who must then appoint a three-member tribunal (2 members of whom must be judges or qualified to hold judicial office) to inquire into the matter. Third, after investigating the matter, the tribunal sends a report on the facts of the matter to the President and a copy to the National

Assembly. Finally, the President can only dismiss the Director-General from office if the tribunal so advises.²⁹⁸

The Commission is empowered to appoint staff of the Directorate. All operational or core functions of the Commission are undertaken by the Operations Branch of the Directorate. The Director of Operations, who is assisted by three Deputy Directors, heads it.

The main source of power of the ACC is the ACC Act, albeit the ACC can in theory also act on the basis of other legislation that has a bearing on corruption, such as the Penal Code and the Electoral Act and Regulations. However, in practice, the Commission considers that the only relevant legislation to its functions is the ACC Act.²⁹⁹

The ACC Act defines corruption widely as “the soliciting, accepting, obtaining, giving, promising or offering, of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit”.³⁰⁰

According to the Act, the following conduct constitutes corruption:

- for a public officer by himself or by or in conjunction with any other person to corruptly solicit, accept, or obtain or agree to accept or attempt to receive or obtain from any person for himself 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 return for any matter or transaction, actual or proposed, with any public body;³⁰¹
- for any person to corruptly give promises or to offer any gratification to any 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.³⁰²

The foregoing conduct, if performed in relation to a private body, also constitutes corruption.³⁰³ The term “gratification” is defined as “any corrupt payment whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property other than as a casual gift.”³⁰⁴

Moreover, the Act makes it an offence for a member of a public body to corruptly solicit, accept or obtain, or to agree to accept or attempt to receive or obtain from any person for himself or for any person any gratification as an inducement or reward for:

- his voting or abstaining from voting at any meeting of such public body in favour of or against any misuse, matter, resolution or question submitted to such body; or
- his performing or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such body; or
- his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person.³⁰⁵

It is also prohibited for any person to bribe or, attempt to bribe a member of any such public body in the circumstances outlined above.³⁰⁶

The ACC can investigate any public officer where there are reasonable grounds to believe that such public officer:

- has abused or misused his office or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;
- maintains a standard of living above that which is commensurate with his present or past official emoluments;
- is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

- is in receipt of the benefits of any services which he may reasonably be suspected of having received corruptly and in circumstances which amount to an offence under the Act.³⁰⁷

If the public officer concerned fails to offer a reasonable explanation, he will be charged with the offence of having, or having under his control or in his possession pecuniary resources or property reasonably suspected to have been corruptly required.³⁰⁸

The Act also deals with situations where a public officer may try to conceal corruptly acquired property by transferring it to a close relation or acquaintance. Such property may be deemed by the court to be in the possession and control of the public officer in the absence of a reasonable explanation from the accused.³⁰⁹

The ACC Act, in addition, has the following provisions:

- a public officer to whom any gratification has been corruptly given, promised or offered must make a full disclosure of the circumstances to the police or the ACC within 24 hours of the occurrence of the event; failure to do so constitutes an offence;³¹⁰
- any person who has thus been reported by a public officer may be arrested without warrant by any police officer or ACC officer;³¹¹ and
- any person arrested for having contravened the Act may be searched without warrant and all articles found on him may be seized.³¹²

Sanctions

Section 41 stipulates the sanctions for those convicted of an offence under the Act, which are:

- upon conviction to imprisonment for a term not exceeding twelve years;
- upon a second or subsequent conviction to imprisonment for a term of not less than five years but not exceeding 12 years;
- in addition to any other penalty imposed under the Act, to forfeiture to the state of any pecuniary resource, property, advantage, profit or gratification received in the commission of the offence.

The court can, under section 42, in addition to the aforementioned sanctions, order the convicted person to pay the rightful owner the amount or value of any gratification actually received by him. If the rightful owner cannot be ascertained or is himself implicated in the corrupt act, the court must order that the amount or value thereof be paid into the general revenues of the Republic.

Powers of Investigation

The Act grants extensive powers of investigation to the ACC, similar to those of the High Court. The Director-General can:

- authorize any officer of the Commission to conduct an inquiry or investigation;
- compel any person in charge of any department, office or establishment of the government, or the head, chairperson, manager or Chief Executive Officer of any public body, to produce or furnish any relevant document in his possession or under his control.³¹³

The Director-General, his deputy and any officer of the ACC may apply to court for a warrant authorizing:

- access to all books, records, returns, and other documents relating to the work of any government department, public body or private body;
- access to and search of any premises, vessel, boat, vehicle or aircraft if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.³¹⁴

Furthermore, the Director-General or any of his officers may obtain a court order to permit the Commission to access any bank account, share account, purchase account, expense account or any other account or any safe deposit box in any bank.³¹⁵

The Director-General or an authorized officer may arrest a suspect without warrant if he suspects that such person has committed or is about to commit an offence under the Act.³¹⁶

Section 24 empowers the Director-General, to direct, by notice in writing, any person being investigated by the Commission, not to dispose of or otherwise deal with any property specified in such notice without his consent. Failure to obey such a directive constitutes an offence. It is an offence for any person to:

- give or cause to be made false testimony or a false report about the commission of any offence under the Act;
- mislead the Director-General, the Deputy Director-General or other officers of the Commission by giving false information, statement or accusation;
- insult, interrupt, assault or otherwise obstruct, resist, hinder, or delay the Director-General, any commissioner or any member of staff in the performance of such person's functions under the Act or in effecting entry into any premises, boat, aircraft or vehicle; or
- disobey any order made under the AAC Act in any material particular or any matter under investigation.³¹⁷

Procedural Matters

The Act makes it easier to prosecute corruption by modifying some of the rules of evidence. This is done by way of presumptions, which will operate once the prosecution proves certain basic facts. The effect of such presumptions is to shift the burden of proof from the prosecution to the accused. Moreover, the accused is barred from pleading that any gratification solicited, accepted, obtained or agreed to be accepted, given, offered or promised is customary in the profession, business, trade, vocation or calling concerned. But casual gifts or entertainments can be pleaded as defence.³¹⁸

The DPP is under Section 54 empowered to authorize any court to tender a pardon to a prospective witness who is directly or indirectly implicated in an offence under Part IV so that such a person can give evidence. However, the pardon is offered on condition that the witness makes a full and true disclosure of all facts or circumstances within his knowledge relating to the offence and to every other person involved in the Commission thereof. If this condition is deemed to be fulfilled, an indemnity certificate is issued to the witness.

Extra-Territorial Jurisdiction

Section 61 provides that in relation to a public offence or Zambian Citizen, or a Zambian resident, the Act shall have effect within as well as outside Zambia, and notwithstanding where any offence is committed by such person, he may be dealt with in respect of such ACC's Reports offence as if it had been committed within Zambia.

Reporting

Reports of investigations are sent to appropriate authorities for corrective action to be taken,³¹⁹ but they are not published.

The Act requires the Commission, not later than ninety days after the end of the financial year, to submit to the President, a report concerning its activities during the financial year, including its financial affairs. The annual report summarises its activities for the preceding year but no details of cases investigated are given. The President is required, not later than seven days after the first sitting of the National Assembly next after receipt of the Annual Report, to lay it before the National Assembly.³²⁰ For purposes of informing the public about its activities the Commission publishes a newsletter entitled "ACC News" in

which in it gives brief details of some of the cases of corruption it has dealt with and some of its activities.

Accomplishments and Failures

A major weakness of the Act is that it does not offer protection to whistle-blowers. The Commission tries to keep the identity of its informers secret as much as possible in order to protect them from victimisation. However, if the case goes to trial the identities of the informers can no longer be kept secret as such informers may be required to give evidence in open court.³²¹

The absence of legal protection for whistle-blowers discourages people who may have useful information from volunteering such information to the Commission. This was evident during the last ten years when there was no political will to fight corruption. Reports of the Commission on prominent officials implicated in corruption were rarely acted on by the relevant authorities, giving the impression that such authorities tolerated corruption.³²²

Since its creation the Commission has been carrying out its functions with varying degrees of success. The education function is entrusted to the Community Relations Department, which employs all forms of mass media communications, organises lectures and conferences and produces pamphlets, posters, newsletters, television and radio programmes. For example, in 1998 the department conducted 340 lectures across the country reaching one million people, 208 "Corruption Concerns You" radio programmes were produced and aired by ZNBC in English and seven local languages, 15 radio programmes were produced and aired in English on Radio Phoenix, 10,000 copies of the ACC News, 4,000 wall and desk calendars and 15,000 fliers were produced and distributed.³²³

The Commission often conducts its educational activities in conjunction with Civil Society.³²⁴ The activities of the Commission in this area have been facilitated by the British Department for International Development (DFID). DFID has established a £2 million Civic Education and Corruption Prevention Fund (CECP), which was launched on October 18th, 2000. The aim of the CECP is to enhance public awareness and understanding of corruption and increase the number of organisations that promote integrity in public and commercial life.³²⁵ A full-time Project Coordinator has been employed to run the project.

The Corruption Prevention Department carries out the prevention function by examining the practices and procedures of both public and private bodies to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures, which may be prone or conducive to corrupt practices. Furthermore, it advises public and private bodies on ways and means of preventing corrupt practices and on changes in methods of work or procedures of such public and private bodies, which the Commission considers necessary to reduce the likelihood of the occurrence of corruption. It conducts one and half to two day Managerial Accountability Workshops to help organisations and various Government institutions and departments establish controls and standards for accountability and transparency.³²⁶

The Legal and Prosecution department handles all prosecutions and provides legal assistance and advice to investigators during the course of investigations. It acts as a link between the DPP and the Commission, whose consent is required before the Commission can prosecute corruption offences. Given the high incidence of corruption the work of the Commission in this area has not been impressive as can be seen from Figure 4 below.

Figure 4 Comparative Statistics on Reports Received for the Period 1994 to 1999.

Year	Reports Received	Complaints Received	Number of Investigations Authorised	No. of Prevention Exercises	No. of Prosecutions Not Authorised	No. of Prosecutions Registered	No. of Convictions	Information Received on Corruption	Consent Declined by DPP
	A	B	C	D	E	F	G	H	I
1994	1011	702	543	13	142	89	29	309	3
1995	950	633	433	5	137	55	25	317	4
1996	922	685	513	6	121	59	37	237	3
1997	865	639	495	4	130	69	55	226	2
1998	1485	823	538	2	283	63	29	662	4
1999	1325	943	460	1	482	100	30	382	3
2000	1262	683	403	1	279	49	10	579	1

Source Anti-Corruption Commission Annual Reports: 1998, p.34; 1999, p.40; 2000, p.38.

Note

A (Reports Received) = B+ H (total number of complaints received plus information received)

B (Complaints received) = C + D + E (reports relating to corrupt practices and abuse of office)

H is information received (reports received which are not of corrupt practices or abuse of office)

Figure 4 indicates that the number of prosecutions against corruption is quite small and that the rate of convictions is equally small. The clear-up rate of prosecutions is also worrying. This is caused by late and inadequate funding, as prosecutors are often unable to travel for court sessions outside their stations owing to lack of money. Figure 5 illustrates this.

Figure 5 Prosecutions, Investigations and Prevention Exercises Undetermined in 1998.

	Lusaka	Kitwe	Livingstone	Chiipata	Kasama	Kabwe
B/f from 1997						
Prosecutions	73	24	9	7	5	4
Investigations	251	78	36	12	17	14
Prevention	3	0	0	0	0	0
C/f to 1999						
Prosecutions	63	21	16	6	6	3
Investigations	338	62	23	19	10	30
Prevention	2	0	0	0	0	0

Source: Anti-Corruption Commission Annual Report 1998, p.32, App. "I".

Several reasons account for the dismal performance of the Commission. First, there has been lack of political will to combat corruption in the last ten years. The President and his top officials did not provide the required leadership.³²⁷ In fact, as subsequent revelations have shown, President Chiluba was at the very centre of the corruption matrix.³²⁸ That is why in July 2002 the National Assembly unanimously voted to strip him of his immunity so that he can be investigated and prosecuted for plunder of public resources.³²⁹

Second, because of lack of political will the Commission was under the Chiluba regime perpetually under-funded, and was often denied operational funds.³³⁰ The only functions of the Commission that appeared to be making any impact were those funded by donors, particularly the public sensitisation campaign and managerial accountability seminars.

Although under the ACC Act the Commission is self-accounting, the Ministry of Finance handles its financial affairs. The Executive always drastically reduces its proposed budget and even the little money allocated in the budget is not released in full. The Commission has had no allocation for capital expenditure for the past five years.³³¹ For example, the Commission's estimated budget for 1999 was K6.3 billion but only K1,759,479,000 was approved. There was even a reduction of Recurrent Departmental Charges (RDC) from K792,871,000 in 1998 to K567,571,000 in 1999. As if this was not enough, only K344,069,042 (representing 60% of the amount approved) was actually released by the Ministry of Finance.³³² This largely explains why the Commission's operations fell below expectations. The Commission noted in its Annual Report for 1999:

"Despite a marked increase in the reports of corruption received during the year, operations of the Directorate during the year under review continued to be below average as in previous years. This can be seen from the reports by individual Stations and Units. The average case load per officer during the year under review was about thirty cases. This kind of heavy workload made it extremely difficult for cases to be cleared in reasonably good time. The heavy workload per officer meant that only a few cases were cleared during the year. There was a very large number of very old cases still uncompleted and some on which inquiries had not commenced. In an ideal situation, a preliminary investigation is supposed to be completed within three months while a full-scale investigation is supposed to be completed within six months to one year. However, at the moment the average completion time for preliminary inquiries is one year, while full scale investigations take anything from one and half to two years to complete depending on a case's complexity. This scenario was created by the inadequate and erratic funding by the Ministry of Finance and Economic Development. Budgetary allocations during the year under review were very poor. This resulted in the Commission lacking essential logistical provisions like transport and office equipment. The budgetary provisions made to the commission, for example, enabled the institution to provide fuel for operations for an average of seven days per month."³³³

Third, owing to its perennial financial problems the Commission cannot offer competitive salaries and other conditions of service to enable it recruit and retain qualified professional staff. In 1999, for instance, 11 officers resigned (six Investigations Officers and five Senior Investigations Officers), and 6 left on voluntary separation (four Investigations Officers, one Senior Investigations Officers and a Deputy Director). It has had particular difficulty recruiting lawyers and other top officials. There has been no Deputy Director-General since the inception of the Commission.³³⁴ According to the approved personnel establishment the Commission is supposed to have 246 workers, including the following professionals:³³⁵

Director-General	1
Deputy Director-General	1
Director of Operations	1
Secretary to the Commission	1
Deputy Director of Operations	2
Deputy Director of Human Resources	1
Chief Investigations Officer	6
Senior Investigations Officer	21
Senior Prosecutions Officer	1
Investigations Officer	75
Senior Accountant	1

Accountant	1
Assistant Accountant	1

Many of these posts remain vacant. There is a serious shortage of investigators and lawyers. Thus, the Commission lacks qualified manpower to deal with complex cases such as the current investigations into the plunder of national resources under the Chiluba regime. At the moment it has only four prosecutors and one former police officer, who are all non-lawyers.³³⁶

Fourth, the Commission has not established offices in three provincial capitals: Mongu, Solwezi and Mansa because there has been no allocation for capital expenditure for many years. This has impacted negatively on the Commission's operations in these provinces. As a result reports received from these Provinces "have continued to stay for long periods unattended to due to lack of funds to travel to these areas rendering most of them unpursuable."³³⁷ Moreover, the existing provincial offices do not have a full compliment of staff. The current staff situation at provincial level is as follows:³³⁸

	Establishment	Actual
Chief Investigations Officer	1	0
Senior Investigations Officer	2	2
Investigators	8	4
Public Prosecutors	1	1

At the beginning of 2002, following some improvement in funding under the New Deal Administration the Commission recruited 34 officers. It has recently recruited two lawyers and a deputy Director of Public Relations. These three positions will be funded by DFID for three years. Although various donors have been supporting the Commission this is the first time that donor support is directed toward staff retention as the conditions of service for these positions are quite attractive.³³⁹

Fifth, there has been political interference in the work of the Commission. As a result the Commission, until Mr. Mwanawasa's ascendancy to power in 2002 has, according to popular opinion, only gone after small fry, such as junior police officers, junior public service workers and politicians who have fallen out with the MMD government. The Inter-African Network for Human Rights and Development has observed that:

"The ACC was accused of not being able to deal with high ranking government officials, and only concentrating on insignificant cases. There were outstanding cases of Ministers whose cases have been with the Commission for several years without any discernible conclusion. Some of the Ministers implicated in corrupt practices include Minister without Portfolio, Michael Sata and the late Local Government and Housing Minister, Bernie Mwiinga. The impediment here again was the political will to carry out prosecution even when conclusive investigations found some high ranking government officials with a case to answer. The Commission cannot and, in 1999, could not prosecute three public officers because consent was refused by the director of Public Prosecutions."³⁴⁰

In its Annual Report for 1999 the Commission reported two instances of political interference in its work. In the first case, a Cabinet Minister attempted to stop investigations by the Commission against a senior public officer by intimidating the Investigating officers. The Commission merely requested the Attorney General to write to the Minister. In the second case, which involved a Permanent Secretary, the Attorney General wrote to the Director General asking for the docket of the case in order for him to consider the issue of public policy given the status of the accused. This was contrary to article 56(7) of the Constitution, which permits the Attorney General to give directions to the DPP in matters involving public policy when so requested by the DPP. It must be the DPP who must decide whether or not to refer the matter to the AG for directions. The Commission challenged the Attorney General's intervention and informed him that his intervention was improper.³⁴¹

Lastly, a major shortcoming of the ACC Act is that the ACC cannot commence a prosecution without the prior permission of the DPP. This is unlike the Drug Enforcement

Commission (DEC), which does not need such permission. Although this provision may have some benefits in the sense that the Commission will have the benefit of informed legal advice before it takes a matter to court, and it separates the function of investigating from prosecution, it may be abused in practice. It gives an opportunity to politicians to interfere in the work of the Commission through the Attorney General under article 56(7) of the Constitution. According to the Commission, the DPP has rarely refused to grant permission to the Commission to prosecute.³⁴² The DPP is of the view that his office should continue to have this power as otherwise poorly investigated cases will be presented to the courts, resulting in avoidable acquittals. He says many of the dockets he receives from the ACC indicate lack of thorough investigations by the ACC.³⁴³ However, the DPP's power should become unnecessary once the capacity of the ACC is built up in terms of professional manpower and finance.

The Anti-Money Laundering Authority

This is a recent creation following the enactment in 2001 of the Prohibition and Prevention of Money Laundering Act.³⁴⁴ The Act prohibits money laundering, establishes the Anti-Money Laundering Authority and the Anti-Money Laundering Investigations Unit, provides for the disclosure of information on suspicion of money laundering activities by supervisory authorities and regulated institutions, authorises forfeiture of property of persons convicted of money laundering, provides for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering.

Money laundering means:

- engaging directly or indirectly in a business transaction that involves property acquired with proceeds of crime;
- receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property, derived or realized directly or indirectly from illegal activity; or
- the retention or acquisition of property knowing that the property is derived or realized, directly or indirectly from illegal activity.³⁴⁵

The Act defines "illegal activity" as any activity whenever or whenever carried out which under any written law in the Republic amounts to a crime.³⁴⁶

"Property" includes money and all other property, real or personal, movable or immovable including things in action and other intangible or incorporeal property wherever situated and includes any interest in such property.³⁴⁷

The Anti-Money Laundering Authority

The Authority is created under section three and consists of the following members appointed by the Minister of Home Affairs:

- the Attorney-General as Chairman;
- the Inspector-General of Police;
- the Commissioner of the Drug Enforcement Agency (DEC);
- the Director-General of the Anti-Corruption Commission;
- the Governor of the Bank of Zambia;
- the Commissioner-General of the Zambia Revenue Authority; and
- two other persons.

The functions of the Authority are:

- to provide general or specific policy direction to the DEC Commissioner; and
- to advise the Minister on measures required to prevent and detect money-laundering in the Republic.³⁴⁸

The Anti-Money Laundering Investigations Unit

The Act also established the Anti-Money Laundering Investigations Unit, consisting of the Commissioner of the Drug Enforcement Agency and such other officers as the Commissioner may appoint.³⁴⁹

Among the functions of the Unit are:

- to collect, evaluate, process and investigate financial information including that from regulated institutions, and supervisory authorities, relating to financial and other business transactions suspected to be part of money laundering for the purpose of preventing and suppressing money laundering offences;
- to conduct investigations and prosecutions of money laundering offences;
- to assist in developing training programs for use by regulated institutions and Supervisory Authorities in the implementation of the Act;
- to cooperate with law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecutions of money laundering offences; and
- to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and supervisory Authorities under the Act.³⁵⁰

Since every offence under the Anti-Money Laundering Act is deemed to be a cognisable offence an authorized officer of the Investigation Unit can effect an arrest without warrant. Officers of the Unit can, if granted a warrant by a competent court:

- enter any premises and search for, seize and detain any property, book or document reasonably suspected to relate to an offence under the Act.
- search any person who is suspected or connected with the offence in or on the premises, and take that person into custody in order to facilitate investigations;
- arrest any person who is in or on the premises in whose possession any property liable for service for forfeiture under the Act is found or whom the officer reasonably believes to have concealed or deposited on the property;
- break, open, examine and search any premises, article container or receptacle suspected or concerned with the offence; or
- stop, search and detain any conveyance.³⁵¹

Offences

A person convicted of money laundering is liable to a fine not exceeding 170,000 penalty units or to imprisonment for a term not exceeding ten years or to both.³⁵²

Where the offence of money laundering is committed by a body of persons whether corporate or incorporate:

- the said body shall be liable to a fine not exceeding 400,000 penalty units;
- every person who, at the time of the offence acted in an official capacity for or on behalf of such a body of persons whether as a director, manager, secretary or other similar capacity and who was involved in the commission of that offence, shall be guilty of that offence, and shall be liable, upon conviction to a fine of up to 170,000 penalty units or to imprisonment for a maximum of ten years or to both.³⁵³

A person who is convicted of aiding, abetting, counselling or procuring the offence of money laundering may be fined up to 139,000 penalty units or be imprisoned for a maximum of five years or both.³⁵⁴ The same penalty applies to any person convicted of conspiring with another to commit the offence.

It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be committed, to falsify, conceal, destroy or

otherwise dispose of, cause or permit the falsification of material which is or is likely to be relevant to the investigation of the offence.³⁵⁵ Divulging details of an impending investigation to another person without lawful authority is an offence that attracts a fine of up to one hundred and thirty nine thousand penalty units or a term of imprisonment not exceeding five years or both.³⁵⁶

Measures Against Money-Laundering

Part V of the Act contains measures aimed at preventing money laundering. The supervisory authorities listed below are under an obligation to disclose or cause to be disclosed to the Anti-Money Laundering Investigations Unit information they obtain that a business transaction indicates that any person has or may have been engaged in money laundering. Any officer of a supervisory unit who obstructs investigations may, on conviction, be subject to imprisonment for a term not exceeding five years or to a fine of up to one hundred thousand penalty units or to both.³⁵⁷ The supervisory authorities are:

- the Bank of Zambia;
- the Registrar of Building Societies;
- the Registrar of Banks and Financial institutions;
- the Registrar of Co-operatives;
- the Registrar of Insurance;
- the Commissioner of the Securities and Exchange Commission;
- the Registrar of Companies;
- the Commissioner of Lands;
- the Investment Board;
- the Licensing Authority under the Casino Act any other authority which may be established by law as a supervisory authority.³⁵⁸

These institutions can issue directives to regulated institutions, subject to approval by the Unit, which may be necessary to prevent and detect money laundering.³⁵⁹ Regulated institutions are under an obligation, *inter alia*, to:

- report to the Unit the identity of persons involved in any business transaction, in particular cash transactions which give any officer of the regulated institution reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;
- comply with any directives issued to it by the supervisory authority with respect to money laundering activities;
- permit any authorized officer with a warrant to enter into the premises of the regulated institution during working hours and inspect records suspected of containing information relating to money laundering and to make notes or take copies of the whole or any part of the record; and
- designate an officer in each branch or local office to be responsible for reporting all transactions suspected of being related to money laundering.³⁶⁰

A regulated institution should not obstruct any investigations into money laundering that may be instituted under the Act.³⁶¹ Any, regulated institution, which contravenes these provisions commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units.³⁶² Furthermore regulated institutions should, with the assistance of the Unit, provide employees with training:

- on the enactment's and regulations on money laundering;
- in mechanisms for preventing money laundering; and

- in the recognition and handling of business transactions carried out by or on behalf of any person who is or appears to be engaged in money laundering.

Where any regulated institution is guilty of an offence under the Act any officer or employee of the institution who is responsible for, or causes, the regulated institution to commit the offence is guilty of an offence and liable upon conviction to a fine not exceeding one hundred and twelve thousand penalty units, or to imprisonment for a term not exceeding three years or to both.³⁶³

It is not unlawful for any person to make any disclosure in compliance with the Act.³⁶⁴

Any person who tampers with property seized or forfeited may upon conviction, be fined up to 140,000 penalty units or imprisoned for a term not exceeding five years or both.

Seizure and Forfeiture of Property

Section 15 empowers an authorised officer to seize property, which that officer has reasonable grounds to believe that the property is derived or acquired from money laundering. Where property is seized under this Act, the authorised officer who effected the seizure may, at any time before it is forfeited under this Act, order the release of the property to the person from whom the property was seized if the officer is satisfied that the property is not liable to forfeiture under the Act and is not otherwise required for the purpose of any investigations or proceedings under the Act or for the purpose of any prosecution under any other written law.³⁶⁵ In such a case the officer effecting the seizure, or the State or any person acting on behalf of the State, shall not be liable to any civil proceedings by any person unless it is proved that the seizure and the release had not been effected in good faith.³⁶⁶

Any property which has been seized and is in the possession or under the control of a person convicted of a money laundering offence and which property is derived or acquired from proceeds of the crime shall be liable to forfeiture by the court.³⁶⁷

Where any property has been seized under the Act and:

- no prosecution for any offence under any written law is instituted with regard to the property;
- no claim in writing is made by any person; and
- no proceedings are commenced within six months from the date of seizure, for the forfeiture of property;

the Commissioner is required to apply to the Court upon the expiration of the period of six months for an order of forfeiture of that property.³⁶⁸

The Court can only make an order of forfeiture if:

- the Commissioner has given notice by publication in the Gazette and in one national newspaper to the effect that property which has been seized under the Act shall be liable to vest in the State if it is not claimed within three months; and
- three months after the giving of the said notice the property remains unclaimed.³⁶⁹

Any property forfeited under the Act vests in the State.³⁷⁰

Other notable provisions of the Act are that:

- offences under the Act are deemed to be extraditable under the provisions of the Extradition Act;³⁷¹
- a person who is convicted of wilfully failing or refusing to disclose any information or producing any accounts, documents or articles to an authorized officer during an investigation may be fined up to 200 penalty units or be jailed for a term not exceeding five years or both;³⁷²

- the Mutual Legal Assistance in Criminal Matters Act applies to offences under the Act;³⁷³ and
- according to section 29 any act carried out by a citizen of Zambia any where or carried out by a person on ship or aircraft registered in Zambia shall, if it would be an offence by that person on the land in the Republic, be an offence under the Act.

Any person commits an offence punishable by imprisonment of a term not exceeding five years without the option of a fine if he/she:

- obstructs, assaults, hinders or delays any authorized officer in the lawful exercise of any powers conferred on the officer by or under the Act;
- refuses to furnish to any authorized officer on request, any particulars or information to which the authorized officer is entitled under the Act;
- fails to comply with any lawful demand of an authorized officer under the Act;
- wilfully or recklessly gives any authorized officer any false or misleading particulars or information with respect to any facts or particulars to which the authorized officer is entitled under the Act;
- fails to produce, conceals or attempts to conceal any property, document or book in relation to which there is reasonable ground to suspect that an offence has been or is being committed under the Act; and
- before or after any seizure, destroys anything to prevent the seizure or securing of that property or article.³⁷⁴

These are indeed laudable provisions, which if implemented fully are likely to reduce the scourge of money laundering, which is a serious problem in Zambia. Although the Act was enacted in 2001 implementation only started in mid-2002, when the Minister of Home Affairs appointed members of the Money Laundering Authority.³⁷⁵ The Finnish government in November 2002 released US\$150,000 to the Unit to facilitate its operations.

Media

Media Ownership

The role of the media in ensuring good governance cannot be overemphasised. Zambia has both government owned and privately owned electronic and print media. The government owns the Zambia National Broadcasting Corporation (ZNBC), which consists of a TV station, Radio 1, 2 and 4. Coverage of ZNBC extends to most parts of the country. Also owned by the government are the Zambia News Agency (ZANA), Zambia Information Services (ZIS), Zambia Daily Mail, Sunday Mail, Times of Zambia, Sunday Times of Zambia, Financial Mail, and Financial Times.

Privately owned newspapers include The Post Newspaper (daily), Today (Weekly), The People (Weekly), The National Mirror (Weekly), The Star (weekly) and The Monitor (twice a week).

The privately owned TV stations are Multi-Choice (Z) Ltd and Trinity Broadcasting Network (TBN), a religious broadcasting station. Both of these have little, if any local content, and do not broadcast local news.³⁷⁶

There are several privately owned radio stations, including Radio Phoenix, Radio Christian Voice (which is on short-wave), Radio Choice, University of Zambia Radio, Radio Icengelo, Radio Maria, Yatsani Radio, Radio Chikuni, Mazabuka Community Radio Station, Radio Lyambai, and Radio Chikaya.

Apart from Radio Phoenix, which covers at least four provinces, and Radio Christian Voice (whose coverage is the whole country and beyond), all coverage of all the other privately owned stations is restricted to the districts within which they operate.

Media Freedom

Article 20(1) of the Constitution guarantees every person freedom of expression, that is, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with correspondence.

Furthermore, article 20(2) provides that "subject to the provisions of this constitution a law shall not make any provision that derogates from freedom of the press".

But freedom of expression is not absolute. The state can enact legislation restricting the exercise of freedom of expression if such legislation is:

- reasonably required in the interest of defence, public safety, public order, public morality or public health; or
- reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, etc.³⁷⁷

To be valid, the restrictions must be shown to be reasonably justifiable in a democratic society.

There is a plethora of laws that restrict freedom of expression.³⁷⁸ Among these are:

- the State Security Act,³⁷⁹ which severely restricts public access to information possessed by government and has severe penalties for those who violate its provisions.³⁸⁰
- the Penal Code has provisions which define sedition widely, create the offences of criminal defamation, defamation of the President, defamation of foreign princes, permit the President to ban any publication, etc.³⁸¹

Critical journalists from the private media have on several occasions in the last ten years been arrested and charged with breaching the State Security Act,³⁸² defamation of the President, criminal defamation, and spreading false news, etc.³⁸³

The government has also, in the last ten years, not been allowing government departments and parastatals to advertise in critical media or to buy copies of critical private papers. In addition, reporters from the private media have been repeatedly denied access to public officials and government meetings or functions.³⁸⁴ This has been a deliberate measure meant to induce the collapse of the private media. Indeed over the years a lot of newspapers have appeared only to collapse shortly afterwards owing to financial constraints.

Libel Laws

The Penal Code creates the offence of defamation of the President,³⁸⁵ which carries a maximum penalty of three years upon conviction. Section 191 of the Penal Code creates the offence of criminal libel. In addition, the common law recognizes civil defamation. No distinction is made between public figures and private persons.

In the case of *Michael Sata v. The Post Newspapers Ltd and Printmark Zambia Ltd*,³⁸⁶ in which the plaintiff, a Minister, sued the defendants for publishing articles implicating him in acts of corruption, the High Court refused to follow the case of *New York Times v. Sullivan* in which the US Supreme Court laid down some principles grounded in the first and fourteenth Amendments to fetter libel actions by public officials in order to advance free speech and press freedom. Chief Justice Ngulube stated, *inter alia*, "I would reject the proposition in *Sullivan* to the extent that it sought to legalise character assassination of public officials or to shift the burden of proof so that knowledge of falsity or recklessness should be proved by the plaintiff and to a degree of convincing clarity".

The Laws of defamation have been used extensively to curtail reporting on corruption. Many newspapers have been sued for defamation of character. The courts, in some cases,

have awarded heavy damages against the Newspaper companies³⁸⁷ Moreover, there have been many prosecutions for defamation of the President.³⁸⁸

Censorship of the Media

There is no formal censorship of the media except for the Zambia National Broadcasting Corporation. The ZNBC Act allows the Minister of Information to stop any programme being aired on ZNBC Radio and TV if in his view it is defamatory, blasphemous, obscene or seditious.³⁸⁹

On a number of occasions, ZNBC has been stopped from airing certain programmes the government felt uncomfortable with. A recent example was ZNBC's decision to take off the air paid for presidential debates just days before the December 27, 2001 national elections. The government also pressured a private TV Station, TBN, to stop presidential debates, which were only restored after the sponsors of the programme obtained a court order to compel TBN to honour its contract. The State also leans on private radio stations through the licensing system. Licences are only issued and renewed if the Radio stations "behave" themselves, which means essentially toning down criticism of government leaders and towing the government line.³⁹⁰

In 2001 the Ministry of Information closed down Radio Phoenix, the most popular private Radio Station on the pretext that it had not renewed its licence on time. On another occasion, Radio Phoenix was forced by government to stop a live phone-in programme sponsored by AFRONET, which focused on a strike by junior doctors. Government representatives refused invitations to participate in the programme. The programme was stopped allegedly because it was "one-sided" and the doctors had "exhausted their views". It was only restored when AFRONET threatened to sue Radio Phoenix.³⁹¹

Most of the media institutions practice self-censorship in order to avoid victimisation from government.³⁹²

One of the biggest drawbacks to government's domination of the media is that state media do not regularly cover the views of government critics. The only time critics are covered is when they are praising the government or government officials are attacking them. The bias of the state media has been the subject of complaints by opposition parties and NGOs over the years. Even during election campaigns opposition party candidates are rarely covered by the publicly owned media. To get coverage, they have to pay for space or airtime but even this is no guarantee that coverage will in fact take place.

There have been cases where ZNBC has cancelled programmes featuring government critics at short notice despite the programme being paid for. For example, in the run-up to the last elections in 2001, ZNBC cancelled scheduled presidential debates already paid for because the ruling party candidate was not willing to feature with the other presidential candidates. The organizers of the debates obtained a High Court Order compelling ZNBC to fulfil its contractual obligations but the Order was ignored with impunity. Opposition candidates who went to the ZNBC studio to participate in the programme were blocked from entering the Studio grounds by heavily armed paramilitary police officers.³⁹³

Media Coverage of Corruption

Privately owned media mostly covers stories of corruption. State owned media only report court proceedings involving corruption or statements by political leaders or government officials on corruption. State owned media do not carry any investigative stories on corruption.

On the other hand, privately owned media particularly, the Post Newspaper, the Monitor, Today, the People and the National Mirror regularly carry stories on corruption. All the major corruption scandals have been exposed by the Post Newspaper or the other privately owned newspapers.

Fackson Banda, Regional Director of PANOS Institute, has noted that, "where coverage of corruption is concerned, ZNBC Radio and TV have done close to nothing. In fact, prior to the general and parliamentary elections of 2001, a paid-for-advertisement talking about

corruption was removed from the air due to what was perceived in ZNBC circles as political sensitivity".³⁹⁴

However, the coverage of corruption could increase if more journalists were involved in investigative journalism. According to Mr. Fanwell Chembo, Executive Director of the Zambia Independent Media Association (ZIMA), most journalists in Zambia are lazy and make no effort to do investigative journalism. They just rely on written statements or speeches from sources.³⁹⁵

According to Fred M'membe, Managing Director of the Post Newspaper, inadequate time, a hostile political environment as well as an unsupportive public are the main problems his paper faces in exposing corruption.³⁹⁶

Media Licensing

There is no requirement for licensing of Newspapers in Zambia. Only the state owned ZNBC is authorized to operate a broadcasting service. Any other person who wishes to operate a Radio Station or a TV broadcasting Station must obtain a licence issued by the Minister of Information and Broadcasting in accordance with the ZNBC Act.³⁹⁷

The procedures for issuing licences lack transparency. Since the Minister is a politician, political considerations are inevitably taken into account in the licensing process. As Fackson Banda has noted:

"The enactment of the ZNBC (Licensing) Regulations, while meant to pave way for the liberalization of the broadcasting sector, still vest final authority for the awarding of radio and television licenses in the Minister of Broadcasting and Information Services. Indeed, the Minister is empowered to receive and scrutinize applications for radio and television licenses. It is only he/she who can give a license. In this regard, it must be noted that he/she is, first and foremost, a political appointee of the President. Therefore, as some have complained, the Minister's judgment may be influenced by whether or not the applicant's political ideology and party membership agrees with his/her own. This has the effect of discouraging enterprising reporters in privately owned radio stations from pursuing a more vigorous investigative journalism into cases of alleged corruption. Radio Phoenix exemplifies this."³⁹⁸

It appears that there has been an unspoken rule of Christian determinism in the practice of issuing licences. The large number of Christian applicants given licences suggests that the Minister awards licences on the basis of the applicant's Christian orientation. In fact, the first person, Bob Edmonton of Radio Christian Voice, granted a private licence is a Christian. Moreover, although the Act stipulates that only government media are allowed radio transmission on Short Wave (SW), the Ministry ignored the law and granted Radio Christian Voice a SW Frequency in 1994.³⁹⁹

The licensing authority is empowered to attach conditions to the licence, breach of which may lead to revocation or non-renewal of the licence when it expires.⁴⁰⁰

In practice licensing requirements have been used to deny licences to applicants who are considered hostile to the government. For example, the Post Newspaper and an NGO, Women for Change, have had their applications for licences turned down. Apart from community radio stations and religious radio stations, the few people who have received licences are friendly to the government. For example, Richard Sakala, who for ten years was President Chiluba's Assistant for Press, was granted both a TV and Radio licence even though he had no discernible capacity to run the same.⁴⁰¹

Second, the government uses the threat of non-renewal of the licence in order to discourage Radio stations from taking an independent line. Radio Phoenix has been subject to such pressure. Although it has equipment to enable it to transmit to all parts of the country, it has been allowed only to transmit to four provinces, but the expansion has been progressive. Apart from slowing down Radio Phoenix's expansion, the government has also been exerting pressure on it to cancel some programs critical of government. For example, in January 2000 Information Minister, Newstead Zimba, forced Radio Phoenix to cancel a sponsored phone-in programme entitled, "Let the People Talk", a live programme

featuring striking medical doctors, which questioned government's commitment to the health sector. Government officials declined invitations to participate in the programme. On January 24, Radio Phoenix announced that it was discontinuing the programme. "Several hiccups have been experienced along the way, which attracted the public's request for variety and also the intervention of the Ministry of Information and several public demands requesting the Panel to be balanced with input from the Central Board of Health or the Health Ministry", Elizabeth Pemba, the General Manager, explained. She revealed that a number of invitations extended to the Ministry of Health to participate in the discussions had gone unanswered and, as a result, only the striking doctors' view was being broadcast to the public, a situation which the station considered "unacceptable". It later transpired that the Minister of Information had visited the station a day before this announcement and the Radio Station's application to extend its broadcast to Mazabuka was being considered by the Minister. It is instructive that on 19th January 2000, the Information Minister had issued an ominous warning in the following terms:

"Holders of (broadcasting) licences are (however) reminded that each and every licence carries with it specific conditions which owners ought to adhere to without fail. The Chief Government spokesman is, therefore, appealing to all proprietors of television and radio stations to ensure adherence to conditions specified in their respective licences. Operating outside these conditions is illegal. It will be prudent that owners keep reminding themselves about the conditions of their licences to avoid temptations to operate outside specified conditions in their licences and the risk of having their licences withdrawn".⁴⁰²

Civil Society

The Societies Act⁴⁰³ provides the legislative framework for the operation of Non-Governmental organisations, Community based organisations and churches. A few organisations are created under the Companies Act⁴⁰⁴ as companies limited by guarantee while others are formed under the Land (Perpetual Succession) Act.⁴⁰⁵ Trade Unions are regulated by the Industrial and Labour Relations Act.⁴⁰⁶

Civil Society organisations are playing various roles, including fighting corruption, monitoring government's delivery of social services, monitoring the protection of human rights, etc.

The leading organizations involved in fighting corruption are Transparency International Zambia, Integrity Foundation, AFRONET, National Movement Against Corruption (NAMAC), and the Foundation for Democratic Process (FODEP), the Foundation for Corruption Awareness, and the Partnership Forum.

Organisations involved in monitoring the government's performance in areas of service delivery include: the Catholic Commission for Peace, Justice and Development, which monitors the impact of government policies on the poor and marginalized groups; the Foundation for Democratic Process, which monitors the conduct of elections and the performance of elected officials; AFRONET, which monitors government's implementation of human rights; the Consumer Protection Association of Zambia, which advocates the rights of consumers; Women for Change, National Women's Lobby Group, Women and Law in Southern Africa (WLSA) and NGOCC, which are concerned with the improvement of the economic, political, social and legal status of women.

Constraints

Civil society faces a number of constraints in its efforts to make government accountable and transparent in its operations. First, the absence of a Freedom of Information Act means that the public can only access information that the public authorities choose to release. The State Security Act is used extensively to keep information away from the public. The Act is reinforced by the General Orders, which forbid Public Officers from disclosing information to the public without authorization. Moreover, several statutes governing the operations of various statutory bodies contain provisions forbidding unauthorized disclosure of information by staff and board members.⁴⁰⁷

Second, government's attitude towards Civil Society has not always been positive. Its relationship with Civil Society depends on the nature of activities Civil Society is involved in. Government has no difficulties in dealing with developmental or service NGOs, whose work does not involve criticism of government. Churches, particularly evangelical churches, which are supportive of government leaders, get along very well with government. The same goes for compliant trade union and NGO leaders. Most of these were in fact beneficiaries of the presidential discretionary fund, which President Chiluba grossly abused.

However, the relationship between government and critical parts of Civil Society has been characterized by tension in the last ten years. The government has been hostile to Human Rights and Election Monitoring NGOs (FODEP, AFRONET, Coalition 2001), the Law Association of Zambia, NGOCC, the Catholic Commission for Justice and Peace (CCJP), Women for Change, the Zambia Episcopal Conference, the Christian Council of Zambia and Evangelical Fellowship of Zambia, and the OASIS FORUM because of the critical stance these organizations have taken on issues of national interest, such as the high incidence of corruption, lack of genuine constitutional reform, the oppressive conduct of the police, flawed elections, the proposed third term for Chiluba, poverty, implementation of economic reforms without regard to the interests of the poor, etc.

The government's hostility manifests itself through: denial of access to government controlled media; public officials attacking the Civil Society groups through the public media; refusal by government officials to participate in functions or activities of some of these organizations; refusal by top government leaders to have meetings with leaders of critical groups; and refusal to accredit election monitors/observers, police refusal to permit these organisations to hold public demonstrations, etc.⁴⁰⁸

It must, however, be noted that relations that relations between Civil Society and government are getting better since the beginning of January, 2002 when President Mwanawasa took office. There is a marked change in the attitude of public authorities towards Civil Society. There now seems to be eagerness on the part of government officials to co-operate with Civil Society.

Third, the interaction between Civil Society and parliament has been minimal, because until recently Parliament has been a closed shop. Thus, there has been no mechanism established to facilitate Civil Society making submissions to the Legislature on proposed Legislation. Moreover, Chiluba's government did not encourage its MPs to interact with Civil Society as it considered itself as having the sole monopoly to make law. The ruling party's overwhelming domination of the Legislature ensured that no one else's views mattered. There have been few occasions in the past ten years when government has sought the views' of Civil Society on proposed legislation.

One such occasion was when the government in 1994 established the Mwanakatwe Constitutional Review Commission. A lot of people gave evidence to this Commission and their views were incorporated in the recommendations of the Commission. However, the government in passing the 1996 Constitutional Amendments, rejected at least 80% of the recommendations.⁴⁰⁹

Civil Society had also produced a Green paper containing recommendations for a new constitution but the government completely ignored the recommendations.⁴¹⁰

Regional and Local Government

Zambia is a unitary state that has a powerful central government and local authorities, which act as its agents. For administrative convenience Zambia is divided into nine provinces. The political head of each Province is a Deputy Minister⁴¹¹ while the administrative head is the Permanent Secretary, both of whom are appointed by the President. Also found at provincial level are the Deputy Permanent Secretary, heads of government departments, Civil Servants, all of whom are appointed by the national government.

According to the Constitution the system of local government is based on democratically elected councils on the basis of universal adult suffrage.⁴¹² Local government is provided

for under the Local Government Act, 1991,⁴¹³ while the Local Government Elections Act regulates elections.⁴¹⁴

Under section 3 of the Local Government Act the Minister of Local Government and Housing is empowered, by statutory order, to establish for any district, a city council, municipal council, district council, township council or management board as the case may be, and the name of the council or management board shall include the name of the district. In this connection 72 districts have been established. The President may, by statutory proclamation, confer on any municipal council established therefor the status respectively of a city and a city council and shall determine the name by which such city and city council shall be known.⁴¹⁵

A council is a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of the Act and of any other written law, to do all such other acts and things as a body corporate may do by law and as are necessary for, or incidental to, the carrying out of its functions and powers as set out in the Act.⁴¹⁶

A council consists of:

- the members of parliament in the district;
- two representatives of the Chiefs, appointed by all the Chiefs in the district; and
- all the elected councillors in the district.

The number of councillors varies from district to district and the Minister may, after consultation with a council, by statutory order, alter the number of councillors of a council.⁴¹⁷ Councillors hold office for three years. A councillor is elected for each ward by registered voters resident in the ward.⁴¹⁸

A councillor may lose his seat if, *inter alia*, he changes his political affiliation or if he accepts any remuneration for or on account of anything done as a councillor, other than a fee or allowance authorised by or under the Act.⁴¹⁹

Every year councillors elect mayors and deputy mayors in city and municipal councils, and chairmen and deputy chairmen in district councils from among themselves. However, councillors who are MPs or chiefs are not eligible for these positions.⁴²⁰ In 1999 the President personally chose MMD candidates to stand for these positions. MMD councillors who dared challenge the President's candidates were suspended from the Party.⁴²¹ The MMD councillors in most councils overwhelmingly outnumbered opposition councillors.

A council may establish standing and occasional committees consisting of such number of members as the council may determine, for the purpose of examining and reporting on any matter and of discharging any functions of the council delegated to them under the Local Government Act.⁴²² But meetings of council committees are not open to the public.⁴²³

The day to day affairs of councils are managed by Town Clerks (for cities and municipalities) or Council Secretaries, and other supporting staff, appointed by the councils.

Councils are empowered to make by-laws to facilitate governance in areas under their control, including those for the imposition of all or any of the following levies:

- a levy on leviable persons owning or occupying property or premises situated within the area of the council;
- a levy on leviable persons carrying on a business, trade or occupation within the area of the council; and
- a levy on the purchase or sale of a commodity within the area of the council.⁴²⁴

In 1999 President Chiluba superimposed on the councils the office of District Administrator, which office is supposed to coordinate government departments and programmes at district level. The DA is the head of the district. However, there is no statutory basis for this office. The President appointed MMD cadres, mostly those who were in favour of his

third term, to be District Administrators so that they could spearhead his third term campaign. Most of them lacked education, professional skills and administrative capacity. It was a backdoor way of using public funds to pay party cadres masquerading as civil servants.⁴²⁵

Transparency and Accountability

Section 29[1] of the Local Government Act makes all meetings of a council open to the public except in a number of situations.

However, section 29[2] allows a council, by resolution, to exclude the public from a meeting during the whole or any part of the proceedings, whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings.

Moreover, Standing Orders may confer on a council power to exclude the public in order to preserve order at meetings of the council. The council may disallow the taking of photographs of any proceedings or the recording or televising of proceedings.⁴²⁶

Council committees are smaller bodies made up of councillors, which deal with specific matters, for example, land allocations (land development committee). The committees make recommendations to the full council. Meetings of council committees are held behind closed doors, but not those of the council.

Most of the laws discussed in this report apply to Local and Provincial Government. Civil servants working at provincial or district level are bound by the General Orders. The ACC Act and the ZNTB Act apply with equal force to provincial and local governments.

Furthermore, the Local Government Act has provisions on conflict of interest. For example, section 27 requires any councillor who has any pecuniary interest, direct or indirect, in any contract, proposed contract or of other matter and is present at a meeting of the council at which the contract or other matter is being considered, to disclose the fact. He or she is barred from taking part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter. Failure to disclose constitutes an offence.⁴²⁷

There are no restrictions on post-local government employment.

Powers of the Minister over Councils

The Minister of Local Government exercises enormous powers over councils, among which are the following:

- he approves council budgets;⁴²⁸
- he makes constituency development grants or loans of money to councils on such terms and conditions as he may determine;⁴²⁹
- he appoints auditors for councils. He may give to a council such directions as he thinks fit to ensure that a council complies with the auditor's recommendations;⁴³⁰
- he may suspend or withhold grants due to a council if it fails to transmit to him within 60 days the Auditor's Report and statement of accounts;⁴³¹
- he may at any time direct that an extraordinary audit of all or any of the accounts of a council be conducted and for that purpose may appoint a public officer to be the auditor to the council;⁴³²
- the Minister may, after reviewing the Auditor's Report and explanations from persons concerned:
 - disallow any expenditure which has been incurred contrary to law;

- o surcharge the amount of any expenditure disallowed upon the person or persons responsible for incurring or authorising the expenditure;
 - o surcharge any sum which has not been duly brought into account upon the person or persons by whom that sum ought to have been brought into account;
 - o surcharge the amount of any loss or deficiency upon any person or persons whose negligence or misconduct the loss or deficiency has been incurred;
 - o certify the amount due from any person upon whom he has made a surcharge and cause a copy of the certificate to be furnished to such a person.⁴³³
- he must approve any sale or lease for a period of fourteen years or more, or any disposal of, any land or building by the council;⁴³⁴
 - he must approve any grants or loan of money by the council to public institutions, other councils or any other organisation;⁴³⁵
 - he must approve the imposition by councils of owners' rates and personal levy;⁴³⁶
 - he must approve the payment of councillors' fees, allowances for councillors and staff, allowances for the mayor or council chairman and expenses incurred in undertaking public hospitality;⁴³⁷
 - he may, by statutory order, confer additional functions on a council;⁴³⁸
 - no by-law made by a council under this Act shall have the force of law until the Minister has confirmed it;⁴³⁹
 - the Minister may refuse to confirm any by-law submitted to him or may confirm the by-law in whole or in part, or with such modifications as appear to him to be advisable and not opposed to the true spirit and intent of the by-law;⁴⁴⁰
 - the Minister may, by statutory order, amend or revoke any by-law by a council under the Act;⁴⁴¹
 - the Minister may, by statutory instrument, make regulations for any purpose for which, and to the same extent to which a council is empowered by or under the Act to make by-laws or standing orders.

Weaknesses

Local authorities have dismally failed to perform the functions assigned to them under the Local Government Act. Thus, they have failed to maintain health standards, to provide clean, safe water, to collect garbage, to provide street lighting, to enforce planning laws, to repair or build roads, to prevent fires, to run markets, to provide amusement parks, to regulate business, to control street vending, etc. The result has been a chaotic local government system which is riddled with inefficiency and corruption. The cities and towns are littered with unplanned settlements, ugly buildings, and illegal street vendors. MMD Party cadres allocate plots in illegal settlements with impunity when they have no power to do so. Efforts by some councils to demolish illegal structures meet with fierce resistance from politicians who draw political support from the illegal settlers and party cadres. Even efforts to clear the streets of illegal vendors are opposed by the politicians, including the head of state.⁴⁴² The former head of state even called the street vendors part of the "Office of the President" and even appointed a Deputy Minister to look after the interests of street vendors.⁴⁴³

Lack of resources is a major constraint as almost all the councils are broke and most cannot pay salaries to their workers regularly without the assistance of the central government. Some councils have not paid salaries for up to three years.⁴⁴⁴ The central government has taken away their major sources of revenue such as motor vehicle

licences, rental income from housing (as councils were, starting from 1996, forced to sell most of their housing units to sitting tenants at give away prices), markets and bus stations were turned over to MMD cadres, etc. The government has also exempted from schools, churches, government institutions and diplomatic missions from paying rates, thereby further reducing the councils' resource base. Most councils, particularly in rural areas, have no other reasonable sources of income apart from government grants, which are both inadequate and erratic.

Lack of accountability has been a major problem. Although the ACC, the Investigator-General, the Auditor-General and the Police have jurisdiction throughout the country, in practice because of limited resources and inadequate personnel faced by these agencies, they do not, apart from the police, have offices in most of the 72 districts. They have offices in some but not all the provinces. The Investigator General does not have any office outside Lusaka. This makes it difficult for these institutions to police most councils in the country. This has contributed to the rampant financial malpractices in councils.⁴⁴⁵

The rules on conflict of interest intended to enhance probity have been flagrantly violated. Councillors have been allocating plots to themselves and their relatives or selling plots, when they have no legal power to do so. They have also been allocating themselves council taverns,⁴⁴⁶ as was the case in Lusaka a few years ago, which led to the suspension of the council by the Minister of Local Government and Housing.⁴⁴⁷

Councillors have, in some instances, been suspended from office by the Minister of Local Government and Housing or been prosecuted for some of these illegal activities.

What has worsened the situation is the apathy shown towards council affairs by members of the public. Because of the dismal performance of local authorities the public has lost confidence in them. Few members of the public take an interest in meetings of the council or even in elections where voter turn out is extremely low. Few voters even know who the candidates in elections are. In the 1998 Local Government elections, for instance, only 644,159 people voted out of 2,468,909 registered voters. This represented only 26 per cent of registered voters and only 13 per cent of the eligible voters who were estimated to number 4,773,000.⁴⁴⁸

It is clear from the discussion that councils enjoy little autonomy. The Minister just has too much power over councils. The councils seem to be more accountable to the Minister than to the public. The vast powers conferred on the Minister are apt to be abused for political expediency, particularly if an opposition party controls a council.

Another major weakness is that fellow councillors rather than the residents of the district elect the Mayors and Council Chairmen and their deputies. Such officials are therefore likely to be accountable not to the public but to fellow councillors.

The imposition of unelected District Administrators as heads of districts further diminishes democracy at local level. The DAs are accountable to the appointing authority, that is the President, rather than to the residents of their districts.

Anti-corruption Activities

The government does not have a comprehensive strategy or plan to combat corruption. Its approach towards corruption in the last ten years has been piecemeal. Its intervention has been in terms of legislation and strengthening the legislative framework of existing anti-corruption institutions.

Anti-Corruption Legislation and Institutions

The one-party government of Kenneth Kaunda first introduced corruption-specific legislation in 1980, with the enactment of the Corrupt Practices Act. Before the enactment of the Corrupt Practices Act, corruption was covered under the Penal Code. There was no special agency tasked to handle corruption crimes. Moreover, the Penal Code covered only official corruption and did not extend to the private sector. Furthermore, it did not cover corruption in tender procedures, auction sales and voting at meetings. The penalties for corruption were also quite light. The manner the police went about investigating corruption also left a lot to be desired as they lacked specialised skills and were also amenable to political pressure and corruption.⁴⁴⁹

The enactment of the Corrupt Practices Act was, therefore, meant to address these shortcomings. The Act broadened the coverage of corruption to include the private sector and also stiffened the penalties for corruption. A new institution, the Anti-Corruption Commission, was created. It was to focus exclusively on corruption.

In 1973 the government also introduced a leadership code for leaders, which was made part of the Republican Constitution.⁴⁵⁰ It covered all persons in the service of the sole Party, the Government, local authorities, statutory corporations including institutions of higher learning, any Commission established by law, the Zambia Congress of Trade Unions and its affiliates earning above a certain annual salary.⁴⁵¹ The Act forbade leaders from running businesses or earning extra emoluments while in office. It also forbade leaders from owning real property outside Zambia or owning more than one piece of land (and that not exceeding ten acres) in Zambia. They were required to declare extra income to the Leadership Code Committee appointed by the President. Leaders also had to declare their assets within three months of assuming office. They were forbidden from receiving gifts and also abusing their office. They were not allowed to use information acquired while in office for private gain.⁴⁵² Failure to comply with the Code led to dismissal from office.⁴⁵³

When the MMD took power in November 1991 the Leadership Code was scrapped. Leaders were free to own or run businesses while in office as well as to earn extra income in whatever manner they could. For example, Ministers who were lawyers could practise law while still serving as Ministers. All restrictions on property ownership for leaders were removed. It was basically "free for all" or "make hay while the sun shines". The 'new culture' that was introduced glorified private accumulation of wealth irrespective of the method employed. The only concern was with Ministers and MPs being caught in conflict of interest situations. This was taken care of by the enactment, in 1994, of the Parliamentary and Ministerial Code of Conduct Act.⁴⁵⁴ This Act requires Ministers and MPs to file a declaration of assets and liabilities with the Chief Justice, and also to make declarations of interest in government contracts, etc. However, there is no monitoring mechanism established to oversee implementation of the Act. Its efficacy depends on members of the public writing to the Chief Justice to complain about Ministers or MPs breaching the provisions of the Act. Members of the public, in turn rely on the media to expose scandals committed by the leaders. This job has fallen to the privately owned press, particularly the Post Newspaper, which has suffered harassment at the hands of the authorities for its investigative reporting.

It is heartening that to date three Ministers and one MP have been forced to vacate their seats after Judicial Tribunals established by the Chief Justice found them guilty of embezzling or attempting to embezzle public funds. Unfortunately, the majority of Zambian citizens are not aware of the existence of this Act as the Government has done

nothing to publicise it. Moreover, it has not been translated into local languages. Another problem is that most people do not have access to the private media because of expense and limited circulation. Most people, particularly in rural areas depend on ZNBC Radio, which is nothing but a government propaganda organ which is not known for critical investigative journalism, particularly if it involves government leaders.

However, the Chiluba government did take some steps specifically aimed at combating corruption generally. In 1996 the Government enacted the Anti-Corruption Commission Act. This Act created an autonomous Anti-Corruption Commission. Whereas previously the ACC Commissioner reported to the President and acted under his direction, under the 1996 Act, the Director-General reports to the ACC Board appointed by the President. The 1996 Act generally strengthens the provisions against corruption in the ACC Act.

In 1996, following pressure from Civil Society and the Donor Community, the government adopted the Electoral Code of Conduct Regulations, aimed at reducing corruption during the Electoral Process. It forbids the use of public resources for election campaigns and also provides for balanced and fair coverage of election campaigns by the media. Unfortunately, this Code does not also have an enforcement mechanism. None of the investigative organs accepts responsibility for enforcing the Code. As a result the Code is flagrantly ignored, particularly by the ruling party which liberally helps itself to public funds and government resources, like vehicles, in its election campaigns.⁴⁵⁵

In a further effort to show its commitment against corruption, the MMD government in November 2001 enacted the Prohibition and Prevention of Money Laundering Act. The impact of this Act is yet to be seen. The Anti-Money Laundering Authority was only constituted in mid-2002.⁴⁵⁶

Although the government must be commended for passing the various pieces of legislation outlined above, the fact of the matter is that the legislation has done little to deter corruption. The major reason is that the top political leaders, particularly President Chiluba, have not had the political will to fight corruption. It is arguable that the passing of legislation has been done, not out of a genuine desire to fight corruption, but merely to impress the bilateral and multilateral donors so that they can release aid to Zambia. An indicator of this is the deliberate under funding of the ACC, the AG's office, the DPP's office and the Electoral Commission of Zambia. These institutions have, over the years, been denied sufficient operational funds. In contrast, the President had a huge amount of money (the Presidential Discretionary Fund), which was several times bigger than the budgets of these institutions. He used the "slush fund" to buy political support. In 2001, for example, the Treasury released K120 billion to the Presidential Discretionary Fund, to facilitate the illegal third term campaign.⁴⁵⁷ This was at a time when the ACC, for example, was virtually down on its knees for lack of operational funds!

Specific Activities

Government has, through the institutions it has created, been undertaking a number of activities. Since the activities have already been discussed under the NIS pillars above, what follows is a short summary of the same.

Corruption Prevention and Community Education

The main anti-corruption agency, the ACC, has been conducting corruption prevention and awareness activities. The awareness activities have involved dissemination to the public on the evil and dangerous effects of corruption on society in order to encourage the public to actively participate in the fight against corruption. Among activities undertaken have been: the production of radio and TV programmes on corruption; the production and distribution of posters ("the price of Corruption", "stop Corruption", and "Stamp Out Corruption"); production of a newsletter, the ACC News; drama; and giving lectures on corruption, etc.⁴⁵⁸ In 1999, for instance, the ACC conducted 420 lectures across the country reaching more than one million people including heads of government departments and their staff, secondary school teachers and their pupils, chiefs, villagers and local communities in town. The lectures were funded by Norway.⁴⁵⁹

The Commission has also, since October 2000, been conducting a monthly public discussion programme on the theme "Promoting Integrity in Public Life" in different towns. The debates are sponsored by DFID.⁴⁶⁰

The Commission has also been conducting Managerial Accountability workshops for both private and public institutions. For example, in 1999 twenty-one such workshops were held. These workshops are aimed at: helping establish controls and standards for accountability and transparency within such organisations; to identify procedural practices that are vulnerable to abuse, cheating and manipulation and to create plans of action for improving structural accountability and transparency; giving the participants chance to generate innovative solutions for addressing abuses.⁴⁶¹ The Australian Government under the Africa Good Governance Fund has funded these workshops.⁴⁶²

These activities have to a large degree been successful for two main reasons. First, they have been well-funded by the donors, particularly Norway, Australia and DFID. Secondly, the ACC has been working closely with Civil Society groups such as TIZ, Foundation for Corruption Awareness, Integrity Foundation, NAMAC and drama clubs such as Twatasha Theatre and Dance Ensemble, and Kamoto Theatre Group.

The ACC has also undertaken corruption prevention measures by stationing personnel in institutions prone to corruption, such as the Zambia Police (Roadblocks), the Passports Office, Roads Department (weigh-bridges), Zambia Revenue Authority (Internal Affairs Unit), Lusaka Water and Sewage Company, Barclays Bank (Internal Audit), etc. The seconding of officers to various institutions has helped reduce the incidence of corruption in those institutions as well as boosting revenue. For example, in 2000 as a result of stationing ACC officers at weigh-bridges, the department of roads collected over K500 million in fines imposed on erring transport companies who overloaded their vehicles during a period of four months. This figure was "several times the total collected in fines the whole of the previous year, 1999, by the Roads Department."⁴⁶³

This programme could even be more successful if the ACC had adequate manpower, transport and communications equipment and if ACC officers were well-remunerated.

Investigations and Prosecutions

The ACC has been conducting corruption investigations and prosecutions over the years with limited success, if any. The results have been dismal, to say the least, as this has been one of the departments adversely affected by the poor funding to the institution. Moreover, the lack of adequate manpower has also contributed to the dismal record. Operations have also been hampered by poor communications and lack of transport. According to the ACC's Report for the year 2000, "The communication system in the Commission completely collapsed during the year under review. The communication radio system collapsed due to machine breakdown and lack of maintenance and failure to replace items like batteries for radios. The switchboard at Headquarters broke down and staff relied on a few direct lines in some offices. This made it difficult for Commission clients to contact the Commission."⁴⁶⁴

Donors have not been of much help in this area. Their help has been limited to funding training for staff. For example, DFID has been sponsoring a number ACC officers to train as prosecutors at NIPA and the Zambia Institute of Advanced Legal Education (ZIALE), and others to pursue the LL.B degree at the University of Zambia.⁴⁶⁵

The dismal record of the Commission is evident from the following statistics. In the year 1999 the ACC received 1325 complaints out of which investigations were authorised in 460 cases. There were 100 prosecutions resulting in only 30 convictions.⁴⁶⁶ In the year 2000 the ACC received 1262 reports out of which 403 investigations were authorised. The Legal and Prosecutions Department handled 140 prosecutions, out of which only 11 people were convicted, 20 were acquitted, 4 cases were withdrawn by the state by way of *nolle prosequi* because Magistrates had either died or resigned from the Judiciary or witnesses could not be located or had died, 13 cases were withdrawn due to the death of accused persons, key witnesses and magistrates. Ninety-three cases were pending before the courts of law at the end of the year and were carried forward to 2001. The clear-up rate

of prosecutions was very slow mostly due to late or inadequate funding as Prosecutors were unable to travel for court sessions outside their Stations.⁴⁶⁷

The Task Force on Economic Plunder

In July 2002 President Mwanawasa set up a Task Force on Economic Plunder consisting of officers from the Zambia Police, Drug Enforcement Commission, Zambia Security Intelligence Service and the Anti-Corruption Commission. The Director-General of the ACC, the Inspector-General of Police and the Commissioner of the Drug Enforcement Commission are members of the Task Force. The command is led alternately by the Inspector-General of Police and the DEC Commissioner, while the DPP is the overall chairman of the Task Force. The main function of the Task Force is to investigate allegations of economic plunder against former President Chiluba and his associates. At the time of writing, the Task force has arrested a number of prominent personalities in connection with abuse of office including Richard Sakala (Chiluba's former Press Aide and Chairman of the illegal Presidential Housing Initiative), Xavier Chungu (former Director-General of the Zambia Security Intelligence Service), Allan Shasonga (former Ambassador to Washington), Faustin Kabwe (Executive Director of Access Financial Services and believed to be the mastermind of Chiluba's "Matrix of Theft"), Godden Mandandi (former Minister of Works and Supply), and Dr. Peter Machungwa (former Minister of Home Affairs). Some of the people being investigated, such as the former Minister of Finance and Minister of Foreign Affairs, Katele Kalumba, have fled the country. The Task Force has also frozen scores of Bank accounts, confiscated real estate, vehicles, boats and other property believed to have been illegally acquired with public funds by the suspects. Chiluba would have already been arrested but for the presidential immunity he enjoys. Although the National Assembly, at the urging of President Mwanawasa and Civil Society, by a unanimous vote lifted his immunity in July 2002, he is contesting this in the Supreme Court, where a decision on his appeal is pending.⁴⁶⁸

The Mwanawasa regime's stance on corruption is refreshing and has done much to energise the Law Enforcement Agencies.

Donor Anti-Corruption Initiatives

The following bilateral and multilateral donor agencies and embassies are based in the country: SIDA, NORAD, IRISH-AID, USAID, JICA, GTZ, FES, CIDA, DFID, World Bank, IMF, DANIDA, UNDP, European Union, and the Royal Netherlands Embassy, and Australia

The donors have supported the following anti-corruption initiatives:

- Institutional reform and capacity building, in particular the development of a workable public expenditure control system. For example, the development of the Integrated Financial Management Information System [IFMIS] is considered a priority by the European Union, World Bank and the IMF.
- Support to government institutions such as the Anti-Money Laundering Unit, ACC, Governance Development Unit, Ministry of Legal Affairs, ZNTB, the Human Rights Commission, and the Judiciary. For example, FINNIDA recently released US\$150,000 to the Anti-Laundering Authority, which was established in June 2002.
- Assistance to the Anti-Corruption Commission:
 - o The Royal Norwegian and Finnish Governments from 1997 to date have supported activities covering corruption prevention and community education.
 - o The British Government sponsored the "Programme for the Education on and the Prevention of Corruption" worth 2,076,000 pounds sterling which begun in 1998. A project coordinator has been employed to administer the funds.

- o The Australian Government funded the "Corruption Education and Prevention Project" to the tune of Aus \$100,000 in 1999.
 - o In 1998/99 the USA government sponsored the production and distribution of a documentary on corruption which cost \$15,000. The documentary was to be translated into the seven major local languages.
- Support to NGOs involved in anti-corruption activities, such as Transparency International-Zambia, Integrity Foundation of Zambia, FODEP, AFRONET, Coalition 2001, National Movement Against Corruption [NAMAC] and Foundation for Corruption Awareness.
- Sector Wide Approach Programme [SWAP] in the health and education sectors have been adopted by donors in order to enhance the day-to-day monitoring of basket funds and to preclude waste.
- In 2002 the World Bank is funding a baseline survey on corruption to establish the perceptions and experience of corruption and service delivery among public servants, households and businesses.
- The World Bank is developing a public sector accounting profession.
- Sponsoring Staff of Governance institutions to attend training both at home and abroad, e.g.
 - o SIDA sponsored a senior Legal Officer from the Commission for Investigations to attend an advanced study programme on Human Rights and Humanitarian Law in Sweden from 2nd to 13th November, 1998.
- Sponsoring seminars, e.g.
 - o The Commission for Investigations in conjunction with the Friedrich Ebert Stiftung held seminars for senior civil servants on the theme "Ethics in the Public Service" in 1998
- Capacity building for the Auditor-General's office, e.g.
 - o The World Bank and the Norwegian Government have assisted in the training of staff
 - o Donors have since 1997 donated vehicles, computers and related accessories, and other office equipment
- Sponsoring study tours of overseas institutions by Commissioners and Staff members of the Commission for Investigations, e.g.
 - o The Norwegian Embassy sponsored the Investigator-General and staff of the Commission for Investigations on a study tour: of Norway from 20th to 25th April, 1998; to the Office of the Ombudsman, Malawi from 12th to 15th July; and to the Permanent Commission of Inquiry, Republic of Tanzania from 15th to 17th July, 1998.
 - o The British Council sponsored a special study tour to UK of the Investigator General and a staff member from 9th to 24th May, 1998
- A number of donors insist on audits being conducted on their projects and programmes.
- Donors have increased the use of conditionalities in their dealings with government.
- Some donors include clauses in their contracts with government and NGOs relating to corrupt practices in the execution of the contract. An example of such a clause is the following by Norway,

- “No offer, gift, payment or benefit of any kind, which would or could be constructed as an illegal or corrupt practice, shall be accepted, either directly or indirectly, as an inducement or reward for the award or execution of procurement contracts.”

Donor support of anti-corruption efforts has had mixed results. Donors are the major source of funds for Civil Society. Without donor support most organisations would collapse. Civil society has done a lot to sensitise the public about corruption. It has also exposed corruption through research and has also played an oversight role on both the government and the governance institutions. Through advocacy, Civil Society has pressured government to be more accountable. For example, Civil society in 2001 forced President Chiluba to abandon his bid to change the Republican Constitution so that he could run for a third term of office. Again, it was as a result of Civil Society’s pressure that President Mwanawasa embraced the anti-corruption fight, which was in fact not part of his election manifesto. Civil Society pressured the National Assembly to lift former President Chiluba’s immunity so that he could be investigated and prosecuted for plunder of national resources. The Chief Justice was forced to resign by Civil Society when it was revealed that he had received at least \$168,000 in bribes from the former President. President Mwanawasa had allowed him to retire gracefully. When it was revealed that the Auditor-General had paid back money he had received from the infamous Zamtropol account run by the Director General of Intelligence, Civil Society demanded the AG’s resignation or his dismissal. As a result, President Mwanawasa decided not to extend the AG’s contract when it expired.

The support provided by donors to the Governance Institutions has allowed them to carry out activities which they otherwise would not have been able to. As stated throughout this study, governance institutions have been grossly under funded over the past decade. The government was in most cases only providing funds for salaries. Little money was going towards operations. Thus, the public education campaigns by the ACC, for example, were entirely donor funded.

Donor aid has also been useful in building up the capacity of governance institutions. This has been done through sponsorship of study tours of commissioners or staff members, sponsoring training of personnel, provision of equipment (computers and accessories), vehicles, rehabilitation of infrastructure (such as court rooms, offices of the Permanent Human Rights Commission), etc.

However, in many cases, donor aid has been ineffective because of the high staff turnover at the assisted institutions owing to poor conditions of service and lack of professionalism. Thus, most of the staff who have been exposed to training funded by the donors have not stayed long in their positions to make a difference, or to impart their newly acquired skills to their colleagues. It is the view of donors that some of the institutions they have assisted, such as the AG’s office and the ACC, lack absorptive capacity. Donors have poured huge amounts of money into these institutions without any appreciable results being achieved.⁴⁶⁹

In addition, some of the equipment donated by the donors has not been put to optimum use because the staff of the beneficiary institutions have not been given training in the use of the equipment. For example, the computers donated to the Commission for Investigations have not been put to use because the staff have not been trained in their use. The same can be said of the judiciary where most of the judges have not as yet been given computer and Internet training. In cases where vehicles have been donated by donors, the major drawback has been lack of an operational budget as the vehicles require fuel to run as well as regular servicing.

Political interference has also worked to negate most of the gains from donor assistance as the top officers of the governance institutions lack real autonomy, despite the provisions of the law. Officers who have tried to act professionally have often been victimised. Moreover, institutions which annoy the executive branch have difficulties getting their monthly budgetary allocations of funds on time or even in full.

Donor Cooperation or Coordination

Until recently there wasn't any coordination among donors with respect to anti-corruption programmes. Each donor had its own focus. However, the donors are now moving towards adopting a common strategy. They have established a Quality of Government Expenditure Group chaired by Norway, whose task is to assess and develop a common donor policy towards "Quality of government Expenditure" [QGE]. The Group in 2001 commissioned a mapping study on donor practices, plans and strategies to fight corruption. The mapping study revealed that several donors had not articulated a policy against corruption. A meeting attended by all donors decided that the Quality of Government Expenditure [QGE] Group should follow up a Royal Norwegian Embassy initiative to develop recommendations on corruption for the whole donor community in Zambia.⁴⁷⁰

The Working Group on Anti-corruption [WGC] was subsequently formed with representatives from Norway [Chairperson], the IMF, the Netherlands Embassy and the Department for International Development [DFID]. This Group has been having regular meetings since October 2001 and has also had meetings with the ACC, Zambia Chambers of Commerce and Industry, TI-Zambia and Integrity Foundation.⁴⁷¹

Priority Areas and Areas of Possible Donor Support

It is clear from the discussion that most of the building blocks for a National Integrity system do exist in Zambia. The legal framework for the fight against corruption and money laundering is in place. It is largely sound albeit there is some room for improvement. There are also several governance institutions which, by virtue of law, are autonomous. There is a specialised anti-corruption Commission, which if given the necessary support, has the potential to do a good job. The creation of the Task Force on Economic Plunder demonstrates the positive results that can come from closer collaboration and coordination among the investigative and prosecution agencies. The judiciary is another institution which, despite difficulties, largely functions well. The DPP's office, if properly supported and granted institutional and administrative autonomy, is capable of contributing to the observance of the rule of law. The Civil Service Reform Programme if fully and properly implemented has the potential to improve the performance of the Civil Service, which has been very disappointing. Civil Society, though small but growing rapidly, is increasingly playing an influential role in making the government accountable. The Zambia Police Force has largely played a negative role in matters of accountability and transparency as the politicians have invariably used it as a tool to suppress dissent. The same can be said about the government owned media. Local Government is yet another sector that has failed to perform according to expectations. Another institution that has failed is the Electoral Commission which has in the last ten years been organising flawed elections, which have led to political instability.

The key areas or issues requiring immediate attention are:

- Lack of a mechanism for monitoring assets of public officials, Ministers and MPs.
- Lack of a law on political party and election campaign financing.
- Lack of genuine independence of the key institutions in the fight against corruption: the ACC, the Auditor-General's Office, the DEC and the DPP. Although they are independent on paper they have no control over their budgets or the release of approved funding. Some constitutional office holders such as the Auditor-General and the DPP have no operational autonomy as they have no control over the staff under them.
- The various institutions involved in the fight against corruption do not have sufficient capacity to perform their functions effectively. They are seriously under-staffed, their workers are de-motivated because of poor conditions of service and most of them lack specialist skills.
- The ready acceptance of corruption by the public; corruption has become so endemic that it is considered to be part of Zambian culture.

- The lack of legal protection for whistle-blowers.
- The poor salaries and conditions of service in the public service, which force many public officials to engage in corruption to supplement their meagre salaries.
- The lack of a comprehensive government strategy to combat corruption.
- The overwhelming dominance of the President in the government machinery.
- Lack of effective co-ordination among the various anti-corruption institutions. As a result, for example, there is no follow-up of the Auditor-general's Reports.
- Lack of a code of conduct for Civil Servants and Local Government councillors and staff.
- Lack of genuine autonomy of Local government as manifested in the lack of a sustainable resource base and the overwhelming power the central government exercises over them through the Minister of Local Government.

Discussion of Key Issues

The NIS

The National Integrity System in Zambia has not operated well to date, hence the phenomenal growth in corruption. The following are some of the key issues pertaining to the operations of the system.

Political Will

Despite the existence of various institutions making up the NIS in Zambia a major contributing factor to the exponential growth of corruption in the last ten years has been the absence of political will to fight the scourge. The top political leadership and senior government officials actively participated in acts of grand corruption. Many such leaders, including former President Chiluba, are currently being investigated or prosecuted for corruption. While in power they did everything possible to frustrate any effective attack on corruption. This is manifested in the failure of the government to adopt a national comprehensive strategy to fight corruption. Everything was left to the ACC, which was seriously handicapped because of staff, logistical and financial constraints. Further evidence of lack of political will is the deliberate under-funding of anti-corruption institutions and the failure to punish those exposed as being corrupt in numerous reports of the Auditor-General, the press and the Public Accounts Committee. In fact, corrupt officials were warmly embraced by the leadership, especially by the President.

Lack of Capacity of Key Anti-Corruption Institutions

The study has revealed that Government institutions set up to fight corruption have inadequacies, which have seriously affected their operations. The inadequacies revolve around poor funding. This is linked to the lack of political will. The low level of funding reflected the low priority accorded to the fight against corruption by the Executive Branch, which controls the national purse. Owing to inadequate funding the anti-corruption institutions do not offer competitive conditions of service to attract qualified manpower and also have a high staff turnover. They often do not have the necessary facilities, equipment or operational funds for their work. All of them have serious manpower shortages. Furthermore, the existing staff in most cases lack specialized skills. The institutions are unable to train staff adequately or to send them for specialized training because of the perennial problem of poor funding. In many cases, government has been providing funds only for salaries and not for operations, thereby incapacitating these institutions. It is imperative for the government to adequately fund these institutions if the fight against corruption is to be won.

Moreover, there is little formal co-ordination among the different institutions fighting corruption. Although they do refer clients to each other there are no follow-ups and no systematic co-ordination of their responsibilities. It is hoped that the Task Force on Economic Plunder will provide valuable lessons on how the various Law Enforcement agencies can work together effectively. There is need for inter-agency collaboration to be anchored on appropriate legislation, which currently does not exist.

Inadequate Legal Framework

Although the general legal framework for fighting corruption does exist, it does have serious deficiencies that must be attended to as a matter of urgency. For example, there is need for legislation to protect whistle-blowers, to regulate political party funding, and to regulate expenditure on elections. Moreover, there is no Code of Conduct for Public Service workers as well as the Zambia National Tender Board. Neither is there a Code of Conduct for councillors and Local Government staff.

Although there is legislation that prohibits public officials from accepting substantial gifts, there is no monitoring mechanism to ensure that the rules are complied with. Gifts given to Ministers and public officials need to be recorded in a register and the maximum value of gifts a public officer can receive should be specified. Moreover, there should be a mechanism for monitoring gifts as well as assets of political leaders, public officials and personnel of the Zambia National Tender Board.

The rules on conflict of interest do not seem to have worked and certainly need strengthening. Political leaders and public officials should not be allowed to run businesses or practise their professions while still in office. They should place their business interests in blind trusts. But for this to work the remuneration packages for such officials would need to be substantially increased to obviate the need for them to find alternative sources of income to sustain them.

It is recommended that both political leaders and public officers report their assets to the ACC, which should have the task of verifying and monitoring the same.

Insufficient Autonomy of Institutions

All the institutions involved in combating corruption lack meaningful autonomy despite the fact that in most cases the law says they are independent. The excessive powers vested in the presidency have undermined their independence. The President controls the entire government machinery, not only in terms of appointments of key personnel but also in terms of control of funds. Under Chiluba's rule, the government departments, local councils, law enforcement agencies and statutory bodies were deliberately starved of operational funds. The President established a slush fund, the "Presidential Discretionary Fund", which had unlimited resources which were not subject to any audit or parliamentary oversight. He made "donations" from this fund. The fund seriously compromised the work of government departments as everyone looked to the President for funding, by-passing relevant departments.

The lack of autonomy of the anti-corruption institutions manifests itself in various ways.

First, they have no control over their budgets or the release of the funds approved in the national budget. Although they make budget proposals, these are often ignored by the Executive branch. The National Assembly has no real control over the budget, and in any case, it has merely been a rubberstamp in the last decade. There is need for these institutions to be self-accounting and to be permitted to submit their budgets directly to the National Assembly. The law must compel the Ministry of Finance to release the approved funds in full and in a timely manner.

Second, some of the institutions (Auditor-General, Judiciary and DPP) do not have control over all, or most of their personnel, as such personnel are part of the Civil Service which is controlled by Cabinet Office.⁴⁷² There is need to detach the personnel from the Civil Service and place them directly under the institutions concerned in order to enhance accountability and the autonomy of the institutions.

Low Remuneration in the Public Service

Conditions of service in the public service, including the law enforcement institutions are unacceptably low. This is a fertile ground for corruption. Moreover, the Public Service is invariably unable to recruit and retain highly qualified personnel who can contribute to more efficient government, uphold the rule of law, and improve service delivery. Any serious reforms undertaken to combat corruption must not ignore the appalling conditions under which public service workers work.

Corruption as Part of Zambian Culture

There seems to be ready acceptance of corruption by the public. During the past ten years corruption has become part of Zambian culture. Corrupt politicians and public officials can only thrive if the public does not see anything wrong with corruption. Since the State started investigating economic plunder by the Chiluba regime some traditional

chiefs in Luapula Province have expressed great unhappiness with the investigations. They see the investigations as harassment of the Bemba people. Some political parties, notably the Zambia Republican Party of Ben Mwila, have also taken this line. One Luapula chief even described the wanton theft of public resources by the Chiluba regime as "a mistake", which should be forgiven as everybody makes mistakes. There is, therefore, need to raise public awareness about the need to fight corruption so that there is zero-tolerance for corruption.

Need for an Independent Prosecutions Service

The office of the DPP, which is the fulcrum of criminal prosecutions, has over the past decade been downgraded in status and therefore been susceptible to political manipulation. This is evident from the poor funding, severe staff shortage and lack of a permanent headquarters. There is no doubt that reforms are necessary to strengthen its capacity.

First, it should not be an appendage of the Ministry of Legal Affairs. The DPP must have organizational and financial autonomy. The implications of this is that the DPP must draw up his own budget and should receive funds directly, and not through the Permanent Secretary, Ministry of Legal Affairs.

Second, the Office should recruit its own lawyers and be responsible for determining their conditions of service, promotions and discipline. It should have sufficient lawyers so that it can stop relying on police prosecutors who are inadequately trained. State advocates must also be exposed to further training to equip them with specialized skills to enable them prosecute complex cases.

Third, the laws should empower the DPP to compel the Police Command to investigate cases and also to submit case dockets to him upon demand.

Fourth, the Attorney General should not have authority to give instructions to the DPP, as this is the conduit through which politicians interfere with prosecutions.

Need for a Professional Police Service

The Zambia Police lacks professionalism. It has been acting at the behest of politicians in power. The Police Service has over the past decade, with the encouragement of the President and senior MMD and government officials, been instrumental in undermining the Rule of Law. Corruption, torture of suspects, human rights abuses and selective arrests have been rife in the Police Service.

The insecurity of the job of Inspector-General of Police has largely contributed to the lack of professionalism of the Police. The IG has been subject to political manipulation. Thus, in order to insulate the Police IG from political pressure, he should enjoy security of tenure equivalent to that of judges of superior courts. It is also important that police are trained in specialized skills to increase their capacity to detect and investigate acts of corruption. To reduce the endemic corruption among the Police there is need for their salaries and conditions of service to be raised to levels commensurate with the responsibilities of their jobs.

Need for Greater Parliamentary Involvement in the Budgeting Process

The Study has revealed that the National Assembly has little control or influence over the budget. Not only do MPs not have a role in formulating the budget but they also have no power to ensure that funds are expended in accordance with the Appropriation Act. There is simply no fiscal discipline in government. A study of the Reports of the Auditor General indicates that budget releases are not always in accordance with the allocations in the Act. In fact some Government Department spend far in excess of their budgetary allocations, resulting in the executive presenting a huge supplementary budget at the end of the year. The MPs are presented with a *fait accompli* and their role is reduced to rubberstamping the supplementary budget. For example in late November 2002, the National Assembly approved a supplementary budget of K481.6 billion.⁴⁷³

Need for Genuine Decentralisation of Power to Local Authorities

Local councils are in a mess. The Local Government Act gives local authorities numerous functions. But no corresponding resources are provided to the councils. Moreover, the councils are answerable to the Minister of Local Government and Housing, rather than to the residents of the district. The political interference in the running of local councils by political leaders from the Centre coupled with the Minister's excessive regulatory powers seriously impair the work of local authorities. DAs who head districts are not elected by the people and in practice there are frequent clashes between them and Mayors/Council Chairmen as the lines of responsibility are not properly delineated. Moreover, the office of DA is not backed up by any legislation. This office has no useful role and should be abolished as it is just draining resources that could go a long way in helping the councils deliver basic services to the people. It is unacceptable that Mayors and Council Chairmen and their deputies are not elected by the voters but by fellow councillors. This makes such officials accountable to their fellow councillors and their political parties. Furthermore, meetings of council committees are closed to the public. Needless to point out that the poor remuneration of council employees is a source of corruption and low morale among council workers and leads to the general lack of accountability among council workers.

The need for reforms to rejuvenate Local Authorities, to make them more accountable to the people, and to improve their capacity to deliver basic services cannot therefore be overemphasized. The reforms must ensure that the devolution of powers to lower organs entails the transfer of formal powers to local organs, which make decisions about the use of resources and other local matters and the administrative staff are accountable to the locally elected political leadership. The Constitution must guarantee revenue for local authorities and must spell out a revenue sharing formula between Central Government and Local Government which is not susceptible to manipulation by the former. Remuneration packages should also be improved if councils are to engage well-qualified and well-motivated workers.

Fresh Start for Zambia

The installation of the Mwanawasa "New Deal" Administration has breathed new life into the Anti-corruption fight. Its emphasis on good governance and zero-tolerance for corruption has provided the necessary political will to galvanise the anti-corruption institutions. The Anti-Corruption institutions have been energized and now feel encouraged to pursue the corrupt elements without fear of retribution from the government.

The change in the composition of the National Assembly offers the prospect of greater and more effective parliamentary oversight of government operations. For the first time in Zambia's history the Assembly has the opportunity to be really independent of the executive. But MPs lack capacity to effectively discharge their functions. They need training and also access to qualified staff who could help them in research, for example. Furthermore, the law must be changed to augment the powers of the National Assembly, particularly in budgetary matters. Its committees must have power to compel executive officials to comply with the Assembly's decisions, including power to stop release of funds to truant ministries. The Assembly should also have power to scrutinize all international agreements, including loan agreements.

Lastly, the Ombudsman's office, which can play a crucial role in checking abuse of power by public officials needs to be strengthened. It should be an office of parliament, its proceedings must be held in public and it should have enforcement power. It must be given sufficient resources to enable it decentralize, recruit adequate staff, offer competitive conditions of service, publicize itself and carry out operations.

Effectiveness of Government and Donor Activities

As indicated elsewhere in this study, the government has not devised a comprehensive strategy or plan of action for fighting corruption. All it has done in the last ten years is to enact legislation and to create institutions tasked to combat corruption among other

functions. There is need for the government to devise a comprehensive policy to combat corruption and to strengthen the National Integrity System. Such a policy must not only focus on prosecution or punishment of offenders, but also on preventive measures.

Donor support has been crucial in supporting both Civil Society and government institutions. The donor programmes that have had some measure of success are those directed towards corruption prevention. As noted earlier, the Anti-Corruption Commission has conducted numerous public sensitisation activities only because of donor assistance. Similarly, Civil Society has been sensitising the public on the evils of corruption and conducting research as well as engaging in capacity building as a result of donor support. Capacity building of Anti-Corruption Institutions has been another area that has received support. The supply of equipment, vehicles and funds for rehabilitation of dilapidated infrastructure and training of personnel to the Anti-Corruption institutions has been helpful. But it has not had a major impact because such help has been neutralised by other factors: lack of training in the use of the equipment; inadequate operational funds from government; poor conditions of service for staff leading to a high turnover of professional staff; political interference in the operation of the institutions; lack of genuine autonomy, etc.

The donors have not fully supported investigations and prosecutions. This explains why the Anti-Corruption Commission's record in this area has been nothing to write home about. Similarly, the Police Force and the DPP have not received much support from the donors, hence their ineffectiveness in arresting and successfully prosecuting corrupt people. As a result, corruption is not a high risk, low return venture in Zambia. On the contrary, the chances of one being caught, and if caught being tried and convicted, are so slim that the law on corruption does not serve as an effective deterrent.

Priorities and Recommendations

Given the magnitude of the problem of corruption in Zambia it is recommended that priority must be given to prevention. This should involve:

- intensified public education about the evils of corruption so that the public can have zero-tolerance for corrupt leaders, public officials and businesses. Corruption thrives where the public is tolerant;
- development of a Code of Conduct for public officials which promotes ethical behaviour, and fosters a culture of rejection of corruption through respect for public honesty, the proper exercise of responsibilities and the development of integrity of public officials. The Code should set standards of conduct for correct, honourable performance of public functions, with the aim of preventing conflicts of interest, and requiring the proper conservation and use of resources entrusted to public officials in the performance of their functions. The Code should also contain disciplinary measures against public officials who violate those standards;
- education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions;
- design of appropriate Codes of Conduct by/for the private sector;
- public officials being obliged to make declarations to the appropriate authorities regarding:
 - o employment or investment that may constitute a conflict of interest with respect to their functions as public officials;
 - o gifts or benefits obtained in the course of their duties and functions as public officials.

Second, institutions tasked to curb corruption (ACC, DPP, Police, Ombudsman, the Auditor-General, DEC) need to be assisted in order to enhance their capacity. Such assistance

should be in the form of specialised training for their staff, retention of highly qualified staff and support of their programmes.

Third, it is recommended that donors support constitutional and legislative reforms designed to:

- strengthen the operational and organizational independence of the anti-corruption institutions;
- reduce the vast presidential powers in order to strengthen checks and balances;
- repeal laws that inhibit media freedom, and enactment of a Freedom of information Act;
- regulate political party funding;
- correct the imperfections of the electoral system in order to guarantee the free expression of the electorate's will, in particular an effective mechanism for enforcement of the Electoral Code of Conduct must be devised, sanctions for violations of the Code of Conduct have to be stiffened;
- strengthen the rules for public procurement by requiring:
 - o public dissemination of information on both tenders and awarded contracts;
 - o introduction of a procedure for review of tender awards by an independent administrative body;
 - o blacklisting of companies or individuals who are involved in corruption;
 - o strict rules limiting sole sourcing;
 - o regular monitoring of the assets, incomes and life-styles of public procurement officers;
- protect whistle-blowers;
- introduce a mechanism to follow up reports of the Auditor General and the Ombudsman. This could be in form of an inter-agency committee comprising representatives from the law enforcement agencies and Civil Society;
- produce transparent and fair procedures for fixing remuneration and ensuring stability of tenure for the entire Judiciary, including Magistrates and Local Court Justices;
- make corruption an extraditable offence.

Fourth, donors should support:

- Civil Society involved in research, public awareness activities, capacity building and advocacy;
- the media through training of journalists in investigative journalism

Last, there is need for future research on the following areas:

- Public procurement
- The impact of presidential powers on the work of governance institutions
- How Anti-Corruption institutions can be strengthened in order to make them more effective.
- How the monitoring of assets of public officials can be monitored effectively
- Effective decentralisation of local government.

Endnotes

- ¹ Constitution of Zambia, article 33.
- ² Ibid, article 49(1).
- ³ Ibid, article 46.
- ⁴ Ibid, article 47.
- ⁵ Ibid, article 53.
- ⁶ Ibid, article 63.
- ⁷ Ibid, article 62.
- ⁸ These vacancies resulted from the death of two deputy ministers and the resignation of two Heritage Party MPs and the expulsion of one UPND MP, who have since joined the ruling MMD.
- ⁹ Constitution, article 92; The Supreme Court and the High Court (Number of Judges) Act, section 2.
- ¹⁰ The Supreme Court of Zambia Act provides for the constitution, jurisdiction and procedure of the Supreme Court as well as the powers of the Court.
- ¹¹ Cap. 269.
- ¹² Constitution, article 94. Other relevant Acts are the High Court Act, Cap. 27, the Criminal Procedure Code, and the Supreme Court and the High Court (Number of Judges) Act.
- ¹³ Industrial and Labour Relations Act, section 85(1).
- ¹⁴ Ibid, Part IV, section 86.
- ¹⁵ Subordinate Courts Act, Cap. 28, section 4.
- ¹⁶ National Mirror, April 15-21, 2002, "ACC probes cop over K30,000"; The Post, January 20, 1999, "Cop jailed 3 years for abuse of office"; Sunday Post, April 28, 2002, "Corruption in the police worries former IG Mtonga."
- ¹⁷ The Monitor, May 21-23, 2002, "Corruption at immigration exposed."
- ¹⁸ Today, January 16-22, 2002, "ZRA officers are Corrupt, Admits ZRA Commissioner"; The Monitor, May 10-13, 2002, "ZRA in a financial scam."
- ¹⁹ Robert K.K. Sichinga, MP, *Mobilizing Political Will to Fight Corruption*, 1 PROMOTING AND PROTECTING INTEGRITY IN PUBLIC LIFE IN ZAMBIA 10 (May 2001).
- ²⁰ TI-Zambia, The State of Corruption in Zambia Report FOR 2001, Chapter 1.
- ²¹ The Post, July 5, 2002: "Theft Matrix part III."
- ²² The Post, June 24, 2002, "Chiluba bribes Justice Ngulube with cash payments of over \$168,000"; The Post, June 25, 2002, "Chungu faces Arrest for money laundering, theft and bribery"; Ibid, "Analysis of Chiluba's matrix of plunder."
- ²³ The Post, June 29, 2002, "I feel emotionally Attacked-Chungu"; Ibid, July 1, 2002: "ACC Arrest Chiluba's Financial Mastermind-DEC nab Faustin Kabwe for money laundering."
- ²⁴ Tom Kenny, Zambia-Deregulation and the denial of human rights, Submission to the Committee on Economic, Social and Cultural RIGHTS 58-60 (Oxford: Rights and Accountability in Development, March 2000).
- ²⁵ The Post, February 14, 2002, "Sikatana Links Chiluba's Government to theft of Funds. The previous regime connived with Meridien to externalise \$90m." The Post, April 16, 2001, "Patel questions govt's hesitancy to probe \$90m theft."

- ²⁶ The Post, May 31, 2002, "Probe oil losses, urges IMF."
- ²⁷ The Monitor, May 21-23, 2002, "Recover \$7million Carlington maize cash, demands Afronet."
- ²⁸ Republic of Zambia, REPORT of the Auditor General on the operations of the Presidential Housing Initiative for the Period November 1998 to August 2001 presented to the National Assembly (2002).
- ²⁹ TOM KENNY, op cit 61-63.
- ³⁰ The Post, July 4, 2002: " MMD Vehicles were bought from Government Funds-Sata."
- ³¹ The Post, July 4, 2002, "MMD Vehicles were bought from Govt Funds-Sata."
- ³² Fodep, ZAMBIA'S 2001 TRIPARTITE ELECTIONS REPORT 25 (Lusaka, 2001).
- ³³ The Monitor, August 16-19, 2002, " Corruption a cancer, charges PF Leader"; The post, August 21, "MMD vehicles were not bought with Zamtrop money-Zimba"; Ibid, Editorial: "Return those vehicles."
- ³⁴ Ibid. at 26.
- ³⁵ Transparency International-Zambia, State of Corruption Report for 2001, p. 16.
- ³⁶ Constitution of Zambia, article 33.
- ³⁷ Ibid, article 44(5).
- ³⁸ Ibid, article 44(1), (2) & (3).
- ³⁹ Ibid, Part X.
- ⁴⁰ Ibid, article 43(1), (2). & (3).
- ⁴¹ Republic of Zambia, Speech by His Excellency The President Mr Levy Patrick Mwanawasa at the Special Meeting of Parliament on 11th July 2002 (Lusaka, Government Printers, 2002).
- ⁴² Frederick Jacob Titus Chiluba v. The Attorney-General 2002/HP/0630.
- ⁴³ Constitution of Zambia, article 37(1).
- ⁴⁴ The Post, May 30, 2001: "The Need for Speaker to convene Parliament is mandatory, says LAZ."
- ⁴⁵ Constitution of Zambia, article 49(1).
- ⁴⁶ Ibid, articles 49 and 50.
- ⁴⁷ Ibid, articles 29 and 30, respectively.
- ⁴⁸ Ibid, article 46.
- ⁴⁹ Ibid, article 47.
- ⁵⁰ Ibid, article 53.
- ⁵¹ Some of these institutions are discussed in detail below.
- ⁵² Constitution of Zambia, article 123.
- ⁵³ The Service Commissions Act, Cap. 259, section 7.
- ⁵⁴ Ibid, section 8.
- ⁵⁵ Ibid, section 16.
- ⁵⁶ Ibid, section 9(1).
- ⁵⁷ Ibid, section 9(2).
- ⁵⁸ Ibid, section 9(3).
- ⁵⁹ Ibid, section 10.

⁶⁰ Article 44(6) of the Constitution provides: " In the exercise of any functions conferred upon him ...the President shall, unless he otherwise obliges, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority."

⁶¹ Constitution of Zambia, articles 11–28.

⁶² *Ibid*, article 28(1).

⁶³ E.g. *Cuthbert Nyirongo v. Attorney-General* 1991/SCZ/10 (right to a passport), *Phyllis Kasempa v. Attorney-General* 1994/HP/4916 (discrimination on grounds of sex); *William Banda v. Attorney-General* 92/HP/1005 (freedom of assembly, association and expression).

⁶⁴ *Ibid*.

⁶⁵ Human Rights Commission Act, section 9(a) & (b).

⁶⁶ E.g. The Annual Report of the Commission for Investigations for the Year 1997 showed that the Commission received 793 cases during the year covering unlawful dismissals, non-payment or underpayment of benefits, allowances, long service bonus, unfair treatment, victimization, denial of promotion, denial to purchase a government house, wrongful demotion or transfer, etc.

⁶⁷ Constitution, article 52.

⁶⁸ Cap. 16.

⁶⁹ *Ibid*, section 5.

⁷⁰ *Ibid*, section 6.

⁷¹ *Ibid*, section 10(1) & (2).

⁷² *Ibid*, section 3.

⁷³ *Ibid.*, section 11.

⁷⁴ *Ibid.*, section 16.

⁷⁵ *Ibid*, section 7.

⁷⁶ Legal Affairs Minister Remmy Mushota and Patrick Katyoka, Mandevu MP (K210 million scandal). Both lost their parliamentary seats. In 2001, Peter Machungwa (Minister of Home Affairs) and Godden Mandandi (Works and Supply Minister), were found guilty of diverting K2 billion from the National Assembly to the MMD. Guy Scott, then Minister of Agriculture, was found innocent of allegations that he had received a kickback on a government contract. He had requested the Chief Justice to set up a tribunal to investigate the allegations against him. See *The Times of Zambia*, 8th August 1996, "Mushota is fired and that's final."

⁷⁷ Interview with Dr Kanganja, Chairman of the Public Service Commission and five other Commissioners held at Cabinet Office on 22nd May 2002. The Commissioners suggested that the filing of tax returns by Civil servants was a form of declaration of assets. However, not many individuals who are employed file tax returns in Zambia.

⁷⁸ Anti-Corruption Commission Act, section 3(2).

⁷⁹ *The Post*, July 1, 1994, "DPP assured me he'd arrest Health Minister".

⁸⁰ Interview with Ms. R. Wandi, Acting Director of Operations, ACC and Mrs. K.A. Ng'andu, Deputy Director of Human Resources, ACC on 22.05.02.

⁸¹ *The Post*, Friday September 2, 1994, "Gov't Shields Corrupt Leaders, says ACC". Both cases involved Michael Sata, who was then Minister of Local Government and Housing. In one case he was accused of diverting public funds meant for salaries for workers in Local Authorities to Standard and Chartered Bank, a Bank in which he held a substantial number of shares. He was also found to have abused his power in the award of a contract to construct some Council houses (Merzaf). The Attorney General directed the DPP not to prosecute Sata on the grounds that it would not be in the public interest to do so.

⁸² Interview with Mrs. R.M. Wandi, and Mrs. K.A. Ng'andu op. cit.

- ⁸³ ACC Act, section 13(2)
- ⁸⁴ Ibid, section 13(3)
- ⁸⁵ Ibid., section 11, 14.
- ⁸⁶ Ibid, section
- ⁸⁷ Ibid., section 26.
- ⁸⁸ The Parliamentary and Ministerial Code of Conduct Act, section 6(5).
- ⁸⁹ Interview with Dr. Kanganja and PSC Members.
- ⁹⁰ Kebby Malila, *Corruption in the Public Sector Procurement*, 1 THE CORRUPTION EYE 3 (Issue No. 1, September 2001).
- ⁹¹ Ibid.
- ⁹² Constitution, article 62.
- ⁹³ Ibid, article 63.
- ⁹⁴ Ministers are given twenty-one days notice of the questions.
- ⁹⁵ Committees are of three types:- (a) General Purposes Committee-Public Accounts Committee, Committee on Delegated Legislation and Committee on Government Assurances; (b) House Keeping Committees-^{Standing} Orders Committee and the Committee on Privileges, Absences and Support Services; (c) Departmentally Related Committees-Committee on Agriculture and Lands; Committee on Economic Affairs and Labour; Committee on Communications, Transport, works and Supply; Committee on Energy, Environment and Tourism; Committee on Health, Community Development and Social Welfare; Committee on Information and Broadcasting Services; Committee on National security and Foreign Affairs; Committee on Education, Science and Technology; Committee on Local Governance, Housing and Chiefs; Committee on Legal affairs, Governance, Human rights and Gender; Committee on Sport, Youth and Child Affairs
- ⁹⁶ Constitution, article. 37.
- ⁹⁷ Constitution, article 117 (3).
- ⁹⁸ Ibid, article 119(5).
- ⁹⁹ Ibid, article 120.
- ¹⁰⁰ The Electoral Commission Act, section 4(2).
- ¹⁰¹ Ibid, section 4(3).
- ¹⁰² Ibid, section 5(3).
- ¹⁰³ Ibid, section 5(3).
- ¹⁰⁴ Ibid, section 4(4).
- ¹⁰⁵ The current Commission has two judges of the High Court and two non-lawyers (a religious Minister and a social scientist).
- ¹⁰⁶ The Electoral Commission Act, section 12. The rest of the staff of the are also appointed by the Commission.
- ¹⁰⁷ Republic of Zambia, Report of the Auditor-General on the Accounts for the financial year ended 31st December, 2000 Presented to the National Assembly, paragraph 33, p.47.
- ¹⁰⁸ Constitution, article 77(9).
- ¹⁰⁹ Justice Bobby Bwalya, "The Role and Challenges of the Electoral Commission of Zambia in the Electoral Process", paper presented at the FODEP Conference on Electoral Reform in Zambia at Mulungushi Conference Centre, 25& 26th July 2002. Justice Bwalya is the chairman of the Commission.

- ¹¹⁰ Republic of Zambia, Report of the Auditor-General on the Accounts for the financial year ended 31st December, 2000 Presented to the National Assembly, paragraph 34, p.47; Justice Bobby Bwalya, "The Role and Challenges of the Electoral Commission of Zambia in the Electoral Process", paper presented at the FODEP Conference on Electoral Reform in Zambia at Mulungushi Conference Centre, 25& 26th July 2002.
- ¹¹¹ See Election Reports by FODEP, the EU Observer Mission, the Carter Centre and Coalition 2001.
- ¹¹² Cap. 119 of the Laws of Zambia.
- ¹¹³ The Electoral (Conduct) Regulations, S.I. No. 179 of 1996, Reg. 7(l).
- ¹¹⁴ Electoral (General) Regulations, Part IV: Corrupt and Illegal Practices and Election Offences.
- ¹¹⁵ Electoral Act, Cap. 13, Laws of Zambia, section 18 (1), (2)(a), (c).
- ¹¹⁶ Ibid, section 9(3) (as amended by Electoral (Amendment) Act, No. 23 of 1996).
- ¹¹⁷ Constitution, article 121(1)
- ¹¹⁸ Auditor-General Siame, who has been in this position since 1995, says that it is not necessary for one to be an accountant. Interview with Mr. F. Siame held on 21.05.02.
- ¹¹⁹ Constitution, article 122(2), (3). Interview with Dr. Joshua Kanganja and PSC Members.
- ¹²⁰ Constitution, article 121(2)
- ¹²¹ Constitution, article 121(3).
- ¹²² Constitution, article 121(4).
- ¹²³ Interview with the Auditor-General.
- ¹²⁴ Interview with Deputy Secretary to the Cabinet on 29.05.02.
- ¹²⁵ Republic of Zambia, Report of the Auditor-General on the Accounts for the financial year ended 31st December, 2000 Presented to the National Assembly, pp. 2-3.
- ¹²⁶ Republic of Zambia, Estimates of Revenue and Expenditure for the year 1st January, 2002 to 31st December, 2002, pp. 12- 21 (The Yellow Book); Interview with Auditor-General, op. cit.
- ¹²⁷ Ibid.
- ¹²⁸ Interview with the Auditor-General.
- ¹²⁹ Ibid.
- ¹³⁰ Ibid.
- ¹³¹ Republic of Zambia, Report of the Auditor-General on the Accounts for Financial Year ended 31st December, 2000, Presented to the National Assembly, paragraphs 11& 12.
- ¹³² Ibid, article 121(4).
- ¹³³ Ibid.
- ¹³⁴ Ibid.
- ¹³⁵ Republic of Zambia, Report of the Auditor-General on the Accounts for Financial Year ended 31st December, 1999, presented to the National Assembly, p.6.
- ¹³⁶ REPUBLIC OF ZAMBIA, REPORT OF THE AUDITOR-GENERAL ON THE ACCOUNTS FOR FINANCIAL YEAR ENDED 31ST DECEMBER, 2000, p. 269. Attached to the Report is an appendix, which contains recommendations of the Public Accounts Committee, which have not been implemented since 1991.
- ¹³⁷ Zambia Daily Mail, 5 March 2002, "ACC to engage lawyer to prosecute Mandandi's case."
- ¹³⁸ Interview with the Auditor-General.
- ¹³⁹ Constitution, article 91(1).

- ¹⁴⁰ Cap. 24 of the Laws of Zambia.
- ¹⁴¹ Ibid, article 97(2).
- ¹⁴² Other members of the JSC are: the Attorney-General; chairman of the Public Service Commission or his nominee; Secretary to the cabinet; a judge nominated by the Chief Justice; the solicitor General; an MP; a Law Association of Zambia representative; the Dean of the University of Zambia Law School; and a judge appointed by the President See section 3 of the Service Commissions Act 1991.
- ¹⁴³ No. 24 Of 1991.
- ¹⁴⁴ Principal Resident Magistrates, Senior Resident Magistrates and Resident Magistrates.
- ¹⁴⁵ Judicature Administration Act.
- ¹⁴⁶ Constitution, article 98(1).
- ¹⁴⁷ Ibid, article 98(3), (4) & (5).
- ¹⁴⁸ John Sangwa, "The Extent of Discretion in Public Law Remedies in Zambia." Paper presented to a Seminar of Judges held at Manchinch Bay, Siavonga from 12-18th December 1999.
- ¹⁴⁹ E.g. the High Court recently ruled that the Minister of Tourism had acted illegally by issuing hunting concessions to Safari Companies without due regard to tender procedures.
- ¹⁵⁰ E.g. *Chimba & Others v. Attorney-General* (1973) ZR 166, in which the court awarded damages to the applicants who had been subjected to torture, inhuman and degrading treatment by the police.
- ¹⁵¹ Constitution, article 1(3).
- ¹⁵² Ibid, article 1(4).
- ¹⁵³ SCZ Judgement No. 25 of 1995.
- ¹⁵⁴ 1998/HP/111 (Justice Tamula Kakusa).
- ¹⁵⁵ Constitution, articles 72(1) and 41(2), respectively. In fact, there is currently a petition challenging the election of President Mwanawasa in the Supreme Court initiated by three of the losing presidential candidates: Mazoka, Miyanda and Tembo. The High court has already determined six petitions while over 30 are still pending.
- ¹⁵⁶ The Weekly Post, January 24-30, 1992, "Independent Judiciary Needs Strengthening".
- ¹⁵⁷ Interview with Mr. Phillip Musonda, former Chief Administrator of the Judiciary and currently Judge of the High Court of Zambia held on 31st May 2002.
- ¹⁵⁸ See Chuulu, Chanda et al, *Women and Justice: Myth or Reality in Zambia*. Lusaka, WLSA 1999), chapter 3.
- ¹⁵⁹ Interview with the Director of Public Prosecutions, Mr. Mukelabai Mukelabai, held on 31st May 2002; The Post, June 26, 1996: "Lucy Carpets Magistrate..and accuses him of corruption".
- ¹⁶⁰ The Post, January 14, 1997, "FTJ Suspends Judge Chanda".
- ¹⁶¹ The Post, July 5, 2002, "Corrupt Practices" (article by Roger Chongwe, SC)
- ¹⁶² The Times of Zambia, January 20, 1996: "Miyanda fires salvo at Supreme Court Judges"; Ibid, "Supreme Court put in the dock".
- ¹⁶³ The Post, September 20, 1996, "FTJ linked to Rape Lies"; Ibid, "Mushota's expertise in conspiracies."
- ¹⁶⁴ Muna Ndulo, "Independence of the Judiciary is at Stake", in The Post, September 24, 1996; Law Association of Zambia, "injurious attacks on the Chief Justice", Press Release of 16th September 1996, published in The Post, September 20, 1996.
- ¹⁶⁵ The Post, June 24, 2002, "Chiluba Bribes Chief Justice Ngulube with cash payments of over \$168, 000."

- ¹⁶⁶ The Weekly Post, February 14-20, 1992, "Nabulyato Blocks ACC Probe Team".
- ¹⁶⁷ The Post, Feb. 20, 2002: "Chiluba lies about ACC Clearing Sakala."
- ¹⁶⁸ General Orders, chapter II: Appointments, acting appointments, promotions and transfers.
- ¹⁶⁹ Interview with the Deputy Secretary to the Cabinet held on 29.05.02.
- ¹⁷⁰ Ibid.
- ¹⁷¹ Republic of Zambia, Report of the Auditor-General on the Accounts For Financial Year ended 31st December, 2000, p. 69.
- ¹⁷² Republic of Zambia, Report of the Auditor-General on the Accounts For Financial Year ended 31st December, 2000, p.70.
- ¹⁷³ Interview with Deputy Secretary to the Cabinet, 29.05.02.
- ¹⁷⁴ Republic of Zambia, Report of the Auditor-General on the Accounts For Financial Year ended 31st December, 2000, p. 70.
- ¹⁷⁵ Interview with Dr. Kanganja et al.
- ¹⁷⁶ General Order 213(c) .
- ¹⁷⁷ General Orders, chapter IV: Conduct and Discipline.
- ¹⁷⁸ Interview with Deputy Secretary to the Cabinet held on 29.05.02.
- ¹⁷⁹ Constitution, article 65(7).
- ¹⁸⁰ Section 193 provides, inter alia:

(1) Members of the Civil Service shall ensure that the exercise of participation in political activities does not compromise their independent exercise of their functions, powers and duties as impartial servants of the general public.

(2) The National Assembly may prescribe a category of civil servants, who by reason of their seniority shall not be able to directly participate in political activities:

Provided that –

(a) the civil servants so restricted shall have the right to resign in order to participate directly in political activities;

(b) nothing in this section shall be deemed to prejudice any civil servant having the absolute right to vote in accordance with this Constitution;

(c) without prejudice to subsection (1) any civil servant whose functions are not directly concerned with the formulation and administration of the policies of the Government shall be exempt from restrictions under this section; and

(d)

(3) No Government or political party shall cause any civil servant acting in that behalf to exercise functions, powers or duties for the purposes of promoting or undermining the interest or affairs of any political party or individual member of that party, nor shall any civil servant acting in that behalf promote or undermine any political party or member of that party, save as is consistent with the provisions in this section.

(4) No government or political party shall cause any civil servant, acting in that behalf to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or interest group, nor shall any civil servant acting in that behalf cause such deployment, save as prescribed by this Constitution or an Act of Parliament consistent with the provisions of subsection (1).

(5) Any civil servant who contravenes this section shall be subject to such disciplinary measures as the Civil Service Commission considers appropriate, taking into account the gravity and circumstances of the contravention, subject to such regulations as may be prescribed by an Act of Parliament.

(6) Where the Civil Service Commission is satisfied that a government or political party or member of a political party has acted in contravention of subsection (3) or subsection (4), the Civil Service Commission may initiate proceedings before the High Court for punitive damages and, in the case of a contravention of subsection (4), the recovery of such resources or sums equivalent to the benefit of the enjoyment of those resources from the government or political party or member of a political party who has so benefited, as the case may be.

¹⁸¹ Afronet, Zambia Human Rights Report 1999, p. 58.

¹⁸² Law Association of Zambia and CSUZ v. Attorney-General 2001/HP/0444.

¹⁸³ FODEP, Final Report on the Tripartite Elections held on 27th December 2001 (June 2002)

¹⁸⁴ Interview with Deputy Secretary to the Cabinet.

¹⁸⁵ The Post, May 31, 2002, "Probe oil losses, urges IMF Representative"; The Post, May 21, 2002 "Thief Case goes to ZNCB- Court Orders inspection of bank accounts to prove Chiluba's thefts"; The Post, June 5, 1996, "Mushota's tribunal begins."

¹⁸⁶ ACC Act, section 3.

¹⁸⁷ General Order 79.

¹⁸⁸ Cap. 39.

¹⁸⁹ Sections 8 and 9.

¹⁹⁰ Interview with the Investigator-General.

¹⁹¹ For example, the common complaints submitted to the Commission for Investigations are: no confirmation in appointment; non-payment or delayed payments of allowances, long service bonus, redundancy package, leave benefits, deletion from payroll; hindering complainant from buying a Government house; unfair termination of contract; prolonged acting appointment; victimisation and harassment; underpayment of salary or retrenchment package; non-adjustment of salary after promotion; wrongful retirement; delayed repatriation after retirement; abuse of powers by superiors; wrongful suspension; tribalism; misuse of funds; wrongful deductions from salary; refusal to release property confiscated; non arrest and prosecution of criminal suspects; police brutality; police indiscipline; etc. See COMMISSION FOR INVESTIGATIONS ANNUAL REPORT FOR THE YEAR 1998.

¹⁹² INTERVIEW with the PSC Members.

¹⁹³ Constitution of Zambia, article 103(3).

¹⁹⁴ Ibid, article 104.

¹⁹⁵ Zambia Police Act, section 3(1).

¹⁹⁶ Ibid, section 4(1). The ranks starting from the highest to the lowest are as follows: Inspector General, Commissioner, Deputy Commissioner, Senior Assistant Commissioner, Assistant Commissioner, Chief Superintendent, Senior Superintendent, Superintendent, Assistant Superintendent, Chief Inspector, Inspector Sergeant-Major, Sergeant, Corporal and Constable.

¹⁹⁷ See A.W. Chanda, The State Security Act v. Open Society: Does A Democracy Need Secrets? 29 ZAMBIA LAW JOURNAL 33-47 (1997); A.W. Chanda, Freedom of Expression and the Law in Zambia 30 ZAMBIA LAW JOURNAL 123-145 (1998)

¹⁹⁸ Margaret Munalula, Government Watchdog Institutions. A Position Paper prepared for Transparency International Zambia June/July 2002; AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1999, p. 49.

¹⁹⁹ Human Rights Watch, ZAMBIA No Model for Democracy-Continuing Human Rights Violations. May 1998, Vol. 10, No. 2.

²⁰⁰ AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1999, pp. 30-40; AFRONET, ZAMBIA HUMAN RIGHTS REPORT 2001, pp. 84-102; Amnesty International, ZAMBIA-Appling the law fairly or fatally? Police violation of human rights. April 1999. AI Index: AFR 63/01/99; Human Rights Watch, ZAMBIA No Model for Democracy-Continuing Human Rights Violations. May 1998, Vol. 10, No. 2.

²⁰¹ E.g. Baldwin Nkumbula, Cuthbert Nguni, Paul Tembo, Wezi Kaunda, Pumulo, etc.

- ²⁰² Zambia Daily Mail, November 20, 2002: "Some police officers are crooked-Mapushi". The Minister of Home Affairs, Lackson Mapushi told Parliament on 19th November 2002, that police were in some cases behind a spate of criminal activities that had rocked Lusaka lately. He said that he had information that some police officers were involved in organised crime especially in Lusaka. Sunday Post, April 28, 2002, "Corruption in the police worries former IG Mtonga"; National Mirror, April 15-21, 2000 "ACC probes cop over K30,000"; The Post, Jan. 20, 1999: "Cop jailed 3 years for abuse of office."
- ²⁰³ Zambia Daily Mail, November 20, 2002: "Some police officers are crooked-Mapushi".
- ²⁰⁴ Anti-Corruption Commission, Annual Report for the Year 2001, p. 39, Appendix L.
- ²⁰⁵ Constitution, article 56(1).
- ²⁰⁶ Ibid, article 56(2).
- ²⁰⁷ Article 56(4).
- ²⁰⁸ Office of the DPP, Strategic Development Plan 2002-2007 (March 2002), p.8.
- ²⁰⁹ Ibid., article 56(7).
- ²¹⁰ Ibid, article 39.
- ²¹¹ Criminal Procedure Code, section 86(1).
- ²¹² E.g. in 2002 the DPP submitted a budget of K2.3 Billion but only K1,046, 513,209 has been allocated by the Treasury.
- ²¹³ It currently shares an office building with the Law Development Commission. Space is inadequate and there is inadequate security of documents.
- ²¹⁴ Interview with the DPP, op. cit.
- ²¹⁵ Ministry of Legal Affairs, Annual Report for the Office of the Director of Public Prosecutions, p. 14.
- ²¹⁶ Ibid, at .11.
- ²¹⁷ Ibid, at 8.
- ²¹⁸ Ibid.
- ²¹⁹ Ministry of Legal Affairs, Office of the DPP, Draft National Criminal Prosecutions Policy (March 2001), p.2.
- ²²⁰ Ibid, pp. 1-2.
- ²²¹ Ministry of Legal Affairs, Office of the DPP, Strategic Development Plan 2002-2007, p. 8.
- ²²² Interview with the DPP, op. cit.
- ²²³ Ibid.
- ²²⁴ Ministry of Legal Affairs, Office of the DPP, Strategic Development Plan 2002-2007.
- ²²⁵ The Post, July 8, 1994, "Sata Accused of Helping DPP in Acquiring a House".
- ²²⁶ Constitution, article 56(7).
- ²²⁷ Interview with Ms. Wandu and Ms. Ngandu of the ACC on 22.05.02.
- ²²⁸ The Post, April 10, 2002, "Sondashi orders police to arrest Sata for "theft."
- ²²⁹ Cap. 394.
- ²³⁰ Ibid, section 4(1).
- ²³¹ Ibid, section 5(4).
- ²³² Ibid, section section 5(1) & (2).

- ²³³ Ibid, section 7(2).
- ²³⁴ Tender Regulations, SI. No. 151 of 1995.
- ²³⁵ Interview with Ms Elsie Sikanyika, Board Secretary and Legal Counsel, Zambia National Tender Board held on 28.05.02.
- ²³⁷ ZNTB Act, section 18.
- ²³⁸ Ibid, section 9.
- ²³⁹ Ibid, section 10.
- ²⁴⁰ Interview with the Board Secretary and Legal Counsel, ZNTB.
- ²⁴¹ Regulation 42 of the Tender Regulations.
- ²⁴² Makufi Kupela, "Corruption in the Public Procurement System", op cit.
- ²⁴³ Republic of Zambia, Report of the Auditor-General on the Accounts For Financial Year ended 31st December, 2000, pp. 157-158.
- ²⁴⁴ Republic of Zambia, Report of the Auditor-General on the Operations of the Presidential Housing Initiative for the Period November 1998 to August 2001 presented to the National Assembly (2002).
- ²⁴⁵ The Monitor, May 21 – 23, 2002, "Recover \$7 million Carlington maize cash, demands Afronet"; The Post, May 31, 2002, "Probe Oil Losses, urges IMF", pp1 & 4.
- ²⁴⁶ The Post, May 31, 2002, "Probe Oil losses, urges IMF."
- ²⁴⁷ The Monitor, May 21 – 23, 2002, "Recover \$7 million Carlington maize cash, demands Afronet".
- ²⁴⁸ Makufi Kupela, "Corruption in Zambia" (Afronet 2002).
- ²⁴⁹ Ibid.
- ²⁵⁰ Makufi Kupela, "Corruption in the Public Procurement System." Paper presented at an AFRONET Corruption Study Peer Review Workshop held at Blue Crest Guest House, 23rd February 2002.
- ²⁵¹ Ibid.
- ²⁵² Ibid.
- ²⁵³ Interview with Board Secretary/Legal Counsel, ZNTB.
- ²⁵⁴ Constitution, article 90(2).
- ²⁵⁵ Cap. 39.
- ²⁵⁶ Ibid, article 90(1).
- ²⁵⁷ Ibid, article 90(2). The current Investigator General was a High Court Judge prior to his appointment.
- ²⁵⁸ Constitution, article 90(5).
- ²⁵⁹ Ibid, article 90(6), (7), (8) (9) & (10).
- ²⁶⁰ The Commission for Investigations Act, Cap. 39 of the Laws of Zambia, section 5(3).
- ²⁶¹ Ibid, section 6.
- ²⁶² Ibid, section 8.
- ²⁶³ Ibid, section 3(1).
- ²⁶⁴ Ibid, section 3(2)
- ²⁶⁵ Ibid, section 9.

- ²⁶⁶ Ibid.
- ²⁶⁷ Ibid, section 10(1).
- ²⁶⁸ Ibid.
- ²⁶⁹ Ibid, section 10(2).
- ²⁷⁰ Ibid, section 10(3).
- ²⁷¹ Ibid, section 11.
- ²⁷² Ibid, section 15.
- ²⁷³ Ibid, section 16.
- ²⁷⁴ Ibid, section 20.
- ²⁷⁵ The Commission for Investigations Act, section 21.
- ²⁷⁶ Ibid, section 21.
- ²⁷⁷ In 2000 no cases were referred to the President while in 2001 only two cases were referred to him.
- ²⁷⁸ Interview with the Investigator-General. Mr. Justice Valentine Chileshe on 21.05.02.
- ²⁷⁹ Ibid, section 22.
- ²⁸⁰ The Commission for Investigations Rules 11 and 12.
- ²⁸¹ Interview with the Investigator General, Mr. Justice Chileshe on 21-05.02.
- ²⁸² Commission for Investigations, Annual Report for the Year 1998, p.4.
- ²⁸³ Ibid, p. 1.
- ²⁸⁴ Interview with the Investigator-General, op. cit.
- ²⁸⁵ Ibid.
- ²⁸⁶ Ibid.
- ²⁸⁷ These were Typists (4), executive officers (2), Assistant Personnel Officer, Registry officer, Assistant Registry Officer, Registry Clerk, Stenographers (2), Clerical Officer, Personal Secretary, Assistant Accountant, etc. See COMMISSION FOR INVESTIGATIONS, ANNUAL REPORT FOR THE YEAR 1998, PP. 3-4.
- ²⁸⁸ Ibid.
- ²⁸⁹ Interview with the Investigator-General, op cit
- ²⁹⁰ Anti-Corruption Commission Act, section 4(1).
- ²⁹¹ Ibid, section 5.
- ²⁹² Ibid, section 7.
- ²⁹³ Ibid section 7(3).
- ²⁹⁴ Ibid, section 16(1).
- ²⁹⁵ Ibid, sections 18 and 19.
- ²⁹⁶ Ibid, sections 16(4) & 18(1).
- ²⁹⁷ Ibid, section 8.
- ²⁹⁸ Ibid, section 17. Since the enactment of the ACC Act no commissioner or Director-General has been removed from office using this procedure. However, Director-Generals have been transferred to other positions in the past.

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- ³⁰⁴ Ibid, section 3.
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- ³¹² Ibid, section 40(3).
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- ³²⁰ Section 4, First Schedule.
- ³²¹ Interview with Ms. Wandu and Ms Ngandu of ACC.
- ³²² Ibid.
- ³²³ Anti-Corruption Commission Annual Report 1998, p.22.
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- ³²⁹ Frederick Jacob Titus Chiluba v. The Attorney-General 2002/HP/0630.
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- ³³¹ Interview with Ms. Wandu and Mrs Ngandu, op. cit.

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- ³³⁹ Ibid
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- ³⁹¹ Ibid.
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- ⁴⁰⁰ Zambia National Broadcasting Corporation Act, section 31.
- ⁴⁰¹ Interview with Mr. Chembo, op cit.
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- ⁴⁰³ Cap. 119, Laws of Zambia.
- ⁴⁰⁴ Cap. 388, Laws of Zambia.
- ⁴⁰⁵ Cap. 186, Laws of Zambia.
- ⁴⁰⁶ Cap 269, Laws of Zambia.
- ⁴⁰⁷ E.g. The Privatisation Act; the Local Government Act.
- ⁴⁰⁸ Afronet, Zambia Human Rights Report 1999, pp. 45-46; Afronet, Zambia Human Rights Report 2001, pp. 8-29.
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- ⁴¹³ Cap. 281, Laws of Zambia.
- ⁴¹⁴ Cap. 282, Laws of Zambia.
- ⁴¹⁵ Local Government Act, section 4(1).
- ⁴¹⁶ Ibid, section 6.
- ⁴¹⁷ Ibid, section 9.
- ⁴¹⁸ Local Government Elections Act, section 13.
- ⁴¹⁹ Ibid, section 14.
- ⁴²⁰ Ibid, section 16.
- ⁴²¹ For example, in Luanshya where incumbent Mayor Simon Kachimba, defied the President and stood in the elections, beating the President's preferred candidate, Evans Chilufya, by 18 votes to 14 votes, the installation ceremony was postponed indefinitely. The MMD District Executive Committee suspended Simon Kachimba and all the councillors who voted for him from the party. In Lusaka, an MMD candidate, councillor Water Manzi, who stood against Patricia Nawa, who was handpicked by President Chiluba, was suspended from the party for alleged insubordination. The handpicking of the council heads by the President took place in most councils across the country because in the December 30, 1998 elections the MMD won 889 wards, UNIP won 234, UPND won 29, Agenda for Zambia won 18, NCC won 2, Lima Party and National Party won 3 each. See AFRONET HUMAN RIGHTS REPORT 1999, pp. 56 & 57.
- ⁴²² Local Government Act, section 31(1).
- ⁴²³ Ibid, section 33(2).
- ⁴²⁴ Ibid, section 69(1).

- ⁴²⁵ AFRONET HUMAN RIGHTS REPORT 1999, p.58. The first 16 cadres were appointed as DAs on 1st December 1999. Commenting on the office of DA AFRONET noted: "Critics condemned the creation of these positions, which were a replica of the UNIP district governors during the one party era. They viewed it as a ploy by the ruling MMD to organise itself at district level, using tax payers' money. Sakwiba Sikota of the UPND said: 'What we find offensive is to appoint district political administrators disguised as government officials.' He charged that if President Chiluba was genuine about the district administrators being civil servants, he would have let the Public Service Commission make the appointments since district administrators were too junior for a Republican President to appoint."
- ⁴²⁶ Local Government Act, section 29.
- ⁴²⁶ Afronet, Zambia Human Rights Report 1999 .
- ⁴²⁷ Local Government Act, section 27(7).
- ⁴²⁸ Ibid, section 39.
- ⁴²⁹ Ibid, section 45.
- ⁴³⁰ Ibid, section 52.
- ⁴³¹ Ibid, section 56(40 & (3).
- ⁴³² Ibid, section 60(1).
- ⁴³³ Ibid, section 57(2).
- ⁴³⁴ Ibid, section 67(2).
- ⁴³⁵ Ibid, section 68.
- ⁴³⁶ Ibid, section 70.
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- ⁴³⁹ Ibid, section 82(1).
- ⁴⁴⁰ Ibid, section 82(4).
- ⁴⁴¹ Ibid, section 83.
- ⁴⁴² Zambia Daily Mail, November 29, "Levy Warns truant councils"; The Post, November 29, 2002: "Levy condemns Kalikiti fracas"; The Post, November 28, 2002: "Mabenga criticises Kalikiti demolitions as inhumane." Mabenga is the Minister of Local Government and Housing.
- ⁴⁴³ Afronet, Zambia Human Rights Report 1999, pp. 53-58.
- ⁴⁴⁴ AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1999, pp. 53-57; The Post, 23 November, 2002: "Country-wide strike threatens Councils"; Sunday Post, 24 November 2002: "It's not government's obligation to pay council workers-Mungo."
- ⁴⁴⁵ Afronet, Zambia Human Rights Report 1999, pp. 56 & 57.
- ⁴⁴⁶ The Post, April 19, 1996: "Councillors' trial fails to take off."
- ⁴⁴⁷ Afronet, Zambia Human Rights Report 1999, p. 54.
- ⁴⁴⁸ FODEP, Zambia's 1998 Local Government Elections Report, pp. 28 & 94.
- ⁴⁴⁹ Transparency International Zambia, 2001 State of Corruption Report, pp. 53-54 (2002).
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- ⁴⁵¹ The Leadership Code, First Schedule, Regulation 2
- ⁴⁵² The Leadership Code, Regulations 3, 4, 6, 7, 8 and 9.
- ⁴⁵³ Ibid, Regulation 13.

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- ⁴⁵⁵ See FODEP, Zambia's 2001 Tripartite Elections Report, pp. 22-28.
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- ⁴⁵⁸ Anti-Corruption Commission, Annual Report for the Year 2000, pp. 10-11.
- ⁴⁵⁹ Anti-Corruption Commission, Annual Report for the Year 1999, pp. 23.
- ⁴⁶⁰ Anti-Corruption Commission, Annual Report for the Year 2000, p. 26.
- ⁴⁶¹ Ibid.
- ⁴⁶² Ibid, p. 23.
- ⁴⁶³ Ibid, p.13.
- ⁴⁶⁴ Ibid, p. 11.
- ⁴⁶⁵ Ibid, pp. 22-23.
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- ⁴⁷⁰ Report on the Common Donor Position and Areas of Possible Assistance to the Government of Zambia in its Fight Against Corruption Prepared by the Working Group on Corruption, Lusaka, May 2002, p.5.
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International and Regional Instruments

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SADC Protocol Against Corruption 2001