



National Integrity Systems

Transparency International

Questionnaire

Zambia 2003

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Zambia

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Yes. Chapter 3 of the Constitution 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.

Practice

Few citizens sue the government because of:

- ignorance of human rights by most people;
- fear of government officials;
- the prohibitive cost of litigation;
- the highly technical language in which the bill of rights is couched;
- lengthy court proceedings.

Are there procedures for the monitoring of assets, including disclosure provisions, for cabinet?

Yes and No. 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. Under part III of the Parliamentary and Ministerial Code of Conduct Act Ministers are required to file annual declarations of their assets and liabilities with the Chief Justice. There is no mechanism for monitoring these declarations.

Practice

At every presidential election candidates for the office of President have been filing statutory declarations of the assets and liabilities with the Chief Justice on nomination day. Similarly, ministers have also been filing declarations of their assets and liabilities.

Are there procedures for the monitoring of assets, including disclosure provisions, for high level officials?

Various pieces of legislation require public officers participating in meetings of various statutory bodies to disclose any pecuniary interest they may have in any matter that is under consideration by the body concerned. Examples include the Privatisation Act, the

Anti-Corruption Commission Act, the Zambia National Tender Board Act, etc. But there is no legislation that requires public officials to disclose their assets.

Practice

Few high-level public officials have been prosecuted for failure to disclose their pecuniary interest albeit a number of Permanent Secretaries and heads of Public Corporations have been investigated by the AAC.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

No. The differences between Ministers and high-level public officials are essentially that the latter are not required to make a declaration of their assets.

But both of them are required to disclose any pecuniary interest they or their spouses may have in any government contract or other matter being considered by official bodies of which they are part.

Are there conflict of interest rules for ministers?

Yes. Sections 5 and 6 of the Parliamentary and Ministerial Code of Conduct Act has provisions on conflict of interest.

Are there conflict of interest rules for high level officials?

Yes. A number of 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.

Practice

Ministers, Deputy Ministers and high-level public officials were in the previous regime allowed to run businesses while in office. Many of such businesses had government contracts, e.g. road rehabilitation, maize marketing, fuel supply, car hire, etc.

Are there 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.

Practice

There is no register for registration of gifts. 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.

Are there rules and registers concerning gifts and hospitality for high level officials?

Yes. Under Order 79 of the Civil Service General Orders, 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;
- the family of an officer who dies in the service.

An officer who infringes this Order commits misconduct. But there are no registers to record gifts and there is no monitoring mechanism.

Practice

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. Civil Service salaries are extremely low.

If so, are these registers kept up to date? By whom?

N/A

Have they legal powers to enforce disclosure?

N/A

Have they staff to investigate allegations?

N/A

What powers of sanction are in place against high level officials?

N/A

Have they ever been invoked?

N/A

Are there restrictions on post ministerial office employment?

No.

Are members of the executive obliged by law to give reasons for their decisions?

Yes and No. Administrative law requires decision makers to give reasons for their decisions when these decisions are challenged. But this depends on the nature of the decision and the enabling legislation. For example, immigration officers, police officers and local government officers are in most instances compelled to justify their decisions.

Practice

This is not always done on account of time and cost.

Do ministers or equivalent high level officials have and exercise the power to make the final decisions in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Yes and No. As a rule, tender committees are responsible for the award of contracts in government ministries. Similarly, committees normally issue licences. However, in some instances, legislation may give the Minister or a high official power to make the final

decision. An example is the Zambia National Broadcasting Act which empowers the Minister of Information and Broadcasting to issue licences.

Practice

The exercise of such power by Ministers has proved controversial. Some ministers and officials have abused this power. For instance, in 2002 the Minister of Tourism's award of hunting licences to some Safari Companies was invalidated by the High Court because the Minister had usurped the powers of the Tender Committee.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes. These are found in service regulations. Those dissatisfied with a decision made by an officer can appeal to his superior for redress in accordance with the chain of command existing in a particular department or ministry.

Legislature

Is the legislature required to approve the budget?

Yes. Article 117 of the Constitution empowers the National Assembly to approve the budget. The approved estimates of expenditure are then included in an Appropriation Bill.

Are there significant categories of public expenditure that do not require legislative approval?

Yes. Expenditures charged on the general revenues of the Republic by the Constitution do not require approval by the National Assembly. The expenditures involved 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, and such other offices as may be prescribed by statute; and
- all debt charges for which the Government is liable.

Are there conflict of interest rules for parliamentarians?

Yes. Members of Parliament are subject to the same rules as ministers. 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 for a term not exceeding 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.

Practice

No MP has ever been charged with receiving illegal gifts or hospitality and there is no register for gifts and hospitality.

Electoral Commission

Is there an independent Electoral Commission?

Yes. 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.

Practice

The Commission enjoys little autonomy, as it is dependent on government for funding. It is not funded directly by Parliament. The current Commission does not enjoy the confidence of all stakeholders as it is perceived as being partisan and incompetent.

Who appoints the head of the Commission?

The President, subject to ratification by the National Assembly, appoints the chairman and Commissioners.

Political Parties

Are there rules on political party funding?

No.

Are substantial donations and their sources made public?

No.

Are there rules on political party expenditures?

No.

Are political party accounts published?

No.

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

No.

Supreme Audit Institution

Is the national Auditor General independent?

Yes. Article 121(6) of the Constitution guarantees the independence of the Auditor-General.

Practice

The office lacks functional independence. Although the Auditor-General himself is independent the rest of the staff are not independent. They are part of the Civil Service and therefore do not owe their loyalty to the Auditor-General. The staff are employed, promoted, upgraded and disciplined by the Public Service Commission. The Civil Service also determines their conditions of service. The Auditor-General can only make recommendations.

Is the appointment of the Auditor General required to be based on professional criteria/merit?

No.

Is the appointee protected from removal without relevant justification?

Yes. Article 122 of the Constitution provides for retirement of the Auditor-General 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 Auditor-General if a Judicial Tribunal of three members appointed by the Assembly so recommends.¹

Practice

No Auditor-General has ever been dismissed using this procedure.

Are all public expenditures audited annually?

No. Under article 121(2)(c) of the Constitution, the Auditor-General must 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 statutory corporations and other institutions that have been partly or fully funded by the state.

The Auditor-General is also required to audit the accounts relating to any expenditure charged by the Constitution or any other law on the general revenues of the Republic.

Practice

Audit reports are always late, sometimes by several years. Some government institutions and statutory corporations have not been audited for several years.

Is reporting up to date?

No. According to Article 121(4) of the Constitution Reports must be submitted 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 after the receipt of such report, cause it to be laid before the National Assembly.

Practice

The reports are always late. 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.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Yes.

Practice

The Auditor General's report is first examined by the Public Accounts Committee, which then presents a report to the whole Assembly for debate and adoption.

Are all public expenditures declared in the official budget?

No. 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 National Assembly thereafter, an Excess Expenditure Appropriation Bill, for the approval by Parliament of such 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 National Assembly.

Judiciary

Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other ministers and their officials)?

Yes. Article 94(1) of the Constitution grants the High Court unlimited and original jurisdiction to hear and determine any civil or criminal proceedings.

Practice

The courts have, in fact dealt with many cases involving the President, Ministers and other executive officials. These have been cases where plaintiffs have alleged abuse of power by the officials concerned, departure from established law, failure to follow principles of natural justice, and violation of the bill of rights.

Are judges independent?

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, No. 13 of 1999, reinforce these provisions.

Practice

Poor funding to the judiciary, uncompetitive conditions of service and a severe shortage of well-trained staff have undermined judicial independence.

Are appointments required to be based on merit?

Yes. The qualifications for appointment to the High Court, Supreme Court and the Industrial Relations Court are stipulated by the Constitution.

Are the appointees protected from removal without relevant justification?

Magistrates and Local Court Judges are appointed by the Judicial Service Commission, which is also responsible for their promotion, discipline and dismissal. It is generally easier to dismiss them than Judges of the Superior Courts. The tenure of Superior Court Judges is protected by the Constitution.

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 misbehavior. The dismissal can only be effected after a judicial tribunal consisting of three persons, appointed by the President, after investigations, so recommends.

Practice

Only one judge has been dismissed using this procedure in the last three decades. Chief Justice Annel Silungwe was pressured to resign in 1992.

Are recruitment and career development based on merit?

Only those with the requisite qualifications as laid down in the law are appointed to the bench, particularly those appointed as magistrates, puisne Judges, Supreme Court Judges and the Chairman and Deputy Chairman of the IRC.

However, no qualifications for Local Court Judges are prescribed. Candidates are picked for their assumed knowledge of customary law, and in the rural areas they are recommended by Area Chiefs. They do not undergo any training in general or customary law.

Practice

In recent years the Judicial Service Commission has been advertising vacancies in the High Court and IRC. It has been interviewing applicants and recommending suitable applicants to the President. The President then sends the names to the National Assembly for ratification.

Promotions of High Court Judges to the Supreme Court are done 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.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

No.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Yes. The main piece of legislation is the Anti-Corruption Commission Act. Others include the Penal Code and the Electoral Act and Regulations.

Are there rules requiring political independence of the Civil Service?

Article 65(7) of 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.

Practice

Public officials who are MMD members have often been fielded as candidates in Parliamentary elections without being required to resign their jobs first. But those belonging to opposition parties have more often than not been fired from their jobs. District Administrators, under Chiluba, were full-time party mobilisers and held positions in the ruling party despite being Civil servants.

Are recruitment/career development rules based on merit?

Yes and No. The President appoints the Secretary to the Cabinet, Deputy Secretary to the Cabinet and Permanent Secretaries at his discretion. Lower level officials and middle management positions up to Director are appointed, promoted and disciplined by the Service Commissions.

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.

Practice

In recent years because of political patronage recruitment and development in the Civil Service has not been on merit. Loyalty to the ruling party and its leader were the major criteria for appointment especially in the top echelons of the Public Service. Civil Service Examinations were abandoned.

Are there specific rules to prevent nepotism and cronyism?

Yes. The Commission for Investigations Act, Cap. 39, empowers the Commission to receive and investigate complaints of maladministration or abuse of office or authority or nepotism against a public officer. The General Orders also prohibit such practices.

Practice

Nepotism is common in the Public Service.

Are there rules (including registries) concerning acceptance of gifts and hospitality?

Yes. The Anti-Corruption Commission Act prohibits public officers from accepting gifts unless they are 'casual gifts'. The General Orders also prohibit public officers from giving or receiving valuable presents.

Practice

These rules on gifts are rarely, if at all, enforced. There is no register of gifts and no monitoring of gifts occurs.

Are procedures and criteria for administrative decisions published?

Yes and No. Much depends on what the matter is all about. Usually the enabling legislation will lay down the general criteria and procedures, which may then be elaborated upon in regulations. However, in most cases public officers enjoy a large measure of discretion in applying the rules as each case is different.

Are there complaint mechanisms for public servants and whistle blower protection measures?

Public servants can file complaints with the Anti-Corruption Commission (ACC) or the Commission for Investigations. But there is no protection afforded to whistle-blowers under the Act.

Are there means for complaints by members of the public?

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

Are there administrative checks and balances on decisions of individual public officials?

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

Police and Prosecutors

Is the Inspector-General of police independent?

No.

Are public prosecutors independent?

Yes and No. Article 56(7) of the Constitution provides that the shall not be subject to the direction or control of any other person or authority, and that the powers shall be vested in

him exclusively. But most of the Prosecutors are police officers whose independence is not guaranteed.

Practice

The DPP's independence is undermined in several ways. First, the office is seriously under-funded, thereby hampering operations. Secondly, there is a severe shortage of staff (state advocates) because of poor conditions of service. Thirdly, he lacks administrative and organizational autonomy as the police prosecutors are not accountable to the DPP but to the Police Command or to whichever organization employs them.

Are there special units for investigating and prosecuting corruption crimes?

Yes. The Anti-Corruption Commission is responsible for investigating and, subject to the consent of the DPP, prosecuting corruption crimes. There is also the Anti-Money Laundering Unit, established in June 2002 under the Prohibition and Prevention of Money Laundering Act 2001.

Is there an independent mechanism to handle complaints of corruption against the police?

Complaints against Police corruption may be lodged with the ACC and the recently established (June 2002) Police Complaints Authority.

Does civil society have a role in such a mechanism?

No.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Yes. There have been a few prosecutions of police officers implicated in corruption. But given the high incidence of corruption in the Police Force this has just been a drop in the ocean.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private-to-private corruption punishable by law?

The Anti-Corruption Commission Act is the main Anti-Corruption legislation. However, other pieces of legislation supplement it such as the Penal Code, the Electoral (General Regulations), the Electoral (Code of Conduct) Regulations, and the Anti-Money Laundering Act of 2001. The Anti-Corruption Act also covers private-to-private corruption.

Is the law applied?

The Law is applied to some extent. In the last 10 years it has been applied mostly against low-level officials.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Few ministers and Senior Public Officials have been prosecuted in the last 10 years. There was a high level of tolerance of corruption by the political leadership which also deliberately undermined the operations of the ACC and DPP.

Ombudsman

Is there an ombudsman or its equivalent?

Yes. There is the Commission for Investigations, established under Article 90 of the Constitution. It is chaired by the Investigator-General. and has three other commissioners.

Is the ombudsman independent?

No. Under section 8 of the Commission for Investigations Act, the Commission is subject to the President's directions.

Are appointments required to be based on merit?

Yes and No. The Investigator General must be qualified to be appointed as a judge of the High Court. But no qualifications are prescribed for the Commissioners

Is the appointee protected from removal without relevant justification?

The Investigator-General (IG) enjoys the same security of tenure as a judge of the High Court. But the commissioners serve on contract for three years subject to re-appointment for one more term. The IG retires at the age of sixty-five years. He 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. The President can dismiss the IG only if a judicial tribunal appointed by the Chief Justice acting on a resolution of the National Assembly, so recommends.

Has an ombudsman been removed without justification in the last five years?

No.

Can petitioners complain anonymously if they fear possible reprisals?

No.

Are reports of the ombudsman published?

Only annual reports presented to the National Assembly are published.

Does the government act on the ombudsman's recommendation?

The Commission reports to the President who is not bound by its recommendations.

Practice

According to the IG, Justice Chileshe, the President accepts most of its recommendations. Moreover, it uses quiet diplomacy to persuade erring officers to mend their ways. Most officers co-operate with the Commission. It has not had much of an impact on governance.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

Yes. The Anti-Corruption Commission (ACC), created under section 4 of the Anti-Corruption Commission Act, is the main body tasked to combat corruption in Zambia.

What are their main responsibilities?

Under Section 9 of the ACC Act the main functions of the Commission are to:

- present and take necessary and effective measures for the prevention of corruption in public and private bodies;
- 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;
- investigate any conduct of any public officer which, in the opinion of the Commission, may be connected with or conducive to corrupt practices
- disseminate information on the evils and dangerous effects of corruption on society; and to
- enlist and foster public support against corrupt practices.

Practice

Since its creation the Commission has been carrying out all the listed functions with varying degrees of success. It has not been successful in its investigation and prosecution function. Despite receiving hundreds of complaints only a few are investigated and fewer still result in prosecutions. The rate of convictions is also dismal.

Is the commission Independent?

Yes as per section 5 of the ACC Act.

Are appointments required to be based on merit?

The Commission comprises the chairperson and four other Commissioners, all appointed by the President, subject to ratification by the National Assembly. The Directorate is headed by the Director-General DG, who is appointed by the President subject to ratification by the National Assembly. The DG, his deputy and the chairman are required to be qualified to be appointed Judges of the High Court (sections 7 and 16). Qualifications for the Commissioners are not specified. The Commissioners serve on part-time basis.

Are the appointees protected from removal without relevant justification?

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;
- become bankrupt;
- become insane or are declared to be of unsound mind.

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.

Practice

No commissioner or DG has ever been dismissed from office.

Are their reports published?

Only the annual reports submitted to Parliament are published.

Can people complain to the Commission without fear of recrimination?

No. The ACC Act does not offer protection to whistle-blowers.

Practice

The Commission encourages members of the public to report any cases of corruption. The Commission tries to keep the identity of its informers secret as much as possible in order to protect them from victimization.

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.

Media

Is there a law guaranteeing freedom of speech and the press

Yes. Article 20(1) of the Constitution guarantees every person freedom of expression. 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 is permitted to enact legislation restricting the exercise of freedom of expression in the public interest or to protect the rights of others, etc.

Practice

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

- The State Security Act, which severely restricts public access to information possessed by government and has severe penalties for those who violate its provisions.
- 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.

Is there censorship of the media?

There is no formal censorship of the media except for the Zambia National Broadcasting Corporation (ZNBC). The ZNBC Act empowers the Minister of Information to censor broadcasts on ZNBC. Moreover, even privately owned electronic media could be censored through licensing. In issuing licences to Radio and TV Stations the Minister can also regulate the content of their programming through the imposition of conditions.

Practice

On a number of occasions, ZNBC has been stopped from airing certain programmes the government felt uncomfortable with. Radio licences have been issued mostly to community and Christian radio stations. TV licences have only been issued to Commercial Stations (Multi-Choice and CASAT) and a religious station (TBN), which do not have local content and just re-broadcast foreign programmes and news.

Most of the media practises self-censorship in order to avoid victimisation from government.

Is there a spread of media ownership?

Yes. There is both government owned electronic and print media as well as privately owned media.

Does any publicly-owned media regularly cover the views of government critics?

No.

Have journalists investigating cases of corruption been physically harmed in the last five years?

No.

Does the media carry articles on corruption?

It is mostly the privately owned media which carry articles on corruption. Publicly owned media only report court proceedings involving corruption or statements by political leaders or government officials on corruption. They do not carry any investigative stories on corruption.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

The government has used the licensing requirements to deny licences to applicants who are considered hostile to the government. The Minister of Information is empowered to issue licences. The manner in which licences are issued is arbitrary.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption.

Yes. The Laws of defamation have been used extensively to curtail reporting on corruption. 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.

Civil Society

Do the public have access to information and documents from public authorities?

No. There is no Freedom of Information legislation that could facilitate the public's access to information. 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.

Do the authorities generally cooperate with civil society groups?

The Chiluba government was generally hostile to critical Civil Society groups. However, the Mwanawasa government has shown a new and refreshing willingness to cooperate with Civil Society.

Are there citizen's groups or business groups campaigning against corruption?

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

Are there citizens' groups monitoring the government's performance in areas of service delivery?

Yes. E.g. the Catholic Commission for Peace, Justice and Development, FODEP, AFRONET, Consumer Protective Association, Women for Change, National women's Lobby Group, Women and Law in Southern Africa, NGOCC, etc.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

No.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Yes. 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.

Practice

In the last ten years tender procedures have been ignored in major procurements for oil feedstock, the sale of copper and cobalt, procurement of services and goods for the Presidential Housing Initiative, Carlington maize supply contract, etc. Reports of the Auditor-General are replete with such cases.

Are the rules laid down in documents publicly accessible?

No. The rules are available only upon demand.

Are there strict formal requirements that limit the extent of sole sourcing?

No.

Are procurement decisions made public?

No.

Is there a procedure to request review of procurement decisions?

No.

Can an unfavourable decision be reviewed in a court of law?

Yes.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Yes. Section 9 of the ZNTB Act provides that if a person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter such person or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

Practice

Reports of the Auditor-General reveal many cases where this provision has been disregarded.

Are assets, incomes and life-styles of public procurement officers monitored?

No.

Are all major procurements widely advertised to the private sector?

Yes except in a number of specified instances.

Regional and Local Government

What public offices at provincial and local level are appointed by the national government?

At provincial level the Provincial Deputy Minister, the Permanent Secretary, the Deputy Permanent Secretary, Heads of government departments, Civil Servants, are all appointed by the national government.

At district level, district administrators are appointed by the President, while police officers, intelligence and army officers, immigration officers, teachers and other Civil Servants are appointed by the national government.

Do national agencies with a remit to deal with corruption work at provincial or local levels and are there specific agencies with regional and local responsibilities?

The ACC, the Commission for Investigations, the Auditor-General and the Police have jurisdiction throughout the country.

Practice

Because of limited resources and inadequate personnel faced by these agencies, they do not, apart from the police and the intelligence, have offices in most of the 72 districts. They have offices in some but not all the provinces. The Commission for Investigations does not have any office outside Lusaka.

There are no special agencies with regional and local responsibilities.

Are there at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public employment?

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.

In addition, section 27 of the Local Government Act, requires disclosure of interest by those attending council meetings. Failure to disclose constitutes an offence. There are no restrictions on post-local government employment.

Practice

Councillors have been allocating themselves plots or allocating plots to their relatives or selling plots, when they have no legal power to do so. They also have been allocating themselves council taverns. In some instances they have been suspended from office or been prosecuted for some of these illegal activities.

Is there a legal requirement that meetings of city/town councils be open to the press and public?

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

Are there clear criteria restricting the circumstances in which city/town councils can exclude the press and the public?

Section 29[2] of the Local Government Act 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.

In addition, 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

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for its implementation?

No.

How much of the strategy has been implemented?

N/A

Is the government meeting its timetable?

N/A

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?

SIDA, NORAD, Irish-Aid, USAID, JICA, GTZ, FES, CIDA, DFID, World Bank, IMF, DANIDA, UNDP, EU, Netherlands Embassy, WHO, UNICEF, FAO, UNESCO, WFP.

What types of anti-corruption initiatives have they supported?

- Capacity building for the Auditor-General's office.

- Institutional reform and capacity building, in particular the development of a workable public expenditure control system.
- Support to government institutions such as the Anti-Money Laundering Unit, ACC, Ministry of Legal Affairs, Auditor-General, and ZNTB.
- Support to NGOs involved in anti-corruption activities.
- Adoption of Sector Wide Approach Programme [SWAP] in the health and education sectors by donors in order to enhance the day-to-day monitoring of basket funds and to preclude waste.
- Funding by the World Bank of a baseline survey on corruption to establish the perceptions and experience of corruption and service delivery among public servants, households and businesses.
- Developing of a public sector accounting profession by the World Bank
- Insistence by some donors 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.

Are there any examples of donors cooperating or coordinating their programmes?

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.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention and which are they?

The key areas or issues requiring immediate attention are:

- Lack of a mechanism for monitoring assets of public officials, ministers and MPs.
- Public officers are not required to disclose their assets
- Politicization of the Civil Service through appointment of Party cadres often without proper qualifications.
- Lack of a law on political party and election campaign financing.
- Lack of genuine independence from executive control of the key anti-corruption institutions.
- The various anti-corruption institutions lack 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 meager 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.
- Lack of a code of conduct for Civil Servants and the ZNTB.

Is there a particular aspect of corrupt activity either particular to Zambia or significant in terms of effect or impact, that would require more in-depth research?

Public procurement and the impact of presidential powers on the work of governance institutions would stand out as areas requiring further study. There is also need to explore how anti-corruption institutions can be strengthened in order to make them more effective.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

- Support to the Civil Society involved in research and public awareness activities.
- Support to the Anti-Corruption Commission, the DPP, the Auditor-General, the DEC in terms of training, retention of key staff and provision of operational funds since government grants are invariably grossly inadequate.
- Support of the media through training of journalists in investigative journalism.

Can key areas or issues relating to possible anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

- Government must devise a comprehensive policy and plan of action to combat corruption and to strengthen the National Integrity System.
- Prevention should receive priority. 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;
 - 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 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:
 - 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.

Secondly, institutions tasked to curb corruption 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.

Thirdly, 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 disclosure of assets by public procurement officers;
 - 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;
- develop 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.