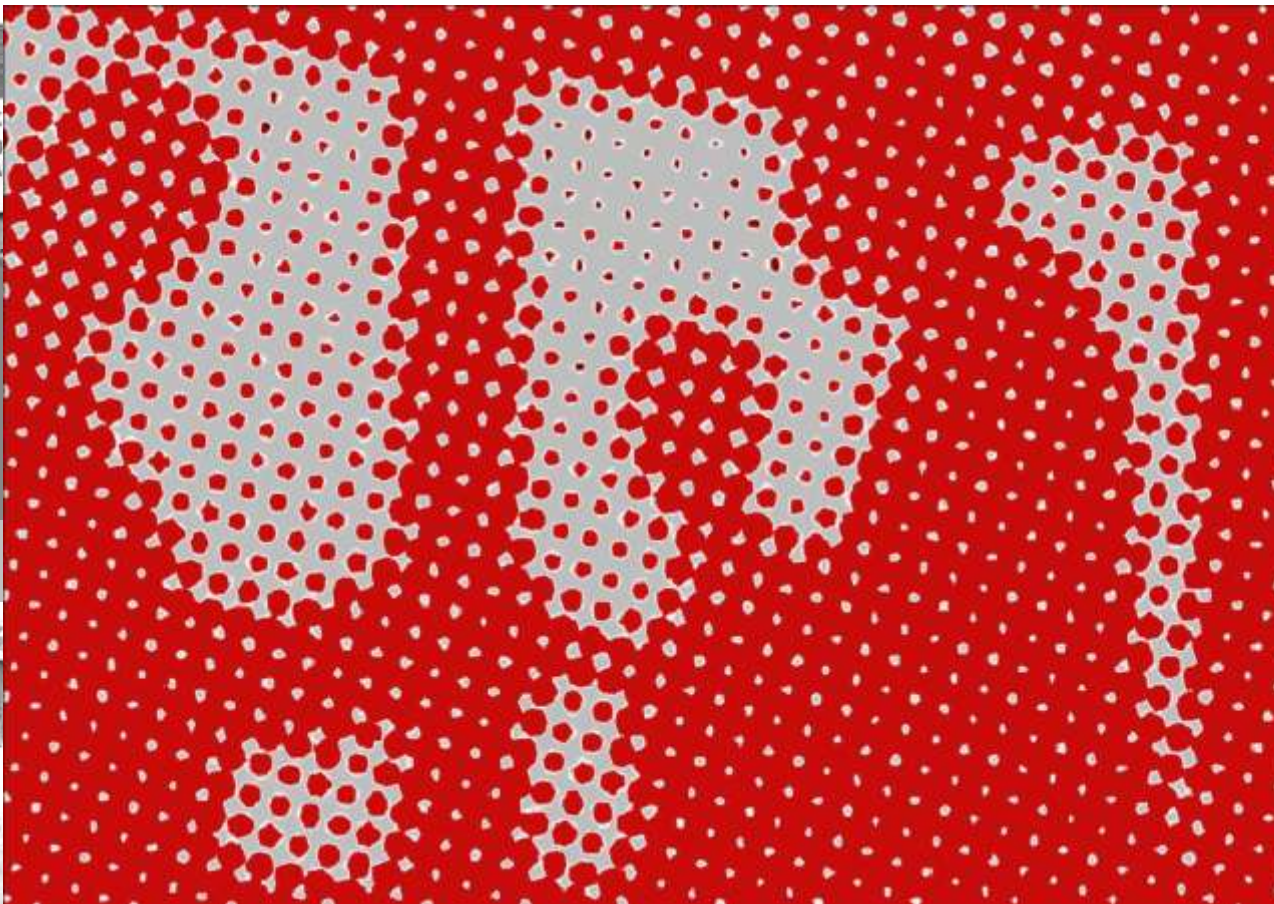




good governance



Civil Society Organisations Engaged in Anti-Corruption

Anti-Corruption Mapping

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1. Starting Point

The Good Governance Programme in its second phase 2009 to 2012, has included anti-corruption as a cross cutting theme in its cooperation with partners from civil society. Anti-corruption pursued by civil society has a predominant focus on prevention. However, civil society organisations (CSOs) also address criminalisation and law enforcement. Anti-corruption initiatives include quite a broad spectrum of topics such as budget monitoring and budget tracking, specific initiatives that aim at enhanced transparency and accountability of state institutions and service providers, code of conduct and integrity pacts in the public domain and within CSOs, facilitation of contributions to e.g. the implementation of the National Anti-Corruption Policy (NACP).

One important area of engagement is training and capacity development as has been conducted in cooperation with the U4 partnership.¹ The latter in particular refers to the ability of CSO partners to build profile and networks. Altogether, the core focus is to contribute to checks and balances in the public domain and to promote the principles of good governance.

The Good Governance Programme undertook a brief mapping of anti-corruption efforts of partner organisations from civil society in mid-2010. The aim was to assess the engagement of partners and potential partners in initiatives and activities towards promoting anti-corruption. This was done by looking at two dimensions:

- Ability to be: Do organisations operate based on mission, vision and values?
- Ability to do: Do organisations have the capacity to successfully achieve their objectives and are they effective in their networking efforts with stakeholders?

The mapping covers the following civil society organisations: Anti Voter Apathy Project (AVAP), Caritas Zambia, Civil Society for Poverty Reduction (CSPR), Economics Association of Zambia (EAZ), Jesuits Centre for Theological Reflection (JCTR), Southern Africa Centre for Constructive Dialogue (SACCORD) and Transparency International Zambia (TIZ).

2. Historic Perspective of Anti-Corruption in Zambia

Since the attaining of independence in 1964, Zambia has had several laws in place to address corruption. Though incidences of corruption was unheard of at the time of independence, they were legal provisions contained in the Penal Code, specifically under CAP 146, chapter X, section 56 but was restricted to corruption occurring in public service (GRZ, 2009:2).² In 1980, the *Anti-Corruption Commission (ACC)* was

¹ 2009 and 2010 saw in-country training courses on the NACP and mainstreaming of anti-corruption in sectors with emphasis on the health sector. The courses were organized by the U4 Anti-Corruption resource centre and facilitated by GTZ and DFID in 2009 and the Netherlands Embassy (2010) in cooperation with GTZ and DFID. www.u4.no

² GRZ, National Anti-Corruption Policy, 2009

established through an Act of parliament to spearhead the fight against corruption in both the public and private sector.

In 1971, the *Special Investigations Team on Economy and Trade (SITET)* was established with investigative powers to tackle economic crimes, i.e. money laundering, black market foreign currency dealings, smuggling etc., SITET was abolished with coming of Chiluba into government in 1992. In 1973, the government introduced the *leadership code* which extended further than the public service as it covered the ruling party at the time (UNIP), local authorities, parastatal companies, institutions of higher learning, Commissions and Unions (ibid, 2009:2), it was not until. The leadership code was abolished in 2002.

In 2002, a combined team of officers from ACC, Drug Enforcement Commission (DEC), Zambia Police, and Zambia Intelligence Security Services (ZISS) comprised the Task Force on Corruption (TFC) to investigate corruption in the public service during the Chiluba regime (1991-2001). The TFC was disbanded in 2009, before it could conclude on many cases that it was prosecuting, it was in the same year that a *National Anti-Corruption Policy (NACP)* was launched in 2009 and subsequently its implementation plan in 2010.

After the return to multiparty democracy, a number of CSOs have been formed with a focus on governance reforms. The only organisations that have an exclusive focus on corruption are Transparency International Zambia and the Integrity Foundation which are involved in monitoring government performance of anti-corruption efforts and ethics training for ACC and parliamentarians respectively.

3. Profile of Organisations

3.1 Anti Voter Apathy Project (AVAP)

Current Initiatives

Monitoring Political/Election Corruption³

AVAP focuses on prevention, mediating when conflicts arise among the political opponents, reporting acts of corruption. AVAP also monitors the conduct⁴ of political parties and individuals before⁵, during and after elections. This includes advocacy for transparency of party and campaign funding for which however limited information is available. The use of government resources such as vehicles, facilities and also staff in campaigns is addressed.

³ AVAP usually works with other stakeholders such as the Police Service and Caritas in setting up complaints desks in Democracy Centres and Conflict Management Committees in conjunction with the Electoral Commission of Zambia (ECZ), during election periods. www.avap.org.zm

⁴ The monitoring is based on the guidelines provided by the Electoral Code of Conduct of 2006.

⁵ For example, monitoring the issuance of National Registration Card (NRC) exercise.

Public Service Delivery

Focus is on how the Constituency Development Fund (CDF) is administered by the local Authorities (Councils) and the respective Members of Parliament (MP) and the constituency committees.⁶ So far, discussions around CDF have been concentrating at the debate led by AVAP management and staff at democracy fora where among other, Members of Parliament and the public meet.

New Initiatives

Tracking of Constituency Development Fund (CDF)

AVAP is envisaging the possibilities of conducting annual tracking for CDF initiatives. This could possibly be done in collaboration with CSPR, Caritas, EAZ, ACC and TI-Zambia. Performance tracking would also focus on the process that the CDF committee engages in which are: Identification of priorities, allocation, disbursement and utilisation of resources. AVAP is working on alternative guidelines and ToRs for CDF Committees.⁷

Envisaged Role of the Good Governance Programme

Anti-corruption within the work of AVAP cuts across all its programmes areas, i.e. community awareness through managing for democracy and election monitoring. It is also noteworthy that AVAP has made efforts in addressing corruption as and when it has arisen.⁸ This is part of AVAP's mission. The mandate of the organisation is the empowerment of citizens in the context of the electoral cycle. The Good Governance programme would assist in enhancing such efforts by:

- Facilitating general training and focus on AVAP's specific needs of focal persons.
- Use AVAP's sub-national presence through the Democracy Information Centres to encourage networking among CSOs on anti-corruption.
- CARITAS Zambia

Current Initiatives⁹

The Economic Justice Programme (EJP)

Caritas' focus in anti-corruption initiatives is at three fronts: Central government, local government and public service delivery and political level.

Since its inception, the EJP has worked on themes such as the effects of trade liberalisation and privatisation on the poor strata of society, monitoring budgetary allocation to the social sectors namely education and health. It has also assessed govern-

⁶ The Constituency Committees comprises of: MPs, Councillors, and CSOs. Though MPs have a greater influence on who is appointment to the Constituency Committee.

⁷ Perhaps AVAP could be encouraged to extend this by also demonstrating the cost-benefit analysis of the alternative ToRs and comparing them to the ones currently used.

⁸ AVAP was also part of the consortium of CSOs that had petitioned the government to appeal against the acquittal of Frederick Chiluba (*please refer to the press statement "Acquittal of Frederick Chiluba"*).

⁹ www.ccjdp.org.zm/about.htm

ment efforts in implementing the health and education policy reforms in line with the Abuja and Maputo Agreements respectively.

Budget Tracking and Expenditure Monitoring

The EJP programme has trained Justice and Peace teams throughout its dioceses in understanding making use of the national budget tracking and expenditure monitoring systems. This has over the years strengthened the capacity of teams to advocate for accountability from government agencies. This programme aims at monitoring grand corruption at national level and petty corruption at service delivery points.

Caritas Publish What You Pay (PWYP) Chapter

Publish what you pay it is a civil society initiative launched in June 2009. It advocates for transparency and accountability in the extractive Sector. This initiative aims to help citizens of resource rich developing countries holding their government accountable for the management of revenues from oil, gas, forest, marine and mining industries. The initiative follows the launch of the Extractive Industry Transparency Initiative (EITI) by the Zambian government in July 2008. Caritas is an active member of the national stakeholder dialogue.

Parliamentary Liaison Programme (PLP)

The purpose of this programme is to enhance the capacity of people in exercising their democratic rights of contributing to the parliamentary policy and legislative making process in Zambia. Experience with community advocacy work has shown that most of the issues affecting communities derive from the types of public policy formulated and pieces of legislation enacted.

New Initiatives

Tracking of Constituency Development Funds (CDF)

The Parliamentary Liaison Programme is adding an initiative of tracking the utilisation of Constituency Development Funds through the dioceses. The organisation also participates in election monitoring.

Caritas was also part of the consortium of 10 CSOs¹⁰ that petitioned the government in setting up a tribunal to investigate former Minister of Communication and transport Dora Siliya on alleged abuse of office (*please refer to the appendix for the press statement*).

The organisation took part in the initiative of 17 CSOs¹¹ that petitioned the government to appeal against the acquittal of Frederick Chiluba by the magistrate court (*please refer to the press statement "Acquittal of Frederick Chiluba"*).

¹⁰ Citizens Forum, Civil Society for Trade Network, Foundation for Democratic Process, Jesuit Centre for Theological Reflection, Southern Centre for Constructive Resolution of Disputes, Transparency International Zambia, Women for Change, Zambian Youths Association in the Fight Against Corruption including William Harrington.

¹¹ Anti-Voter Apathy Project, Caritas Zambia, Citizen's Forum, Civil Society for Poverty Reduction, Civil Society Trade Network of Zambia, Evangelical Fellowship of Zambia, Foundation for Democratic Process, Jesuit Centre for Theological Reflection, National Youth Anti-Corruption Movement, Non-Governmental Coordinating Council,

CSO Africa Peer Review Mechanism (APRM) Secretariat

Caritas hosts the CSO APRM secretariat which coordinates the work of civil society related to the process, which consist of ten major CSOs¹² and conduct research based advocacy and make recommendations in four thematic areas:

- *Democracy and political governance*: the focus is on political corruption accountability and efficiency of the public service, electoral cycle, political, social, cultural and economic rights.
- *Economic governance and management*: focuses on public finance management (, its transparency, predictability of resource flows) and the risks of corruption and other economic crimes.
- *Corporate governance*: focuses on the regulatory framework for economic activities including the promotion and adherence to the code of ethics that govern corporations with respect to their clients and their employees.
- *Socio-economic governance*: focuses on the delivery mechanism of policies and initiatives by the state in the social sectors.

The engagement of CARITAS is based on Christian faith values as reflected in its vision and mission statements and which is transferred in its non-partisan advocacy and community work. The focus is on equity and human development.

Envisaged Role of the Good Governance Programme

The cooperation with Caritas would have to be extended beyond the PLP to include the Economic Justice Programme and the Publish what you Pay initiative. Clearly, Caritas is well grounded in conducting its work on budget tracking, however, the Good Governance programme could facilitate for sector specific anticorruption training such as health, and education.

3.2 Civil Society for Poverty Reduction (CSPR)

Current Initiatives

Research and Policy Analysis Programme

The programme's overall objective is to "... *effectively enhance government's public service delivery and budget execution especially to the poor*:"¹³ The specific objective is "...citizens' participation and ability to hold government accountable of the National Budget and Service Delivery."¹⁴ This objective is made operational through budget tracking and service delivery monitoring exercises carried out in cooperation with re-

Southern Africa Centre for Constructive Resolution of Disputes, Transparency International Zambia, Women for Change, Young Leaders' Integrity Alliance, Zambia Civic Education Association, Zambia Council for Social Development, Zambia Youths Association in the Fight Against Corruption.

¹² AVAP, Caritas, Centre for Policy Trade Dialogue (CPTD), FODEP, JCTR, LAZ, MISA, NGOCC, SACCORD, TI Zambia, YWA.

¹³ CSPR proposal submitted to the European Commission (EC).

¹⁴ Synergies have been formed between Caritas, JCTR, EAZ related to Budget Tracking and advocacy to the Executive and Legislature on pro-poor programmes.

search partners and through communities and members CSOs. CSPR under its Research and Policy Analysis Programme (RPA) has been conducting budget tracking in the social sectors: agriculture, education, health, social protection, and water and sanitation.¹⁵

The organisation has established good capacity to analysing the impact of the budget on poverty reduction, conducting expenditure tracking, capacity building, and participatory poverty research in the above mentioned thematic areas. Through the RPA programme, CSPR monitors and tracks expenditure of government and conducts poverty and other impact assessments to determine the effectiveness of government initiatives and programmes on reducing poverty and lifting the livelihoods of the Zambian population.

Civic Engagement and Advocacy

The objective of this programme is to promote civic engagement in pro-poor development processes at national, sub-national and international level and to advocate for policy and institutional frameworks. The programme facilitates policy dialogue among CSOs¹⁶. The programme conducts evidence-based advocacy which is furnished by the RPA programme.

New Initiatives

CSPR through its RPA programme is in the process of developing a *service delivery and budget execution barometer*, in fact a broad based oriented perception survey. The initiative builds on the successes that CSPR has scored in poverty assessments and budget tracking. The objective of this new initiative is to have an informed and effective budget performance and service delivery monitoring system that takes into consideration the perspectives of the intended beneficiaries and other stakeholders. To this end, CSPR has taken the opportunity of setting up a quarterly budget tracking and service delivery barometer that would collect administrative data and experiences of ordinary members of the public on the budgetary process and public service delivery in Zambia.¹⁷

Envisaged Role of the Good Governance Programme

The CSPR network presents a comparative advantage in linking sub-national level initiatives such as research and advocacy to national level. Good Governance programme can facilitate linkages with other organisations with similar initiatives such as: Caritas at sub national level in terms of monitoring service delivery of local authorities, professional bodies such as TI Zambia and Economics Association of Zambia can provide a broad-spectrum for policy influence based on the results of CSPR's budget tracking exercise. Conversely, TI Zambia can make use of the capacity of the

¹⁵ www.cspr.org.zm/

¹⁶ CSPR was part of a consortium of 10 CSOs that petitioned the government in setting up a tribunal to investigate former Minister of Communication and transport Dora Siliya on alleged abuse of office (please refer to the appendix for the press statement). CSPR were also part of the 17 CSOs¹⁶ that petitioned the government to appeal against the acquittal of Frederick Chiluba by the magistrate court (please refer to the press statement "Acquittal of Frederick Chiluba").

¹⁷ CSPR, 2010. Draft concept on the service delivery and budget execution barometer.

CSPR sub national structures to monitor the implementation of the National Anti-Corruption Policy.

3.3 Economics Association of Zambia (EAZ)

The Economics Association of Zambia (EAZ) was established in the 1960's. It is a professional organisation for economists and professionals in related fields. Its broad aim is to promote the fiscal discipline in Zambia and thereby contribute to the country's social economic development of the country.

Current Initiatives

Alliance for Public Financial Awareness

This initiative aims to influence government and parliamentarians to increase spending on poverty reduction and relevant services in a cost efficient and effective manner. The initiative aims at empowering citizens to demand government to prudently expend resources in public service delivery. Activities that are undertaken include: public expenditure reviews¹⁸, advocacy through public fora and media campaigns, popularising findings of public expenditure reviews to communities through drama. These activities are conducted in a coordinated manner by the EAZ in alliance with Caritas, CSPR, JCTR, Private Sector Development Association, Trade Unions (ZCTU and FFTUZ), Transparency International Zambia, and University of Zambia's Department of Economics; Zambia Association for Manufacturers; Zambia Business Forum; Zambia Chambers for Commerce and Industry; Zambia National Farmers Union.

Envisaged Role of the Good Governance Programme

The programme would engage with EAZ's initiatives and support complementary work done by other CSOs such as CSPR, Caritas, and TI Zambia.

3.4 Jesuits Centre for Theological Reflection (JCTR)

Current Initiatives¹⁹

Economic Governance Programme (EGP)

The focus of the programme is to prevent the country falling once again into unaccountable and unsustainable debt. The idea is that better trade arrangements must be worked out for Zambia to benefit from its many resources. To meet these new challenges, the JCTR Debt and Trade effort re-shaped into the Economic Governance Programme (EGP) for the 2008-2010 Strategic Plan. Rather than just focussing

¹⁸ The tracking will be done using the CSPR provincial structures and Caritas dioceses in the following sectors: Agriculture, Education and Youth Sport. EAZ could also explore ways of collaborating with: Office of the Auditor General; Anti-Corruption Commission and TI-Zambia.

¹⁹ www.jctr.org.zm/

on improving macro-economic indicators the programme aims at promoting economic conditions within the country that measure success more on the respect for human dignity for all, assurance of equitable access to social economic indicators the programme aims at promoting within the country that measures success more on respect for human dignity for all, assurance of equitable access to social and economic opportunities and productive use of Zambia's resources.

Church Social Teachings Programme

The Catholic Church's doctrine determines JCTR's position in its governance topics which include corruption and its effects on the poor. This programme addresses a specific theme called *political ethics* which has gained prominence with its weekly (Tuesday) columns²⁰ in the *Post Newspaper*.

JCTR also collaborates with other CSOs²¹ in participating in the APRM process²² where they publish a quarterly booklet on the process. The organisation also collaborates with the Bishops who are the overseers of Caritas and its dioceses, the organisation also does joint advocacy with Christian Council of Churches of Zambia (CCZ) and the Evangelical Fellowship of Zambia (EFZ) on Governance topics.

Debt Monitoring

JCTR conducts research on public finance governance arrangements such as debt audits that provide transparent accounts of external debt management, equitable tax policies. Both the media and small meetings e.g. with Members of Parliament, with traditional rulers, with the Government's Sector Advisory Groups are being utilised to popularise the JCTR's recommendations. One of the research sub-themes is to highlight the gender dimensions of the impact of trade relationships. Furthermore, the EG Programme is undertaking research in cooperation with some international partners on global governance issues and an assessment of creditor/donor adherence to the principles of the Paris Declaration.

JTRC advocates for national governance reform with a strong focus on transparency and accountability on the budget cycle and the national debt management system. The organisation works along the catholic social teaching which it reflects in its own way as theological reflection with the vision "... where faith promotes justice for all in all spheres of life especially for the poor."

Envisaged Role of the Good Governance

The Good Governance Programme has been supporting JCTR in its overall and specific programmatic. A more accentuated engagement in profiling anti-corruption in the organisation could be considered. The programme further provides support to smaller CSOs that network with JCTR and use of the unique experience and know-how. The

²⁰ The weekly column is written by Fr. Pete Henriot who was Director of JCTR over a period of 20 years until September 2010.

²¹ CSPR was part of a consortium of 10 CSOs that petitioned the government in setting up a tribunal to investigate former Minister of Communication and transport Dora Siliya on alleged abuse of office (please refer to the appendix for the press statement). CSPR were also part of the 17 CSOs²¹ that petitioned the government to appeal against the acquittal of Frederick Chiluba by the magistrate court (please refer to the press statement "Acquittal of Frederick Chiluba").

²² The CSO APRM secretariat is currently hosted by Caritas Zambia.

Initiative for Sustainable Livelihood (ISRL) is part of the debt monitoring teams of JCTR. It is recommended that this support continues and the programme can explore possibilities of providing capacity development to other debt monitoring teams.

3.5 Southern African Centre for the Constructive Resolution of Disputes (SACCORD)

Current Initiatives

SACCORD has been monitoring the governance and security sectors of the Fifth National Development Plan (FNDP), namely: Constitutionalism, human rights, crime prevention, decentralisation, popular participation and democratisation, and monitoring the states compliance with international treaties. The particular area of interest for the purposes of this mapping exercise is the SACCORD initiative of monitoring Zambia's compliance with international treaties and protocols. SACCORD has been undertaking in depth enquiries on treaties and protocols that Zambia has signed, ratified and acceded to, especially those in related to SADC, NEPAD, AU, and UN.

The on-going popular participation and democratisation programme intends to empower citizens in order to create a critical mass to be in a position to exercise their rights and place demands on the duty bearers. The programme is also closely linked to the initiative on decentralisation which among other things looks at making the office bearers and decision makers accountable. The programme has been creating a platform for dialogue between citizens and state authorities.

New Initiatives

Monitoring Integrity Programmes

SACCORD continues to monitor the development of integrity programmes for government ministries and agencies. This activity could complement the official Integrity Committees established under the National Anti-Corruption Policy and driven by the Anti-Corruption Commission in cooperation with line ministries. The organisation also readily collaborates with other CSOs on corruption topics.²³

Envisaged Role of the Good Governance Programme

SACCORD provides quite a unique opportunity for active engagement in monitoring and follow-up of anti-corruption conventions such as the UN Convention against Corruption, AU Convention on Prevention and Combating Corruption and the SADC Protocol against Corruption. In terms of monitoring integrity programmes and accountability in local authority that the Good Governance Programme could facilitate SACCORD's work in relation to other CSO networks such as CSPR and the NGO INSAKA.

²³ SACCORD monitors is actively involved in election monitoring was part of a consortium of 10 CSOs that petitioned the government in setting up a tribunal to investigate former Minister of Communication and transport Dora Siliya on alleged abuse of office (please refer to the appendix for the press statement). SACCORD were also part of the 17 CSOs.

3.6 Transparency International Zambia (TIZ)

Current Initiatives²⁴

TI Zambia implements three major programmes: i) Communication and coalition building to strengthen partnership with Anti-Corruption Commission; ii) Corruption awareness & prevention through strong engagement with the media; iii) Good Governance. TI Zambia was actively engaged in the development of the National Anti-Corruption Policy and implementation plan. They forwarded in 2005 the first proposal on which the actual NACP, which was drafted and issued in March 2009, was based.

The organisation's niche is that it is in many instances the first place for complaints against corrupt behaviour and practice from the public through its eight-hour hotline for complaints which is being popularised through radio programmes. Some cases that have been successfully investigated by ACC were reported at TI Zambia. The trustworthy relation between both institutions allows an informal exchange of complaints in particular. TI Zambia stated that such a support was needed for ACC, as the commission is present in all nine provinces, however, with weak infrastructure. They also lack staff for their outreach programmes and for their classical operational duties.

TI Zambia also cooperates with some paralegal organisations to exchange corruption cases and forward them to ACC. The exchange of cases is necessary, bearing in mind that the paralegals are usually overloaded with their constituency and individual work and many cases are replicable in their structure and hence are dealt best by specialised organisations.

TI Zambia is also linked with district groups (DDCCs). The organisation provides training and makes manuals for monitoring governance institutions available. At national level, TI Zambia is involved in themes related to constitution and decentralisation.

New Initiatives

NURU Project: Political Finance in Zambia

"Nuru" is a Swahili term meaning "ray of light" it is a tool that will appraise the legal framework and practices of political finance in Zambia use the results to advocate for law reforms and practice in this regard. Nuru was first applied successfully in eight Latin American countries under an equivalent meaning Latin term "Crisis" in the period 2005- 2007. The Zambia Nuru project is still in its feasibility stage.

Medicines Transparency Alliance (MeTA)

MeTA was launched in May 2009 as an alliance of civil society with the objective of promoting transparency and accountability in the health sector with respect to the supply chain of essential medicines and accessibility of the vulnerable to health care. TI Zambia is currently hosting the secretariat of MeTA with the support from DFID.

²⁴ www.tizambia.org.zm/

Envisaged Role of the Good Governance Programme

Transparency International Zambia is currently the most competent organisation in Zambia in terms of conducting research on the subject of corruption. However, TI Zambia lacks presence at sub national level. In this regard, the Good Governance programme can facilitate for stakeholder dialogue in order to increase their outreach with other organisations with sub national level such as, AVAP's Democracy information centres, CSPR's PPMTs, Caritas diocese outreach, from JCTR's provincial outreach programme and the decentralised structure of ZCSD.

Conversely, CSOs with sub-national presence would benefit from TIZ's comparative advantage in applied research. TIZ would be instrumental in providing quality control to the CSO code of conduct that is being developed by the NGO INSAKA.

3.7 Other CSO Anti-Corruption Initiatives

Civil society organisations grouped together to address cases of corruption and/ or misuse of public funds. To some extent the below described cases could not or only to a limited extent been exposed without the establishment of anti-corruption consortia from CSOs. Engagement involved a large number of network and smaller CSOs active in advocacy for good governance and national governance reform in particular. The initiatives below indicate the dimension of the problem and also the limited opportunities of civil society to inflict change beyond making cases of corruption and mismanaging of public resources public.

Dora Siliya Tribunal

In March, 2009 a consortium of ten CSOs²⁵ and William Harrington²⁶ petitioned the high court to set up a tribunal to investigate impropriety allegations against the then Minister of Communications and Transport Dora Siliya in her involvement over the sale of the Zambian Telecommunications Organisation (Zamtel) and procurement of radar system for the National Airport Corporation. She was forced to resign after she was found guilty of breaching constitution and Ministerial code of conduct (cabinet handbook) by the Denis Chirwa tribunal which had eight key findings:

- Usurping of powers and role of the Zambia Development Agency (ZDA)
- Unlawful signing of the MoU with RP Capital Partners Limited
- Usurping of powers of Cabinet
- Committing of the Zambian Government to US\$2 million
- Abrogating the Zambia Public Procurement Act of 2008
- Deception through insertion of US\$2 million in the MoU
- Irregular involvement in the procurement of radar equipment; and

²⁵ Caritas Zambia, Citizens Forum, Civil Society for Poverty Reduction, Civil Society for Trade Network, Foundation for Democratic Process, Jesuit Centre for Theological Reflection, Southern Centre for Constructive Resolution of Disputes, Transparency International Zambia, Women for Change, Zambian Youths Association in the Fight Against Corruption

²⁶ William Harrington served in many Ministerial positions during the Chiluba Presidency.

- Breach of the Republican Constitution

Ms Siliya was reappointed to cabinet as Minister of Education after a High court ruling by Judge Philip Musonda who dismissed tribunal findings.²⁷

Frederick Chiluba's Acquittal

On 30 September 2009, a consortium of 17 CSOs²⁸ petitioned government to appeal against the Magistrate ruling which acquitted former President Fredrick Chiluba of corruption charges during his presidency. The CSOs stated among other things their intention to: petition Speaker of the National Assembly to restore Chiluba's immunity and embark on nationwide campaigns through honking and whistling calling for the government to appeal against the ruling.²⁹ The government did not appeal against the acquittal while two of Chiluba's co accused were found liable on the same charges.

In addition to his acquittal in the civil case, the Zambian High court threw out an application by the Zambian government to have the ruling of the London High court that found Chiluba guilty of defrauding the Zambian people of money amounting to US\$46million.³⁰ TI Zambia has studied the judgement and have given its opinion through a written submission to the Attorney General in form of an amicus.

4. Recommendations: Capacity Development for Empowerment

4.1 Need for Capacity Development

This brief mapping exercise even though restricted to seven CSOs revealed that TIZ is as expected the organisation highly specialised in quite a number of specific and broader aspects of anti-corruption. Most CSOs working on governance and poverty reduction address corruption more implicitly. Areas of engagement are the monitoring of elections and advocacy for a sound electoral code of conduct, budget tracking, monitoring of state service delivery, use of public resources for private gains and behaviour of public officials. Except for TIZ anti-corruption is neither the central focus nor is mainstreaming high on the agenda. Overall, the level of knowledge and also the capacity to actively deal with anti-corruption at the programmatic and operational level of partner organisations from civil society is limited. Yet all organisations advocate for increased participation of people in decision-making, higher degree of state

²⁷ Refer to the press statement issued by the consortium of CSOs attached in the appendix.

²⁸ Anti-Voter Apathy Project, Caritas Zambia, Citizen's Forum, Civil Society for Poverty Reduction, Civil Society Trade Network of Zambia, Evangelical Fellowship of Zambia, Foundation for Democratic Process, Jesuit Centre for Theological Reflection, National Youth Anti-Corruption Movement, Non-Governmental Coordinating Council, Southern Africa Centre for Constructive Resolution of Disputes, Transparency International Zambia, Women for Change, Young Leaders' Integrity Alliance, Zambia Civic Education Association, Zambia Council for Social Development, Zambia Youths Association in the Fight Against Corruption.

²⁹ Refer to the press statement "Acquittal of Dr Frederick Chiluba" in the appendix.

³⁰ Refer to the press statement and the Amicus-brief for the Attorney General issued by TI Zambia in the appendix.

transparency and public accountability and through this contribute to checks and balances.

4.2 Empowerment: How can the Deficiencies of CSOs be Bridged?

Our conviction is that there are three things that would need to be addressed. The first and overarching responsibility is that of restoring public trust in civil society. CSOs would legitimise and improve their credibility in society if they were to commit to integrity pacts or a common code of conduct that emphasise on accountability and transparency in their internal governance with respect to their constituents, state and their funders.

Networking with other CSOs national and cross-border is recommended. The same applies to the need for improved communication with state organisations and here particularly those who are kind of natural partners of CSOs such as the Anti-Corruption Commission of the Office of the Auditor General.

The second is to professionalise their work which requires acquiring knowledge and skills in understanding what corruption is, why it is harmful to development and what organised civil society could do in combating corruption. Corruption is the expression of bad governance. Due to the high occurrence of corruption in the public and private domain basic and enhanced knowledge and the ability to engage in collective action have a direct bearing on the empowerment of citizens to demanding and being able to contributing to good governance.

Umbrella CSOs would be well placed to transfer knowledge to their sub-national partners, which in turn have the capacity to address community based organisations. Also People need to participate in the application of tools such as social audits and citizens-leaders development pacts. Result based application of knowledge would strengthen CSOs as legitimate anti-corruption partners of the people in their dual role of stage and actor. Professionalism would contribute to remain focussed and to would further result in strengthening the comparative advantage of organisations to stay engaged.

The third point is that of CSOs positioning themselves as learning institutions. Again, we observe that knowledge management is a rhetoric item and hardly internalised in the programmatic of CSOs in Zambia. Notwithstanding TIZ's lead role, we have suggested the establishment of a CSO clearing house that would gather, process and share knowledge and information on best practices on initiatives in anti-corruption. Such institution could become an opportunity for peer learning among CSOs in Zambia and would further draw experience from successful initiatives across regions.

Finally, we are quite convinced that cooperating partners, who promote capacity development in the area of promoting good governance, would be ready to complement CSOs in their own efforts. Experience confirms that cooperating partners are ready to make their networks, facilities and knowledge available. For example, the Good Governance Programme would be in a position to provide capacity development and support knowledge management which would include support for networking of CSO initiatives at national and sub national level. The programme is ready to activate its own network such as the German UNCAC Project, U4 Anti-Corruption Resource Centre, the Judicial Integrity Group, the Anti-Corruption Task Force of the OECD

DAC, the International Centre for Asset Recovery, specific capacity of Transparency International, the capacity of UNODC and that of specialised cooperating partners such as DFID.

Examples are the interactive U4 in-country and online courses which combine broad and highly specialised training in anti-corruption, TI's specific thematic initiatives and tools and those hosted by UNODC or by bilateral partners such as the German UN-CAC project.

Annex 1

Press Statement

Reflections on the Fight against Corruption in 2009 by TIZ

30 September 2009

The fight against corruption in 2009 can be termed to have been multi-textured. The general characteristic of the fight is that there was an absence of a clearly stated vision especially from President Rupiah Banda and his cabinet. Partly this can be attributed to a very mild form of political leadership on the matter which simply failed to inspire any meaningful action against those engaged in corruption.

The Banda Administration seemingly was content with minor successes and generally failed to focus on the bigger picture of the immense benefits that would accrue to this country if corruption is fought vigorously. In the absence of high ambition and demonstrated political will, it is our conclusion that there was a lot of motion with limited forward movement.

The actions taken in 2009 by the Banda Administration in dealing with corruption especially in the public sector- were not adequate to make lasting impact. There was a lot of political rhetoric but with little meaningful action. While acknowledging that President Banda has his own leadership style in dealing with corruption, it is our considered view that his approach to this important scourge is too tentative and not firm enough to secure meaningful achievements.

The launch of the National Anti-Corruption Policy as well as the marginal improvements on the Transparency International Corruption Perception Index from 2.8 to 3.0 out of possible 10, are been heralded as key developments in 2009. While these were important to the fight against corruption, it should be recognised that these are efforts which go back in time and are overshadowed by the numerous failures by Government to effectively reduce corruption in the public sector. Corruption continues to be rampant and systemic and in 2009, nothing significant has been done to change this scenario.

The National Anti-Corruption Policy while positive is merely a representation of policy intentions and the measure of its success will be judged in manner that this Policy will be implemented. It can be said therefore that there is no cause for celebration yet as this Policy has to be translated into concrete actions. Public procurement continues to be a source of concern and the Rupiah Banda Government still has a long way to en-sure that partisan political interests do not subsume public interests. The manner that Government has been handling key procurements e.g. for oil supplies, ZAMTEL valuation, hearses and food supplies among others, all leave a bitter taste in the mouth.

The Dennis Chirwa Tribunal set up to investigate alleged misconduct of Hon. Dora Siliya who then served as Communications and Transport Minister, did allude to a number of such inadequacies in public procurement and it is a pity that to date, the Republican President has not publicly reacted to the Tribunal's report despite asking for time to study the same report.

Most of the actions taken in 2009 vis-à-vis fighting corruption were self-serving and the most significant one was the acquittal of former President Frederick Chiluba. The Executive took positions on this matter even before the verdict had been read in the Court of Law and it was not surprising thereafter that President Banda and a number of his Ministers continued to do the Public relations work for Dr Chiluba even in the face of strong reaction to the acquittal. It is a pity that while a lot was expected from the judiciary and the Director of Public Prosecutions on this case, they have fallen short and simply proved the unfortunate view held by many that Zambia has two judicial systems – one that is for the rich and another for the poor. The reasons given by the Executive for not appealing against the acquittal of Dr Chiluba actually confirms this view. The whole handling of the process leading to acquittal of Dr Chiluba and the aftermath – was not only poor but a classic example of what happens to the Judiciary and DPP's office when these revered institutions become compromised – judicial independence and accountability equally become diluted. President Rupiah Banda has strongly supported the decision not to appeal but he should be warned that whole episode is an 'elephant in the room' – it simply won't go away and sooner than later- this will have political costs which will come to haunt the ruling party.

Electoral and political corruption continued unabated and the accusations of electoral corruption during by-elections grew stronger than before and unless all political parties take strong measures- this form of corruption will grow into a cancer. The ruling party should lead by example and ensure that they stop the rot of bribing the electorate for their votes. The opposition political parties have equally not done enough to fight corruption in their electoral campaign processes and this is becoming a source of concern because it would seem our political leaders have run out of ideas of convincing the electorate on their strengths without resorting to appeasing, treating and bribing would be voters. Corruption in our electoral process does little to promote our democratic standing as a country. TIZ is concerned that if electoral corruption is tackled with the urgency it requires, the 2011 Elections will be nothing but shambolic.

Overall, 2009 will remain a year where so much was said about corruption but very little was actually done. We witnessed more political attacks on civil society and the media by senior Government leaders who are in privileged positions to do something about the high corruption level but elected to spend their energies on trivialities or expressing jaundiced opinions of the media and civil society. We hope 2010 will be different and the Banda Administration will stop hiding their inadequacies behind the argument that the corruption they are fighting occurred during the Mwanawasa Administration.

The Zambian people care less when the corruption scandals started but how Government is addressing them and ameliorating the severe impacts of this corruption. Assuming leadership positions means assuming both good and bad and this Government will be judged by their timely action and not unnecessary defensiveness and political mudslinging. The time for excuses and shifting blame is long gone and Transparency International Zambia would like this Government to rise to the challenge. President Banda should provide strong leadership and ensure that meaningful steps are taken to clean the public sector of corruption. All allegations of corruption should be investigated regardless of the political consequences. Government should desist from approaching the fight against corruption.

Rueben Lupupa Lifuka

TIZ Chapter President

Annex 2

Press Statement

Complainants in the Justice Dennis Chirwa-Led Tribunal

19 April 2009

A. Introduction

Welcome to this press conference following the submission of the Dora Siliya Tribunal Report on Thursday 16 April 2009 to the Republican President His Excellency Mr Rupiah Bwezani Banda.

The first complainant Mr William Harrington and the consortium of ten civil society organisations have had occasion to review the findings of the tribunal and we now wish to present our reaction and position on this matter.

As a preamble, we wish to place on record our gratitude and appreciation for the support rendered to the process (tribunal proceedings), by the government. In particular, we thank the Chief Justice Mr Ernest Sakala for expeditiously setting up the Tribunal to investigate the various allegations against Hon. Dora Siliya. We believe that this action in itself consolidates our democracy as a country and demonstrates a willingness to enforce all laws of the land. We want to extend our gratitude as well to the Tribunal comprising Supreme Court Justices, Dennis Chirwa (Chairperson), Peter Chitengi and High Court Justice Evans Hamaundu for their dedication and professionalism in the discharge of their functions. We also appreciate the Republican President's intervention in ensuring that funds were made available to facilitate the work of the Tribunal. Special thanks also goes to the media – who in different ways, kept the general public updated on the Tribunal proceedings. We are however, greatly indebted to the general public, both within and outside the country, who have followed the proceedings with keen interest and for rendering tremendous moral support to our cause.

We would like to seize this opportunity to assure everyone that our motive in calling for the establishment of the Tribunal was not done out of malice or bad faith, but was aimed at ensuring the entrenchment of a system of governance that is not only transparent, corruption-free but anchored on the strict observance of the rule of law.

B. Outline of the Press Statement

The first complaint – Mr William Harrington and the consortium of ten NGOs, generally are of the view that the Tribunal, in their findings, adequately address some of the issues that we raised with them. We observe, with interest, the fact that the Tribunal in its findings did not uphold two of the three allegations, in so far as Section 4 of the Parliamentary and Ministerial Code of Conduct Act is concerned. The Tribunal however firmly established that the Honourable Minister had violated the Republican Constitution, which is more serious. The significance of this Tribunal finding that the Honourable Minister, breached the constitution, is not lost on us and we will state our position on this issue in our conclusion.

This statement is in three parts – in the first part, we address our minds to the Tribunal findings and pick out salient points raised which should not be glossed over. In the second part, we make our observations on the whole episode surrounding Hon. Dora Siliya and we link the Tribunal findings to statements previously made by His Honour the Vice President and Minister of Justice – Mr George Kunda on some of the allegations considered by the Tribunal. And in the last part we present our demands which are fortified by the Tribunal findings.

PART I: Tribunal Findings of Fact on Laws Hon Dora Siliya Breached

There are a total of eight key findings of fact that we have picked out of the report of the Tribunal, establishing that Hon Dora Siliya breached various laws, Cabinet Handbook and the Constitution of the Republic of Zambia as follows:

- Usurping of powers and role of the Zambia Development Agency (ZDA)
- Unlawful signing of the MoU with RP Capital Partners Limited
- Usurping of powers of Cabinet
- Committing of the Zambian Government to US\$2 million
- Abrogating the Zambia Public Procurement Act of 2008
- Deception through insertion of US\$2 million in the MoU
- Irregular involvement in the procurement of radar equipment; and
- Breach of the Republican Constitution

1. Usurping of the Powers of the Zambia Development Agency

At page 42 and 43, the Tribunal states the following: *“The advice of the Attorney-General of the 5 January, 2009 was that the first Memorandum of Understanding be treated as a nullity and be re-done. His advice was not that a second Memorandum of Understanding concerning the role of the Zambia Development Agency be signed. Further the role spelt out for the Zambia Development Agency in the second Memorandum of Understanding is merely that of providing supervision over R.P Capital Partners Limited. Therefore the second Memorandum did not address the chief concerns raised by the Attorney-General. At this juncture we note that the provisions of the Zambia Development Agency Act, No. 11 of 2008 do not give powers to a Minister to do what Hon. Dora Siliya did. **The action she took unlawfully usurped the powers of the Zambia Development Agency.**”*

2. Unlawful Signing of the MoU

At page 43 the Tribunal states *“We further note that the Attorney-General had indicated in his letter of the 5 January 2009 that since the Memorandum of Understanding related to the privatisation of a parastatal company, **it should have been signed by the Minister of Finance and not Hon. Dora Siliya.** Indeed under Section 44 of the Zambia Development Agency, Act No. 11 of 2008, the Minister responsible for finance is the authority empowered to sign the sales agreement to transfer shares or assets to the selected bidder. **Therefore we agree with the Attorney-General that the Memorandum of Understanding which was the preliminary stage leading to the final sale and transfer of the assets of ZAMTEL should have been signed by the Minister of Finance.** That aspect of the Attorney-General’s letter of the 5 January 2009 was not addressed.*

3. Usurping the Powers of Cabinet

The Tribunal makes a cardinal finding reflected on Page 44 where it states as follows: *“The effect of the Memorandum of Understanding executed on the 22nd December, 2008 is that it is now binding on the government and is not contingent upon Cabinet approval of the sale of ZAMTEL. As we understand the regulations put before us the sale of a parastatal company must be sanctioned by the Cabinet. **However, the Memorandum of Understanding which was signed by Hon. Dora Siliya has usurped the powers of the Cabinet because whether Cabinet approves the sale of Zamtel or not, R.P Capital Partners Limited will still claim their money.**”*

4. Committing Zambian Government to US\$2million without Tender Approval from the Zambia Procurement Authority

At page 45 and 46, the Tribunal in their report categorically states that *“In the first in-stance it is clear that once a decision to sell ZAMTEL has been made by Cabinet, the Government will not be allowed to commence any tender process. Instead the Government is now bound by the Memorandum of Understanding to allow R.P Capital Partners to proceed to provide consultancy services leading to the sale of ZAMTEL and bound to pay at least a sum of US\$ Two Million. This commitment is traced to the Ministry which signed the Memorandum of Understanding allowing R.P Capital Partners Limited to provide consultancy services for the sale of ZAMTEL and be paid US\$ Two Million without the Zambia Public Procurement Authority. Quiet clearly the sum of US\$ Two Million is beyond the Ministry’s*

threshold. **Therefore, Hon. Dora Siliya signed a Memorandum of Understanding which committed Government to a sum of Money beyond her Ministry threshold without approval of the Zambia Public Procurement Authority.**

5. Abrogating the Public Procurement Act on Limited Selection

The Tribunal in their report, on page 47 states the following- *“It is clear that the manner in which RP Capital Partners were selected was against the provisions of the Public Procurement Act. The evidence clearly shows that R.P Capital Partners went to the Ministry through the Hon. Dora Siliya. Therefore the omission must squarely be put on the shoulders of the Hon. Dora Siliya. Therefore we find that the Minister of Communications and Transport did not follow the requisite tender process in the selection of R.P Capital Partners Limited. It is not the law that the ‘limited selection’ occurs when a supplier of goods and services presents a different proposal from others.”*

6. Deception on Inserting US\$ 2,000,000 in the MoU

At page 41, the Tribunal makes the following observation- *“On the 22nd December, 2008, Hon. Dora Siliya went ahead to sign a Memorandum of Understanding which was not substantially the same as the draft which the Solicitor-General had cleared for signing in that in the Memorandum of Understanding signed on the 22nd December, 2008 there was introduced a new element regarding the financial implications. There was now inserted a base floor sum of US\$ Two Million. This was not contained in the final draft which the Solicitor-General approved. In the circumstances, Hon. Dora Siliya can-not plead that she was following the advice of the Solicitor-General in its entirety.”*

7. Minister’s Involvement in Procurement of the Radar System

On this issue, we note that while the Tribunal found this allegation was not proved, they raised important points on page 59 and 60 by stating that *“It is clear that there was no contract that was cancelled by Hon. Dora Siliya. Even her attempt to suspend the tender process was not successful. The allegation is not attempting to cancel the contract but that she cancelled the contract. Reference was made by Counsel for the Consortium of Civil Societies to Section 75 of Public Procurement Act, which creates an offence. But a commission of that offence does not amount to breach under Parliamentary and Ministerial Code of Conduct Act in its present form. If the Civil Societies wanted to complain against the breach of the section, the complaint should have been directed to the appropriate authority to investigate. **However we do agree that the manner of Hon. Dora Siliya’s involvement in the issue of radar tender is against the guidelines in the Cabinet Handbook especially clauses 8. 2. and 8. 4.”***

8. Breach of the Constitution

The Tribunal concludes on an important finding at page 106 when they state the following: *“It is a notorious fact that before Ministers assume their responsibilities they take official oath of office to uphold and defend the Constitution of Zambia and the laws of Zambia. **Breach of the Constitution is a serious matter.** If a sitting President breaches the Constitution he is liable to impeachment under Article 37 of the Constitution. **In this case by ignoring the legal advice of the Attorney – General, Hon. Dora Siliya breached Article 54 sub Article 3 of the Constitution. The observance of the legal advice of the Attorney-General is also clearly spelt in Chapter 8 Paragraph 8.13 of the Cabinet Hand Book.** We are not idle to think that Hon. Dora Siliya is not acquainted with Constitutional provisions and the provisions of the Cabinet Hand Book.”*

PART II: Other Observations on the whole Episode

Before we conclude this statement with our demands as part of the way forward, we would like to bring to your attention, our observation on the conduct of Senior Government Officials – particularly His Honour – the Vice President and the learned Minister of Justice. We observe with regret and displeasure the conduct of the Vice President – Mr George Kunda SC over the handling of the RP capital MoU. In so doing we want to quote his official statement to the nation in defence of Hon. Siliya on 17 February 2009. We contrast his statements on this issue with the findings of the Tribunal.

The Vice President stated the following: *“the MoU was finally signed on 22nd December, 2008 by all the parties. Thus at the time of signing the MoU, the Solicitor General had cleared and approved the MoU which had taken into account comments of the Solicitor General. For all intents and purposes, the Solicitor general was acting on behalf of the Attorney general”.*

However the Tribunal’s findings are at variance with this position and they state that *“On the 22nd December, 2008, Hon. Dora Siliya went ahead to sign a Memorandum of Understanding which was not substantially the same as the draft which the Solicitor-General had cleared for signing, in that in the Memorandum of Understanding signed on the 22nd December, 2008 there was introduced a new element regarding the financial implications. There was now inserted a base floor sum of US\$ Two Million. This was not contained in the final draft which the Solicitor-General approved.”*

Mr Kunda in his statement further concludes that *“for all intents and purposes, the Memorandum of Understanding signed by the Minister of Communication and Transport was approved by the Solicitor General.”*

The Tribunal’s findings that the MoU was not approved and the Honourable Minister breached the constitution invokes us to make a critical observation on the conduct of His Honour –Vice President as follows:

The breach of the constitution in the matter of RP Capital is not limited to Hon. Siliya but extends to Hon. Kunda, who clearly is in a unique position firstly as Republican Vice President, secondly as Minister of Justice, thirdly as a former Attorney General and finally as a senior Lawyer. Hon Kunda misled the nation and for reasons known to himself, he defended the breaches of the law and constitution.

PART III: Our Demands

- The Republican President should immediately relieve Hon. Dora Siliya of her ministerial position for breaching various laws and more seriously, the Constitution of the Republic of Zambia, which she swore to uphold and defend, as Minister of Communication and Transport.
- We call upon the Speaker of the National Assembly to equally institute appropriate action against Hon. Siliya as a Member of Parliament and Minister, for misleading the House in her ministerial statement of 13 February 2009 in relation to the MoU with RP Capital Partners of Cayman Islands.
- The Republican President should immediately relieve His Honour the Vice President and Minister of Justice – Mr George Kunda of his duties for misleading the nation by supporting and justifying Hon. Siliya’s unconstitutional and unlawful conduct as being within the law when in fact not.
- We call upon the Office of the Auditor General to audit the Petauke District Council accounts, to determine the abuse or misuse of public funds especially in light of the tribunal findings of laxity in handling of financial matters. It is our contention that the laxity identified by the Tribunal in the way Petauke District Council manages its finances, should not be ignored. Such an operating environment is a conducive one for mismanagement, misappropriation and embezzlement of public funds.
- We finally demand without any compromise that all the costs accrued and payable to RP Capital Partners be met by Hon. Dora Siliya herself because she personally committed the government illegally and unconstitutionally. We shall not allow Zambian tax payers who are already overburdened to bear the unconstitutional costs brought about by her misconduct, which is not even provided for in the national budget This costs include amounts of US\$50,000, reimbursables, US\$2 million base floor sum and the 5% of the realisation amount in the event that Zamtel is sold. Additionally, we demand that Parliament should not consider any supplementary estimates that may be presented by Government, considering that these costs are not provided for in the 2009 Budget. .
- We call upon Government to urgently bring to the National Assembly amendments to the Parliamentary and Ministerial Code of Conduct Act with a view to strengthening it by broadening the definition of misconduct in Section 4 to include breach of any written law and most importantly the Republican Constitution; and any other weaknesses which were apparent in the manner that this Justice Chirwa led Tribunal conducted its proceedings.

C. Conclusion

We would like to advise all our national leaders, who are entrusted with the responsibility to run the affairs of the nation, that the Zambian people shall continue to hold them to account using all the available legal means including the Parliamentary and Ministerial Code of Conduct Act, any other written law and more importantly the republican Constitution. Our hope is that the nation has learnt something from the just ended Tribunal. The findings of the Tribunal should serve as a timely warning to all Ministers and Government officials in the discharge of their functions. We wish to remind all those Ministers or Government officials engaged in similar breaches of the laws, the cabinet handbook and the constitution, to take careful notice of these findings.

On our part as individual Zambians and as Civil Society, we will remain vigilant in our work and we will not shy away from taking similar or any other action now and in the future and this we will do in the firm belief that transparency, accountability and respect for the rule of law, should remain the hallmarks of our governance system.

Issued by

Transparency International Zambia

Civil Society for Trade Network

Southern Centre for Constructive Resolution of Disputes

Jesuit Centre for Theological Reflection

Citizens Forum

Civil Society for Poverty Reduction

Foundation for Democratic Process

Zambian Youths Association in the Fight against Corruption

Women for Change

Caritas Zambia

William Harrington

Annex 3

Press Statement

Transparency International Zambia's Statement on Judge Evans Hamaundu's Ruling on the Registration of the London High Court Judgment against

Dr F.T.J. Chiluba and others

18 August 2010

Transparency International Zambia (TIZ) has taken time to study and reflect on the judgment passed by Judge Evans Hamaundu in which he sets aside the order granting the Attorney General leave to register the judgment of the London High Court of Justice obtained against former President Dr Frederick Chiluba and others. We have made a number of observations and we have equally come up with our position on this development and these are presented below:

Our Observations

- The issue that the High Court has addressed in its judgment is only one – namely whether the judgment of the London High Court of Justice should be enforced by direct registration. High Court Judge Hamaundu does not, anywhere in his judgment pronounce himself on the judgment validity which was obtained in a competent court in the London High Court of Justice. As far as we are concerned, the findings against Chiluba and others still remain valid.
- Our understanding of the judgment is that Judge Hamaundu did not state that judgment could not be registered in Zambia except that he has set aside the order to grant the Attorney General of Zambia, on behalf of the Zambian people, leave to directly register the London High Court judgment under the Foreign Judgments (Reciprocal Enforcement) Act. Judge Hamaundu states that a judgment creditor (Attorney General) wishing to enforce a foreign judgment at common law will have to commence an action founded on that judgment as a cause of action. (J19) He actually presents the Attorney General another avenue through which he should consider in seeking the enforcement of the foreign judgment against Dr Chiluba and others.
- We find it instructive that Judge Hamaundu in this current judgment does not favour direct registration as a way of enforcing foreign judgments. What we find more intriguing is that he fails to refer to his own judgment in *Reefcor Limited v. Les Generals Des Carriers Et Des Mines Exploitation Gecamines* (High Court for Zambia, Kitwe District, (11 June 2007) (2002/11K/52G) where he allowed for direct registration of a judgment rendered by the High Court of South Africa despite the respondent arguing that South Africa is not one of the British Majesty's dominions, neither is it a British protectorate nor a mandated territory and that it does not have a reciprocal agreement with Zambia and did not fall under the Foreign Judgment (Reciprocal Enforcement) Act Chapter 76 of the Laws of Zambia. Judge Hamaundu after observing that no proof was rendered in court to show that South Africa had not been added to a list of countries covered by the Foreign Judgment (Reciprocal Enforcement) Act, held: "assuming that South Africa is not one of the scheduled countries, I wish to cite the case of *Mileta Pakou and Others v. Rudnap Zambia Limited* (1998) ZR 233." He applied the following passage from the Supreme Court Judgment in *Mileta Pakou*: –"The law which applies in Zambia in default of any statute is the common law of England. At Common Law, the judgment of any competent foreign court for a sum certain is enforceable as a simple debt on the basis of an implied obligation which arises on the part of the judgment debtor. However, the foreign court must have had the necessary jurisdiction." As TIZ, we are baffled that Judge Hamaundu elected not to be bound by his own precedent which we adequately cited in our amicus curie.

Our Position

- Our position on the registration of the London High Court judgement obtained against Dr Chiluba and others, was clearly articulated in our (TIZ) amicus brief prepared for us largely by Prof Muna Ndulo, an eminent scholar who has reviewed global jurisprudence on the issues at play, including decisions on similar provisions of the law from African Common law countries

where the same arguments were raised. We still contend that the conditions for registration of the judgment under the Common Law and the Foreign Judgments (Reciprocal Enforcement) Act Chapter 76 of the Laws of Zambia have been fully satisfied. This position is clearly stated in our amicus that “to enforce the London High Court Judgment in Zambia, the judgment needs to be registered under the Common Law rules relating to the registration of foreign judgments or under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Laws of Zambia by the High Court of Zambia”. TIZ is of the view that such an important pronouncement on the law as to reciprocity of UK Judgments must go all the way to the Supreme Court.

- As Transparency International Zambia, it is our unwavering position that this is a matter of immense public interest and it cannot be abandoned at this hurdle. It is unimaginable that the Attorney General can abandon the cause at this stage given the rather large judgment sum which should be recovered from the judgement debtors.
- The Attorney General is encouraged to pursue this issue to its logical conclusion. The Zambian public should be reminded that the Zambian Government has already used the London High Court judgment to extract payments from defendants Atan Shansonga, Bimal Thaker, B.B Thaker, Cave Malik and their insurers in the United Kingdom. Properties in Belgium were recovered with a gross value of US\$8 million in a claim against four (4) European defendants based on the same allegations of conspiracy to defraud as was maintained against Dr Chiluba and other Zambian defendants. The Zambian Government has registered the same Judgment against Raphael Soriano in the Belgian Courts and resisted an application by Raphael Soriano challenging that registration.

Conclusion

The issues raised in the Judgment were well articulated in our amicus brief. The Court should have considered the brief and it is a pity that Judge Hamaundu declined to admit it on grounds that he had already set the judgment date. Justice delayed is justice denied we concede, but it has been said that justice rushed is equally undesirable. Given this new development, the ball is back in the court of the Attorney General and the Zambian Government and we can only hope that the Zambian people will be informed of the next steps as soon as possible. As far as we are concerned, this matter is far from concluded and it will be a pity if Government abbreviates this process for other reasons other than legal ones.

Goodwell Lungu

Executive Director TI Zambia

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