



NEW ANTI-CORRUPTION GOVERNMENTS: THE CHALLENGE OF DELIVERY

ZAMBIA

A CASE STUDY

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Paper commissioned for the Kenya Meeting on New Governments, co-organised by the Government of Kenya, TI-Kenya and Transparency International, held in Nairobi, Kenya, in October 2004.

Zambia

1. Executive summary

Corruption has become endemic in Zambia in the last 13 years. It has had devastating effects on the people of Zambia, and considerably slowed down economic development. The most common forms of corruption are petty, grand and political corruption. It is estimated that 80 per cent of the Zambian population lives on less than US \$1 per day. Corruption rose exponentially during the Chiluba presidency (1991-2001), as there was no political will to combat it.

It was the election of President Mwanawasa in December 2001 that galvanised the anti-corruption fight. The main new initiative introduced to fight corruption has been the Task Force on Economic Plunder, an inter-agency body consisting of representatives of various law enforcement and regulatory institutions established in 2002 by President Mwanawasa. The most significant event in the new anti-corruption drive was the lifting of Chiluba's presidential immunity by the National Assembly at the urging of President Mwanawasa in July 2002. Since then, Chiluba, some of his top officials, ministers, managers of parastatals, and former intelligence and defence chiefs have been arrested and prosecuted for stealing public resources.

The government has attempted to address political corruption by appointing the Electoral Reform Technical Committee, which has made significant recommendations in this respect.

Among the recommendations made by the ERTC are state funding of political parties, requiring political parties to declare their sources of funds and requiring political parties to practise internal democracy as a condition for participating in elections.

In the area of public finance the government, with the support of donors, has embarked on public service reforms, which include reform of the budgeting process and strengthening the management of public funds. The problem of low remuneration in the public service is being addressed through another initiative, the medium-term pay review, which is aimed at decompressing salary scales and improving the remuneration of key professionals in the public service.

The existence of political will at the highest level, the work of civil society organisations like TI-Zambia in advocacy and raising public awareness, and the public's support for the anti-corruption drive have created a conducive environment for the implementation of the reforms.

The absence of a comprehensive national anti-corruption strategy, the lack of a legal framework for the Task Force, the use of dysfunctional institutions to implement reform, massive poverty, delays in the disposal of cases, selective arrests and prosecution of alleged plunderers, and inadequate human and financial resources have been serious constraints in implementing the reforms.

In order to enhance the fight against corruption the following measures are recommended:

- the operations of the task force must have a legal anchor;
- the government, working with other stakeholders, must formulate a long-term comprehensive anti-corruption strategy;
- the institutions in the frontline against corruption such as the Anti-Corruption Commission, the Anti-Money Laundering Unit, the police, the Auditor-General, the judiciary and the Zambia National Tender Board need to be well resourced, and have their independence or autonomy enhanced. This will require, *inter alia*, legal reforms;
- an independent prosecution service headed by the Director of Public Prosecutions must be established by law;
- anti-corruption prevention efforts must be intensified;
- codes of conduct for public service workers and the private sector should be developed and implemented; and
- the National Integrity System should be strengthened.

2. Conclusions

2.a. Overall outcomes and current status

In the last three years, there have been no legislative reforms aimed at advancing the fight against corruption. The increase in inter-agency cooperation through the establishment of the Task Force on Economic Plunder has proved beneficial, however. While in the past there was little sharing of information, expertise or resources among the various law enforcement and regulatory institutions, the creation of the task force appears to have sorted out that problem. Furthermore, the usual rivalry between such institutions has been considerably reduced. The task force has managed to recover much property and money embezzled by former public officials.

The fact that there is political will at the highest level to combat corruption has breathed new life into the anti-corruption fight. The anti-corruption institutions have been energised and now feel encouraged to pursue corrupt officials without fear of retribution from the government. The Chiluba government had been hostile to these institutions and did everything to frustrate their work. Officers worked in fear for their jobs if they annoyed those in power. Chiluba, through his conduct and tolerance of corruption, had literally given an open license to public officials to indulge in corruption. Mwanawasa's administration has sent a clear message to all that corruption will no longer be tolerated. The arrest of former ministers, senior parastatal chiefs, former and serving permanent secretaries, former defence commanders and other senior officials has sent a chill into the spines of public officials.

Although corruption has not been totally eliminated, there are indications that it is not as wanton, particularly among top officials, as it was under Chiluba. Petty corruption, however, is still a serious problem in government because of outrageously low salaries paid to public service workers. The absence of a code of conduct for public officials aggravates the problem. Although no legislative reform in the area of public procurement has been undertaken hitherto, there are indications that tender procedures are being taken seriously by public officials. A number of top officials have been arrested and prosecuted for flouting tender procedures in the awarding of contracts or for conflicts of interest.

Political corruption has not abated. It is encouraging, however, that the government is trying to address it by setting up the Electoral Reform Technical Committee (ERTC). The ERTC's recommendations, if implemented in full, will go a long way in levelling the political playing field and reducing political corruption.

There are several obstacles to anti-corruption reform. First, the absence of a legal framework for the operations of the task force has created legitimacy problems for it. The task force has, to some extent, lost the confidence of significant portions of civil society because it is perceived to be acting at the behest of the president. It has been accused of being selective in its investigations, arrests and prosecutions. Second, apart from the recovery of property and cash stolen, the task force has secured an insignificant number of convictions in courts of law. It has suffered a number of embarrassing defeats through acquittals of suspects. This suggests that the task force has capacity problems and lacks independence from the political authorities to do its work professionally without fear or favour.

Third, the various law enforcement institutions constituting the task force have not been significantly strengthened. They still suffer from inadequate funding, poorly motivated

staff, inadequately qualified manpower and a lack of logistics. Some of their weaknesses, particularly the quality of staff, have been transferred to the task force.

Fourth, the political will to deal with political corruption does not appear to be as strong as it is for other types of corruption. That is why there has been no enforcement of the Electoral Code of Conduct.

Fifth, there is no comprehensive national anti-corruption strategy or plan. Transparency International Zambia has for the past three years been advocating the adoption of such a plan and has even done research and come up with suggestions on the basic elements of such a plan. Seminars have been held with policy-makers on this subject. The government has not yet taken any concrete position on the desirability of such a plan, however. The Anti-Corruption Commission, with help from DFID, has been working on a Corruption Prevention Plan, but this has yet to be finalised and is too narrow in scope to constitute a national anti-corruption strategy or plan.

Sixth, there is still resistance to the anti-corruption fight by vested interests in government, the ruling party and some opposition parties.

2.b. Current challenges

The challenges facing the nation include:

- poor accountability and management of public funds;
- the lack of meaningful control over the budgetary process by the National Assembly;
- wide discretionary power given to the minister of finance in terms of disbursements of public funds as well as loan contraction;
- the weakness of watchdog institutions;
- the fact that civil society is still young, developing and trying to find its feet;
- the lack of consolidation of the democratic system;
- the fragility of the rule of law;
- the weakness of the office of the DPP, which is prosecuting the alleged plunderers;
- the fact that the courts are very slow in disposing of cases and that the rules of evidence make it difficult to convict a suspect of corruption;
- resistance to political reforms by the main stakeholders, particularly the ruling party as well as some opposition political parties;
- the absence of a comprehensive national anti-corruption strategy or plan;
- the high levels of poverty and the slow pace of economic development in the country, fertile ground for corruption;

- low remuneration in the public service, which encourages corruption and also discourages well-qualified professionals from working in the public service;
- the over-concentration of power in the presidency, which undermines the other co-equal branches of government;
- widespread ignorance of the law by the public;
- reluctance by the government to enact a freedom of information act; and
- the absence of legislation to protect whistleblowers.

2.c. Evaluation and lessons learned

The past three years have demonstrated that political will at the highest level is crucial for success in the fight against corruption. In addition, it is essential for civil society to keep putting pressure on the government to ensure that there are no reversals in the anti-corruption drive.

The benefits of various law enforcement and regulatory institutions working together and coordinating their activities have been quite enormous. The fight to recover the plundered resources has been constrained by the weaknesses of the various institutions that make up task force. The institutions lack adequate professional competence. The office of the DPP, for example, is so understaffed that the task force has had to hire private lawyers at considerable cost to undertake the prosecution of former president Chiluba and his associates in crime.

Prosecution of corruption cases takes a long time and convictions are hard to come by. This often leads to frustration by both politicians and members of the public. The task force is constantly being attacked by politicians and civil society for the slow pace of both investigations and prosecutions and for the failure to record any significant conviction against the culprits to date.

The cost of task force operations has been quite tremendous and has provoked public dismay. But the government maintains that the total amount the task force has recovered so far exceeds what has been spent on it. Besides, the donors have met most of the costs.

Another lesson learned is that it is difficult to arrange for suspects who have fled the jurisdiction to be brought back to Zambia, particularly where no extradition treaty exists between Zambia and the country where the suspects have sought refuge. So far, two prominent suspects charged jointly with Chiluba, Xavier Chungu (former director-general of intelligence) and Attan Shasonga (former ambassador to the United States), who fled to Congo DR and the UK, respectively, have been at large for months. The government has so far failed to have them extradited to Zambia. In fact, there are even reports that Chungu is now in Canada and that Shasonga is no longer in the UK.

Another lesson learned is that politicians should not be involved in or be seen to be involved in investigations of corruption and deciding who should be prosecuted. This compromises the professionalism of the law enforcement agencies and reduces public support for the anti-corruption fight. The anti-corruption fight is then viewed as a tool being used by politicians in power to settle scores with their opponents. Chiluba is, for example, increasingly drawing public sympathy because of Mwansawasa's perceived control of the task force.

The absence of a legislative framework for the operations of the task force has also resulted in unnecessary tensions among its constituent elements. The lines of accountability are not clearly delineated, allowing for political interference in the work of the task force.

The role of the media in exposing corruption and sensitising the public on issues of corruption has been significant. The anti-corruption fight would not have reached the current stage without the investigative journalism and bravery of the private media, particularly *The Post*.

2.d. Recommendations

Certain measures need to be taken in order to strengthen the fight against corruption.

- A legal framework for the operations of the task force needs to be put in place, clearly specifying the composition, the method of appointment, the powers, functions and accountability of the task force.
- An independent prosecution service must be established to handle prosecutions. It should be well resourced and have qualified state advocates who are well versed in handling financial crimes.
- The Anti-Corruption Commission and the Money Laundering Unit of the DEC need to be strengthened in terms of qualified personnel, training and logistical support.
- Conditions of service in the public sector need to be significantly improved.
- There is need to review and strengthen legislation against corruption. In particular, there should be legislation protecting whistleblowers and the Freedom of Information Bill, which was withdrawn from the National Assembly on dubious grounds, should be enacted immediately.
- The auditor-general's office should be given more autonomy, be well resourced and should be empowered to prosecute those who abuse public funds.
- Anti-corruption institutions should have meaningful autonomy. They should have greater control over their budgets, their allocations should be released promptly and in full, and they should be self-accounting. Furthermore, the

institutions should have full control over all or most of their personnel. They should be able to hire, discipline and set conditions of service for their personnel.

- Efforts aimed at preventing corruption must be intensified. Public education on the evils of corruption should be given special attention. As long as the majority of Zambians see nothing wrong with corruption, corrupt public officials and politicians will continue to thrive.
- Zambia should strengthen its national integrity system.
- A comprehensive anti-corruption plan should be developed and implemented.
- Codes of conduct should be developed for the public service and the private sector.