



ANTI-CORRUPTION, STOLEN ASSET RECOVERY AND CIVIL SOCIETY IN ZAMBIA

CIFAR RESEARCH PAPER

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KEY MESSAGES

- While Zambia does have several anti-corruption laws, it lacks adequate regulations on facilitation payments and freedom of information. Legislation is weak on whistleblower and witness protection. Amongst others, the Protection of Whistleblowers Act gives leeway to put persons who make a disclosure in the public interest at risk..
- A weak judicial system seems to be undermining the country's fight against corruption and efforts towards asset recovery. Attempts to seize and forfeit assets have been slow, and the backlog of cases is increasing.
- A particular challenge has been a lack of a unified account for the forfeited proceeds of crime and a weak management of seized assets, an issue that is currently being improved with the support of ARINSA.
- Civil society voices in the country have been constrained both legally and politically, and those protesting corruption have at times faced charges of conduct breaching the peace. Such a volatile environment encourages self-censorship, which has increased in recent years.
- Despite the difficult operating environment, and little internal support, a number of civil society organisations and investigative outlets are active in the country and speaking up against the impunity of political and business leaders.
- The fight against corruption has been articulated as a number one priority of a new government that came into power after elections in August 2021. The analysis in this report refers to the period prior to elections. How the new government progresses to remedy the challenges left by its predecessors remains to be seen.

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CiFAR - Civil Forum for Asset Recovery e.V. and the authors are solely responsible for the contents of this publication.

Published: 2022, CiFAR – Civil Forum for Asset Recovery e.V.
CiFAR – Civil Forum for Asset Recovery e.V.
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ANTI-CORRUPTION OVERVIEW

Corruption is one of the largest impediments to economic growth, human development, and the alleviation of poverty in Zambia. Zambia ranks number 117 out of 180 countries, appearing in the bottom half of the Transparency International's 2020 Corruption Perceptions Index (CPI). Currently with a score of 33/100,¹ Zambia's CPI score has dropped 5 points since 2013 signaling increasing levels of corruption and insufficient system of measures to curb it in place. In February 2018, Zambia's president at the time, Dr Edgar Lungu, described well the ambiguous approach of his administration towards corruption when he quoted the local proverb "ubomba mwibala, alya mwibala, tabatila uye nambuto kumo", which loosely translates as 'you may eat from the field but do not finish the seed'. In other words, you may steal, but not too much.²

After a landslide win of the opposition party in August 2021, the new government, led by President Hakainde Hichilema, is still in the process of filling in key positions as well as outlining their strategies and priorities. Anti-corruption has been amongst the key topics discussed prior to the 2021 general elections. The messaging of the new government, so far, has been one of change and reform. Under the premise of the 'New Dawn Government', the fight against corruption, promotion of transparency and accountability and the independence of statutory bodies have been named as important priorities.³ It remains to be seen how serious this new agenda will be pursued by the new government. The challenges that need to be tackled are enormous.

The country continues to face significant corruption challenges which have undermined public service delivery.

The 2019 Global Corruption Barometer estimated that 1 in every 5 individuals had paid a bribe to receive public services such as health and education.⁴ Allegations and ongoing investigations into corruption also predominantly focus on the area of public procurement. The Zambian Financial Intelligence Centre received reports of suspected corruption worth about USD 622 million, many of them linked to public procurement contracts.⁵ For example, in 2020, Zambian journalists leaked a story on how the government, through the Ministry of Health, awarded a USD 17 million contract for the supply of health centre kits to a company called Honeybee Pharmacy Limited, which did not exist. The supplied kits were later found to be substandard and unsafe to use.⁶ Even funds received to tackle the COVID 19 pandemic had reportedly been mismanaged. Anti-corruption has recently been high on the political agenda and has been amongst the key messages of the opposition leading up to the 2021 general elections.⁷

Zambia's Anti-Corruption Act No.3 of 2012 prohibits corruption, extortion, bribery of a foreign public official, abuse of office and money laundering to a large extent. However, challenges exist in the enforcement of the provisions of the law, according to the US Department of State, with the law not being enforced consistently, and with officials often engaging in corrupt activities with impunity.⁸ Transparency International Zambia (TIZ) estimates that the average conviction rate for the prosecution of corruption is between 10% to 20%.⁹

Moreover, Zambia lacks adequate regulations on facilitation payments and freedom of information. There is currently no law to regulate facilitation payments and the maximum allowable value of gifts or hospitality.¹⁰ In addition, Zambian

public officials are not subject to financial disclosure laws. Citizens are also limited on how far they can hold the government to account, as there is currently no law guaranteeing access to information.¹¹

The Public Interest Disclosure Act provides legal protection for civil servants or private sector employees reporting cases of corruption, but the law does not adequately protect whistleblowers. Although the Public Interest Disclosure (Protection of Whistleblowers) Act is supposed to compliment the Anti-Corruption Commission Act of 2012 by protecting whistleblowers, Section 13(3) of the act imposes criminal liability on a person who makes a public interest disclosure¹² that is malicious, frivolous, vexatious or made in bad faith or where the disclosure was made for pecuniary gain. This discourages whistleblowers as the penalty can be a payment of a fine or even an imprisonment.¹³

ASSET RECOVERY IN ZAMBIA

To implement the United Nations Convention Against Corruption relating to the forfeiture of proceeds of crime nationally, Zambia enacted the Forfeiture of Proceeds of Crime Act No.19 2010. The Act provides for the: confiscation of the proceeds of crime; deprivation of any person of any proceeds, benefits, or property derived from the commission of any serious offence; facilitation of the tracing of any proceeds, benefit, and property derived from the commission of any serious offence. To enforce the provisions of the Forfeiture of Proceeds of Crime Act, the Zambian Cabinet established the National Prosecutions Authority (NPA), which includes the Asset Forfeiture Department (AFD), in 2012.

Another institution important for recovering stolen assets is Zambia's Financial Intelligence Unit, established by the Finance Intelligence Centre Act, Act No. 46 of 2010. The unit gathers financial intelligence and receives all suspicious transaction reports and disseminates them to the different law enforcement agencies. After investigations have been concluded, prosecution of all the matters is done by the Director of Public Prosecutions (DPP) who heads the National Prosecutions Authority. However, the portfolio of asset recovery is also the mandate of the Anti-Money Laundering Investigations Unit (AMLIU), the Anti-Corruption Commission (ACC), the Zambia Police Service (ZPS) and the Zambia Revenue Authority (ZRA).

There is no single account for the forfeited proceeds of crime and asset management after seizure, confiscation or forfeiture is left to each law enforcement agency separately. For instance, the Drug Enforcement Commission has a forfeiture account which is at the disposal of the commission and proven to be prone to

plunder.¹⁴ A lack of asset management has also left immovable property at the mercy of criminals, looters and poachers.

As the pressure mounted on the administration of former President Edgar Lungu to investigate corruption allegations in a run-up to the national elections, the authorities had been attempting to increase the rate of prosecutions and recover a growing number of assets. The failure to address corruption in light of the increasing fiscal debt was the main campaign message,¹⁵ which brought a victory to an opposition party led by Hakainde Hichilema.¹⁶

In January 2020, the former President Edgar Lungu fired the health minister Chitalu Chilufya amidst an investigation of reported corruption in the health sector. However, no reason was given for his dismissal.¹⁷ In May 2021, former Minister of Community Development and Social Welfare, Emerine Kabansi, was sentenced to two years in prison for failing to follow procedures relating to the engagement of a state-owned company, which distributed social welfare funding for the poor. Prior to her dismissal, in 2018, Britain, Finland, Ireland and Sweden withheld nearly USD 34 million in aid to Zambia's social welfare and education sectors because of concerns over financial mismanagement.¹⁸

Unfortunately, successful asset recovery is being hampered by corruption in Zambia's judiciary,¹⁹ hindering their independence, and the slow pace of investigation of existing cases.²⁰ Corruption amongst the judicial community (including court personnel and lawyers) is also perceived to be problematic.²¹ According to Transparency International, 28% of Zambians think that judges and magistrates

are corrupt, and 70% of Zambians think that the government isn't doing enough to fight corruption.²² Attempts at a judicial reform have been unsuccessful over the years.²³

The lack of confidence in Zambia's judiciary is not new.²⁴ An illustrative case is that of the former President Fredrick Chiluba (1991-2001), who was ordered to pay back USD 58 million to the Zambian Treasury by a London court to compensate for money he was suspected of stealing while he was in office. He later argued that Zambian law on the enforcement of foreign judgments had not been fully satisfied and was acquitted by the Zambian court.²⁵ No civil or criminal liability was attached to Chiluba in Zambia for these accusations.²⁶ Similarly, President Chiluba had been prosecuted by Zambian Courts for the theft of US\$ 500,000 of public funds, however, he was later acquitted.²⁷

Many prosecutions and court decisions are thus perceived to be politically motivated.²⁸ As argued by Transparency International, the Zambian judiciary is often manipulated by the executive, with judicial appointments being within the ambit of the president's powers. This has also been the case of the six appointed judges in the constitutional court in 2016, who all failed to meet the defined eligibility requirements for their positions, and "some of whom were known to be close to the president".²⁹

BIGGEST CORRUPTION CASES AND ASSET RECOVERY PROGRESS

The Anti-Corruption Commission is reported to have received a total of 539 reports of suspected corruption in 2020 alone, 745 cases had been reported in the preceding year and 980 in 2018. Of the reported cases in 2020, 253 were regarded as corruption-related, with 182 of the reports authorized for investigation, adding to a backlog of cases that had still been under investigation from previous years. 913 cases are reported to have been carried forward for investigations in 2021. The anti-corruption commission is reported to have concluded only 74 cases in 2020, making 22 arrests in the year. Between 2018 and 2020, a total of K 63,742,199 (approximately USD 2,800,000) was recovered from cases arising from the Auditor-General's reports.³⁰

With regards to asset recovery, the most notable corruption cases being investigated include:

a. Allegations of corruption involving the Ministry of Health regarding alleged irregularities in the awarding of a tender to Honeybee Pharmaceuticals. In 2020, it was revealed that Zambia's Ministry of Health awarded a USD 17 million contract to Honeybee Pharmacy Limited, which did not exist at the time when the contract was awarded. Honeybee is later said to have supplied medical equipment, of which some was defective. With full knowledge of the defective medical supplies, the Ministry of Health through its Medical Stores Limited allowed for the distribution of the defective drugs.³¹ The Anti-Corruption Commission is expected to soon submit the docket to the National Prosecutions Authority for further action.

b. Since the start of the COVID 19 pandemic, the government has received a number of donations from individuals, corporations, the international community and donors to fight the pandemic. According to an interim audit report for the period from February 1 to July 31, released by the Auditor-General's office, a total of 1.3 billion Zambian Kwacha (about USD 62 million) was mismanaged in various unexplained transactions.³² The Commission has been investigating the matter, and investigations have reached an advanced stage.

c. Investigations into alleged corruption in the process through which the Ministry of Health procured ambulances at USD 288,000 per ambulance from an international supplier, when the same ambulances would have been sourced locally for USD 74,000 per ambulance.³³ Investigations into this matter have been concluded and the case will be submitted to the Legal and Prosecutions Department.

d. Alleged corrupt offering and giving of 1 million cash to a Zambia Revenue Authority Officer by a Mr Samboko of Opermin Zambia Limited as an inducement to overlook tax liabilities amounting to K69 million (approx. USD 4,180,000) by Opermin Zambia Limited.³⁴ The investigations have been concluded and the case has been referred to the Legal and Prosecutions Department for a legal opinion.

In the year 2019, Zambia is reported to

have investigated 232 new cases of money laundering, through several government agencies,³⁵ of which 70 were cases of seizures. The value of the seizure orders amounted to USD 7,145,298. Overall, nine successful forfeiture orders were obtained, which amounted to the value of USD 6,588,000.³⁶

The biggest case of public interest for forfeiture involved anonymous individuals who contested the forfeiture of 51 houses in Lusakas Chalala area, which are reasonably suspected to have been the proceeds of crime. The houses were seized and forfeited to the state and the case is before the DPP for conviction. The case raised suspicions in the eyes of the public, considering the secrecy on the disclosure of the true owners of the 51 houses despite their forfeiture.³⁷

REGIONAL AND INTERNATIONAL INSTITUTIONAL ENGAGEMENT

As a way to aid asset recovery efforts, Zambia is a member of a number of networks on corruption and asset recovery. These include the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA), which allows it to exchange information and model legislation in asset forfeiture, confiscation and money laundering. The ARINSA 2019 report suggested that Zambia is an active member that has benefited from technical support in the form of capacity building workshops and a mentorship programme where a mentor was assigned to aid the enforcement agencies. ARINSA has also aided Zambia with the development of a draft asset management manual.³⁸ This is significant as asset management after seizure, confiscation or forfeiture is left to the law enforcement agencies in Zambia as described above.

Zambia is also a member of the Southern African Forum against Corruption (SAFAC), established in 2001. SAFAC is a network of anti-corruption bodies (where they exist) and representatives of governments in the Southern African Development Community (SADC). The body aims at operationalizing the SADC Anti-Corruption Committee (SACC), established under the SADC Protocol Against Corruption.³⁹

Zambia is also a member of Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The country participated in the mutual evaluation process, which reviews effectiveness of anti-money laundering measures and their level of compliance with the FATF Recommendations. The evaluation outcome report stressed that while Zambia demonstrates the ability to identify tainted property, the number of confiscations of

criminal assets and property are low and is not performed as a policy objective.⁴⁰

In May 2021, the Zambian Anti-Corruption Commission signed a Memorandum of Understanding with the International Centre for Asset Recovery (ICAR) that will enable the two institutions to work together to implement strategies aimed at enhancing the fight against corruption in Zambia. In particular, ICAR will support the Commission's efforts to investigate and prosecute corruption cases and to identify and recover stolen assets. This includes also support for international cooperation to obtain intelligence and evidence from abroad.⁴¹

CIVIL SOCIETY ENGAGEMENT IN ASSET RECOVERY

Zambia's civil society organisations (CSOs) have been operating in a restrictive environment up to the change of government in August 2021, which has considerably opened the space for civic engagement. Despite many challenges, civil society is active in countering these restrictions and unites in thematic coalitions around common interests, especially to oppose restrictive legislation. Several organisations have been active in promoting greater transparency and accountability of politicians, but no advocacy or civic engagement has focused specifically on issues of the recovery of assets stolen through corruption.

OPERATIONAL FRAMEWORK FOR CIVIL SOCIETY

Zambia's constitution has provisions for freedom of assembly and association; however, these rights were not respected by the former government in practice. Demonstrations by opposition parties and civil society are known to have been broken up using force.⁴² While Zambia's NGO Act 2009 was said to have been legislated in good spirit, CIVICUS notes that this has impeded rather than enabled freedom of association and increased the government's influence over NGOs; registration fees and disclosure requirements have created obstacles for new organisations and have led to the dissolution of existing NGOs.⁴³

CIVICUS' monitor tracking civic space evaluates the situation for civil society in Zambia as "obstructed", number 3 on their 1-5 scale. This means that even though citizens can organize and form NGOs, they are regularly constrained, both legally and politically, and at times they may be subject to government violence.⁴⁴ Such a volatile

environment encourages self-censorship, which, according to our interviews with civil society activists, is said to have increased in recent years.

Civil society voices are constrained for example by charges of conduct likely to cause a breach of peace imposed on them for protesting against corruption. These charges are usually dropped and act as a tool for intimidation. As an illustration, a small anti-corruption protest which aimed to draw attention to an infamous corruption allegation of the government, in which 42 (visibly substandard) fire trucks were procured for USD 42 million, ended with several anti-corruption activists arrested and detained.⁴⁵

The government has also prosecuted critics on charges of incitement to public disorder and hate speech. This includes Southern Africa Network Against Corruption's Executive Director Gregory Chifire who called for an investigation into potential corruption in the judiciary and was subsequently arrested.⁴⁶

EXPERT ANALYSIS, ADVOCACY AND CAMPAIGNING

Despite the lack of acceptance for critical voices and attempts by the former government to close civic space, civil society has been active in monitoring good governance and lobbying for change. For example, CSOs have been trying to pressure the government to amend the restrictive NGO Act, whose contentious parts have been suspended and are being revised at the moment.⁴⁷ The repeal and replacement of this Act has been done in close consultation between CSOs and the government. The current draft of the

repealed Act was widely consulted on and is to be presented to parliament in early 2022. Civil society organisations have also come together to criticise the planned Constitution Amendment Bill of 2019, which proposed to increase the powers of the executive branch and to allow for the creation of a coalition government.⁴⁸ After pressure from local and also regional actors, the amendment was withdrawn at the end of 2020.⁴⁹

However, due to the difficult operating environment, and lack of core funding - a prerequisite to critically address governance issues - most organisations in the country focus on service delivery. Even though only a handful of organisations are active in the anti-corruption and good governance field, they undertake a host of activities, including election monitoring, research, legal aid, engagement of citizens and to a certain extent also policy makers. Programmes empowering citizens focus on the promotion of whistleblowing, and also on enhancing understanding of the link between budgetary choices, corruption and services citizen can access.⁵⁰

Some organisations engage policy makers directly in their attempts to advocate on certain topics. Others set up platforms to create a space for citizens to meet with policy makers and discuss and influence policies publicly. No public discussions, however, have been centred around the recovery of stolen assets so far. This is the case both for discussions initiated by civil society and the government.

INVESTIGATIVE JOURNALISM

Zambian media is politically polarised, with state-owned media being generally supportive of the government, while several private outlets take a more critical stand. Overlooking constitutional provisions, the former government frequently harassed independent news outlets and uses

defamation laws or financial reasons, such as non-payment of taxes, to restrain these freedoms⁵¹ - most of which in the past related to those who questioned corrupt practices. For example, in 2020, Zambia's media regulatory agency closed a popular private television station that had ongoing tensions with the government.⁵² Journalists are also subject to physical attacks, especially during election periods.⁵³

Despite the difficult operating environment, and little internal support, a number of investigative outlets are active in the country, with some participating as members in the Global Investigative Journalism Network. The outlets report on a variety of issues from poaching to procurement corruption and electoral processes. Trainings for young journalists in the area of investigations also exist and are supported by international organizations, as well as national institutions.⁵⁴

CONCLUSION AND RECOMMENDATIONS

Corruption in Zambia remains one of the impediments to fighting poverty and improving the welfare of its citizens. While the country is hit with a debt burden estimated to be 119% of its Gross Domestic Product (GDP), the limited resources the country has at its disposal continue to be mismanaged. Corruption challenges are prevalent in public procurement and even funds donated to fight the COVID-19 pandemic have been subject to misappropriation.

A weak judicial system which is also perceived to be corrupt and influenced by the executive, and a lack of political will seemed to be undermining the country's fight against corruption and efforts towards asset recovery until recently. Efforts to seize and forfeit assets proven to have been proceeds of crime have been slow, evidenced by the backlog of cases being investigated and successful seizures. Another challenge is that asset management remains weak after seizures, a problem that this currently being worked on with the support of ARINSA.

Underpinning all this is that Zambian public officials are not subject to financial disclosure laws. The lack of an Access to Information Law has also undermined citizens' call for the government to fight corruption. Civil society actors have reported shrinking civic space, arrests and prosecution for those who speak up against corruption.

Even though the low control of corruption in Zambia stems from difficulties to address impunity of politicians, rather than an inadequate legislative framework, important improvements could be made to make the public sphere more transparent

and to allow civil society to operate more freely.

Based on the findings of our desk-based research and interviews with CSO representatives conducted by CiFAR, this research offers several policy recommendations where the efforts of the new government and civil society should be concentrated:

- Increase parliamentary and citizen oversight over governance processes which can help to fight impunity in the country. An important step would be the adoption of **financial disclosure laws**, which oblige the disclosure of assets and liabilities by politically exposed persons, their spouses and children. This would be an important step to fight impunity.
- Strengthen the **independence of anti-corruption institutions** by making appointments of their leadership more transparent and less subject to political nominations, for example through a selection process by a parliamentary committee.
- Revise mechanisms for the **management of recovered assets** to better organise and simplify the system in a way that allows for better management and more transparency and accountability
- Revise the **Whistleblowers Act-13(3)**, which currently allows for the prosecution of persons who make a public interest disclosure.
- Adopt an **Access to Information Law**, to facilitate citizens' access to information, improve transparency, as well as accountability of the

government.

- Review the **institutional bottlenecks** halting the independent investigation and prosecutions of corruption and establish a plan for judicial reform

Improved access to information, together with a more open whistleblowing regulation constitute important improvements both in the civic space and also in the fight against corruption.

Additional areas where the role of civil society fighting the misappropriation of public funds can be particularly strengthened and supported are:

- Safeguarding Activists. In case allegations of corruption are met by police brutality and arrests, and freedom of assembly is compromised, it is important that regional and international critical voices **support the activities of local civil society**.
- Support sustained **long-term monitoring of corruption allegations**. Following corruption cases beyond their revelations throughout the whole judicial process and potential asset recovery is needed to gather more information, identify concrete bottlenecks in the judiciary, and create pressure on speeding up the investigative process of corruption cases and asset recovery.
- Oversee the support of the **ARINSA network and the establishment of guidelines** and legislation for the implementation of processes to manage and dispose of recovered assets on behalf of the Attorney-General.
- Build on the past successful advocacy efforts and **support the creation of local, as well as regional anti-corruption coalitions** of CSOs to jointly speak out on corruption issues.

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