

A REVOLUTION REVISITED

THE STATE OF DEMOCRACY IN ZAMBIA SINCE 1991



DEMOCRACY INDEX FOR ZAMBIA 2013

Edited by Bryan M. Sims, Amy Eaglestone and Abdon Yezi



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Acronyms and Abbreviations

ABB	Activity Based Budgeting
ACC	Anti-Corruption Commission
ACDEG	African Charter on Democracy, Elections and Governance
ADD	Alliance for Development and Democracy
ANC	African National Congress
APRM	African Peer Review Mechanism
AVAP	Anti-Voter Apathy Project
BFM	Barotse Freedom Movement
BA	Barotseland Agreement
BNB	Basic Needs Basket
BRE	Barotse Royal Establishment
CBC	Central Broadcasting Company
CBOs	Community-Based Organisation
CCJP	Catholic Commission for Justice and Peace
CCZ	Council of Churches in Zambia
CDF	Constituency Development Fund
CEEC	Citizen Economic Empowerment Commission
CG	Corporate Governance
CHRI	Commonwealth Human Rights Initiative
CPC	Criminal Procedures Code
CRC	Constitutional Review Commission
CSEC	Civil Society Election Coalition
CSO	Civil Society Organisation
CSPR	Civil Society for Poverty Reduction
DEC	Drug Enforcement Commission
DIP	Decentralisation Implementation Plan
DSTV	Digital Satellite Television
DVEC	District Voter Education Committees
ECCDE	Early Childhood Care and Development Education
ECZ	Electoral Commission of Zambia
EFZ	Evangelical Fellowship of Zambia
EISA	Electoral Institute for Southern Africa
EITI	Extractive Industries Transparency Initiative
EIU	Economist Intelligent Unit
ERTC	Electoral Reform Technical Committee
FBO	Faith-Based Organisation
FDD	Forum for Development and Democracy
FES	Fredriech Ebert Stiftung

FISP	Fertiliser Input Support Programme
FNDP	Fifth National Development Plan
FODEP	Foundation for Democratic Process
FPTP	First-Past-The-Post
GBV	Gender-Based Violence
HDI	Human Development Index
HIPC	Heavily Indebted Poor Countries Initiative
IBA	Independent Broadcasting Authority
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communications Technology
IG	Inspector General of Police
ILO	International Labour Organisation
JCTR	Jesuit Centre for Theological Reflection
JSC	Judicial Service Commission
LAB	Legal Aid Board
LAZ	Law Association of Zambia
LEA	Law Enforcement Agency
LGBT	Lesbian, Gay, Bisexual and Transgender
LRF	Legal Resource Foundation
MDG	Millennium Development Goal
MECOZ	Voluntary Media Council of Zambia
MMD	Movement for Multiparty Democracy
MP	Member of Parliament
MTEF	Medium Term Expenditure Framework
NAPOA	National Action Plan of Action
NCC	National Constitutional Conference
NDP	National Development Plan
NGO	Non-Governmental Organisation
NLACW	National Legal Aid Clinic for Women
NPSA	National Pensions Scheme Authority
NRC	National Registration Card
NVEC	National Voter Education Committee
NYDC	National Youth Development Council
PAC	Public Accounts Committee
PDCC	Provincial District Development Coordinating Committee
PF	Patriotic Front
PFA	Public Finance Act
PMRC	Parliamentary Reforms and Modernisation Committee
POA	Public Order Act
PPCA	Police Public Complaints Authority



PPP	Public Private Partnership
PPSU	Police Professional Standards Unit
PRMC	Parliamentary Reforms and Modernisation Committee
PRP	Parliamentary Reform Project
PRSP	Poverty Reduction Strategy Paper
PSRP	Public Sector Reform Programme
PUSH	Project Urban Self Help
PWAS	Public Welfare Assistance System
PWDs	Persons with Disabilities
SACCORD	Southern Africa Centre for Constructive Resolution of Disputes
SADC	Southern African Development Community
SAG	Sector Advisory Group
SNDP	Sixth National Development Plan
SOE	State-Owned Enterprise
TBN	Trinity Broadcast Network
TC	Technical Committee
TIZ	Transparency International Zambia
UDHR	Universal Declaration of Human Rights
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
UNIP	United National Independence Party
UNZA	University of Zambia
UP	United Party
UPND	United Party for National Development
UPP	United Progressive Party
WiLDAF	Women in Law and Development in Africa
WHO	World Health Organisation
YWCA	Young Women's Christian Association
ZAFOD	Zambia Federation of the Disabled
ZAMEC	Zambia Media Council
ZANEC	Zambia National Education Coalition
ZANC	Zambia National Congress
ZAPD	Zambia Agency for Persons with Disabilities
ZCID	Zambia Centre for Interparty Dialogue
ZCTU	Zambia Congress of Trade Unions
ZEC	Zambia Episcopal Conference
ZNBC	Zambia National Broadcasting Corporation

Foreword

Idasa developed the Democracy Index to assess the depth of democracy in South Africa. In its initial iteration, designed by Robert Mattes and Richard Calland, the Index comprised 150 questions. These were honed to a list of 100 questions in 2005 and the same questions were used for Idasa's subsequent South Africa Democracy Index in 2010. The research relies on expert analysis to answer a set of questions that interrogate how closely, in practice, democracy meets the broad ideal of self-representative government. More specifically, to what extent can citizens control elected officials and government appointees who make decisions about public affairs; and, how equal are citizens to one another in this accountability process? The Democracy Index assesses a country through five focus areas: participation, elections, accountability, political rights and human dignity.

Idasa is expanding the Index into southern Africa in an effort to broaden the capacity of individuals and organisations monitoring and supporting democratic governance efforts in the sub-region. As the Idasa Democracy Index is tested in a range of countries, the tool will be enhanced and nationalised. The hope is that citizens of any country can use the Democracy Index to assess and debate the current state of their democracy. The purpose of the scores is to assist citizens in making their own judgements, based on the information available, to stimulate national debate, and to provide democracy promoters with a tool for identifying issues and needs that can be addressed through education, advocacy, training, institution building and policy revision. This is the inaugural Index for Zambia and is intended to set a benchmark for democracy to be measured against in the future.

All of the authors, and one of the co-editors, are Zambian or based in Zambia. Together, their depth of expertise is grounded in years devoted to activism, civil society, academia and government. Authors were asked to provide a numerical score for each question and a narrative justifying their rating. The group convened twice to ensure both a common understanding of the Index and peer review of the ongoing assessment process. The second of these meetings took the form of a validation workshop at which other members of civil society, academia and government were invited to give feedback and comment on the analysis. While authors were requested to consult other indices and to reflect the opinions of an expert reference group, ultimately this is an individual expert assessment. As such, each set of Democracy Index results stands on its own and is not suitable for statistical comparison across years or cross-country comparative ranking.

It is through its use by Zambians that the Idasa Democracy Index can enhance research capacity, assist representative groups to lobby for greater democratic depth and quality, and spark participatory engagement between governments and citizens. Idasa is grateful to its in-country partners for their willingness to try out the tool, their commitment to the process and the ongoing work on democracy that they do as individuals or through their organisations.

Karin Alexander, Team Leader: Measuring and Monitoring Democracy, Idasa



INTRODUCTION

BY BRYAN M. SIMS

Zambia's current political and economic conditions have, of course, been shaped by its past. Three republics have emerged since Zambia gained independence from the United Kingdom in 1964. At the beginning of the First Republic, struggle leader Kenneth Kaunda of the United National Independence Party (UNIP) was elected president. His leadership became increasingly authoritarian and intolerant of opposition. These traits culminated in a constitutional amendment creating a one-party state and the birth of the Second Republic in 1972. Zambia was a one-party state until 1991. As opposition through political parties was impossible during this time, growing dissent was channelled through various groups and organisations, including Christian churches, trade unions and other civil society organisations (CSOs).

The State assumed ownership and control over much of the economy, and patterns of neopatrimonial governance became entrenched. However, elections were still regularly held. While Kaunda was not seriously challenged for the presidency, parliamentary seats were sharply contested by UNIP members that were allowed to seek office. From the mid-1970s Zambia, although politically stable, began to experience difficulty in financing its development.

As Zambia's Second Republic emerged, so did democracy's Third Wave (1974 to present). Periods of intense change ushered in democratisation around the globe. Some of these periods of change were accompanied by violence, but others, described as "quiet revolutions", were characterised by social, political and economic movements that favoured more liberal democratic governance. It must be reiterated that democratisation is a process that unfolds in phases. According to Carothers (2002), democratisation can be divided into three phases. First occurs an opening, a period of mass upheaval, with demands for greater political liberalisation. The interests and positions of elites within the ruling dictatorial regime begin to diverge; the reigning regime ultimately weakens. This is followed by a breakthrough. The ruling regime collapses and there is a rapid emergence of a new dispensation. A new government assumes power, often through national elections, and new democratic institutions, along with the promulgation of a new Constitution, are established. After the breakthrough comes consolidation. This, posits Carothers, "is a slow process in which democratic forms are transformed into democratic substance through the reform of State institutions, the regularisation of elections, the strengthening of civil society, and the overall habituation of the society to the new democratic rules of the game".

Zambia was among those countries that rode on the tail of the wave of democratisation following the fall of communism in Eastern Europe, and greater liberalisation and democratisation in Latin America and parts of Asia in the 1980s. As power became more centralised and increasingly concentrated in the hands of Kaunda, popular dissatisfaction with living standards became more difficult to ignore.

Zambia's "opening" began with the steep economic decline of the 1980s. The government's inability to secure loans or enact economic reforms not only undermined its legitimacy, but also closed off vital patronage channels through which it could influence key individuals and contain dissidence (Erdmann & Simutanyi 2003). CSOs and students voiced opposition against the regime. In 1990, growing opposition to UNIP's monopoly on power reached a crescendo, due in part to food shortages, continued economic decline, rioting and the rise of an opposition party. The Movement for Multiparty Democracy (MMD) was a coalition led by the Zambia Congress of Trade Unions (ZCTU) and its leader, Frederick Chiluba. MMD leaders and members consisted of a wide cross-section of society, including prominent UNIP defectors and civil society. In December 1990, a "breakthrough" was devised by Kaunda and UNIP as they assented to legislation that allowed for multiparty democracy after unprecedented mass rallies supporting the return of multipartyism. After difficult negotiations between the UNIP government and opposition groups, Zambia enacted a new Constitution in August 1991.

A chance for democratic consolidation emerged after the multiparty elections in October 1991 that gave rise to the Third Republic. It is during this phase that many countries fail to achieve the next stage of democratisation and often go backwards. While there has undoubtedly been significant progress since 1991, Zambia's democracy is developing slowly, particularly in terms of its ability to reduce entrenched authoritarian tendencies held by the political elites, and reducing poverty and inequality.



From 1991 until 2011, the MMD retained the Executive and held majorities in Parliament. The dominant party system that emerged was not conducive to democratic consolidation and instead entrenched an authoritarian political culture. The Constitution was amended again in 1996 to set new limits on the presidency, including a retroactive two-term limit, and a requirement that both parents of a candidate be Zambian-born. This amendment was political and used to exclude Kaunda from seeking the presidency. Protests by civil society, opposition parties and divisions within the MMD forced Chiluba to abandon an effort to change the Constitution and seek a third term in 2001.

While high levels of poverty and inequality may not erode the quality of democracy, they certainly pave the way for the emergence of authoritarian populists and democratic backsliding. Historical legacies, the structure of constraints, and the impact of previous economic policies shape poverty and inequality in individual countries. Moreover, as the memories of authoritarian failures fade, irritation with democratic failures surface (Huntington 1991). In Zambia, the sustained inability to provide welfare, prosperity, equity, justice, domestic order or external security threatens to undermine the legitimacy of its democratic government.

During the MMD governments of Levy Mwanawasa (2001–2008) and Rupiah Banda (2008–2011), living standards continued to deteriorate despite the country recording economic growth rates averaging six percent annually (African Economic Outlook 2012). Many Zambians were aware of the “paradox of abundance” in which poverty levels and inequitable distribution of wealth increased amid high selling prices for copper. These conditions invariably affected the political landscape as the country headed towards the fifth multiparty elections in September 2011. Michael Sata of the Patriotic Front (PF), who had previously lost in highly contested elections, was elected president, with his vote largely coming from Zambia’s middle-class and youth. The PF victory was based on populist campaigning, drawing attention to the MMD’s failure to address high unemployment. Civil society was widely supportive of the PF campaign. Banda accepted the final result, marking the first time since the reintroduction of multipartyism that an incumbent peacefully surrendered the presidency after losing an election.

CONSTITUTION-MAKING IN ZAMBIA

This Democracy Index was published during a renewed effort to draft an indigenous Constitution that reflects the values of Zambian society, and international norms and standards regarding political, economic, social and cultural rights. However, this is not the first attempt to draft a new Constitution. In past constitutional reform exercises, governments have appointed various constitutional review commissions. The terms of reference have always been crafted by the president. After soliciting the views of citizens, these commissions submitted their recommendations to government. In each process, Zambians lacked control over the process leading to the final product.

The first Constitution was a negotiated settlement with the United Kingdom, enacted at

independence in 1964, and used to set an initial transition to democracy in motion. However, a Constitution was adopted in August 1973 that provided a legal framework for the one-party state. The process was led by the Executive. But as demands for a return to democracy increased, government was forced to adopt a constitutional amendment to legalise political parties, and to negotiate and adopt a new Constitution that was jointly drafted with the newly established political parties, organised labour and civil society.

Since the return to democracy, autocratic tendencies have resurfaced and weakened the current Constitution.

In April 2012 a draft Constitution was released to the public. Unlike previous constitution-making processes, this process has been facilitated by the participation of a large cross-section of society. There was widespread sharing of information and consultations were held with the public, encouraging people to comment and submit proposals for the technical committee to consider in the new draft. Consultations have been held throughout the country within district forums, with provincial and national conventions to follow.

The PF government has reiterated that it will not manipulate the constitution-making process as it too wants justice and fairness to prevail and for all Zambians to have their voices heard and respected. Indeed, if the PF government upholds its promises, and citizens and civil society alike work to hold government accountable, the revolutionary ideals that inspired the struggle for independence and return to multipartyism will bring Zambia closer to cementing its place as a robust and stable democracy.

But at present, despite the stability associated with Zambia, the challenges examined within this Index suggest that, as democratic consolidation continues, government's efforts are insufficient.



THE INDEX

100 QUESTIONS CONTEXTUALISING ZAMBIA'S DEMOCRACY

SECTION 1: PARTICIPATION AND DEMOCRACY

While Zambia maintains the fundamental tenets of democracy, Sikapizye and Yezi posit that the country struggles to promote and protect the participation of all citizens, particularly those who are the most marginalised and vulnerable. In this section, the authors assess participation in terms of nationhood, participation and involvement, government legitimacy, citizenship obligation and duties, and tolerance. Sikapizya and Yezi observe that, while there is a very strong association of ethnicity, a strong majority of Zambians also see themselves as Zambian. As such, the deep social divisions and political differences that are responsible for instability and the breakdown of democracy in many countries in Africa do not threaten Zambia's democracy. Nationhood, and participation in general, are threatened by persistent poverty, unequal development and distribution of wealth, and a lack of platforms to facilitate participation, especially in rural areas. Another challenge is that citizens have a limited knowledge of their civic duties, obligations and responsibilities. This can be attributed to limited access to information and media, as well as weak bonds between citizens and political parties. This section emphasises the need to strengthen existing oversight institutions, and engagement among political parties and their constituents.

SECTION 2: ELECTIONS AND DEMOCRACY

Cheembe and Habasonda note that, while Zambia has a history of holding elections, successive governments have struggled to guarantee universal adult suffrage, secrecy of the ballot and minimise inadequacies in the electoral process. Distrust of the institutions responsible for elections – the Electoral Commission of Zambia (ECZ) and the judiciary – is high, while many believe that legal and administrative frameworks favour the ruling party and disadvantage the opposition. They argue that Zambia’s First-Past-The-Post (FPTP) electoral system disadvantages marginalised groups, particularly women, and that political campaigns are rarely based on values, ideas or policy. The authors posit that, for Zambia to restore integrity to its institutions, reforms to improve the country’s electoral process must be implemented before the next election.

SECTION 3: ACCOUNTABILITY AND DEMOCRACY

The Constitution entrenches the principle of the separation of powers among the Executive, legislative and judicial branches; however, a lack of capacity and commitment to democracy among political elites since independence has entrenched corruptive practices. In examining the principles and values contained in the Constitution, Lungu and Mwale argue that accountability frameworks adopted by government are in need of strengthening and designing new mechanisms that would ensure greater compliance are required. In this regard, the authors believe that the judiciary is largely free of interference. However, the more politically sensitive a case is, the more likely the autonomy and independence of the judiciary is threatened. This section emphasises that the effectiveness of the National Assembly is hindered as the Constitution failed to bestow the body the necessary oversight roles and responsibilities that would ensure it checks the Executive and makes it accountable to citizens. As such, it is largely relegated to a rubber-stamp institution that lacks genuine participation.

SECTION 4: POLITICAL FREEDOM AND DEMOCRACY

Zambia has signed many international and regional agreements that protect fundamental freedoms essential for democracy to flourish. This section analyses political freedoms in terms of civil and political rights, freedoms of association and participation, political parties, and media rights. Mubanga and Mwanangombe posit that, while Zambia has made strides in strengthening the State’s ability to meet its obligations to its citizens, government must address a series of challenges that threaten to foil Zambia’s consolidation of its democracy. These include civil and political rights; police brutality; prison conditions; treatment of children, women, and members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community; and media restrictions. The authors argue that major pieces of legislation – many inherited from the colonial period – must be reviewed or repealed. And while con-



stitution making offers opportunity, the lack of a clear roadmap towards the adoption of a Constitution could scupper the process and derail reform.

SECTION 5: HUMAN DIGNITY AND DEMOCRACY

Musamba and Mwanza hold government accountable according to three main instruments, in addition to the Constitution, that Zambia uses to promote economic and social rights: the Millennium Development Goals (MDGs) framework, the Fifth National Development Plan (FNDP) and National Vision 2030. The main concern in this section is that a lack of funding and qualified human resources leads to a lack in provision of basic necessities, and that these, in turn, inevitably lead to a lack of qualified human resources and funding. Government is striving towards poverty eradication, but is stymied by extremely high levels of poverty, entrenched corruption within the public and private sectors, inappropriate policies, a lack of discipline to use public funds efficiently, and insufficient political will.

WHY MEASURE DEMOCRACY IN ZAMBIA?

In reviewing the state of *Zambian* democracy, Idasa recognises that *Zambia* has created the formal framework for a sustainable democracy. However, for democracy to be truly consolidated, it must be complemented by sustainable development that is fuelled by significant economic growth and provided through the effective delivery of services by government.

This publication assesses *Zambia's* democracy using Idasa's Democracy Index, 100 questions that interrogate how closely, in practice, *Zambian* lived democracy meets the broadly defined ideal of popular self-government. The purpose is to assess the state of democracy in terms of the constitutional framework that defined the country's transition to democracy in 1991.

The authors were asked to score each question between 1 and 10 using the following guide:

- 1–4 inadequate or falling short of the democratic ideal
- 5 stable but insufficient
- 6 stable and adequate
- 7 improving
- 8–10 excellent and as close to the democratic ideal as possible

Authors were requested to weigh their scores, differentiating between procedural forms of democracy and the substantive access to rights, treating the latter as more significant. Average scores at the end of each section, and of the complete Index, establish a benchmark for democracy to be qualitatively measured against in the future.

SECTION ONE: PARTICIPATION AND DEMOCRACY		
NATIONHOOD		
1.	To what extent do leaders and citizens agree on the identity of the nation established by the territorial and legal state?	8
2.	To what extent do political leaders and citizens refrain from the use of violence or illegal activity to settle political disputes?	6
3.	Do the majority of citizens agree that democracy is the only appropriate form of making collective decisions for their nation?	7
4.	To what extent do political leaders agree that democracy is the only appropriate form of making collective decisions for their nation?	6
PARTICIPATION AND INVOLVEMENT		
5.	To what extent do citizens participate in political life? Are citizens willing to participate in elections and become involved in other ways to influence government and hold it accountable?	4
6.	To what extent do citizens feel prepared and competent to take part in political life?	4
7.	To what extent do citizens feel that participation in political life can give them some ability to influence collective decisions?	5
8.	To what extent do citizens feel that the impact of their participation will be equal to other citizens?	4
GOVERNMENT LEGITIMACY		
9.	To what extent do citizens feel that government in general, and the present government in particular, has the right to make binding collective decisions?	6
CITIZENSHIP OBLIGATIONS AND DUTIES		
10.	To what extent do citizens meet their legal obligations?	5
TOLERANCE		
11.	To what extent do citizens tolerate ideas, peoples and practices with which they disagree?	5
SECTION ONE SCORE: 5.5		
SECTION TWO: ELECTIONS AND DEMOCRACY		
ELECTIONS		
12.	Is appointment to legislative and executive office determined by popular election?	7
13.	To what extent are elections for government based on universal suffrage and secrecy of the ballot?	6
14.	Do all citizens believe that their vote is secret?	5
15.	To what extent do citizens believe that their electoral system reflects the will of the people? How much does the electoral system impact on representivity?	5
EQUAL VOTES		
16.	Do the votes of all electors carry equal weight?	7
17.	To what extent do citizens believe that they have equal influence?	5
OPEN COMPETITION		
18.	Is there equal opportunity for all groups who wish to organise and stand for office? Does social grouping make a difference?	8
19.	Are all political parties able to campaign free of threat?	9



20.	Are all citizens free to form opinions, voice them, persuade others and vote, as they like, free of threat?	6
21.	How effective a range of choice does the electoral and party system allow the voters? Is there an open competition of ideas and policies?	4
ELECTION RULES		
22.	To what extent are voter registration procedures independent of control by government or individual political parties?	6
23.	To what extent is the management and control of the elections delegated to an independent body?	5
24.	To what extent are election procedures independent of control by government or individual political parties?	5
25.	To what extent are the advantages of incumbency regulated to prevent abuse in the conduct and contesting of elections?	4
26.	To what extent are voters able to register and to what extent have they registered to vote?	6
27.	Are election procedures free from abuse? And to what extent do citizens see election procedures as free from abuse?	5
VOTER INFORMATION		
28.	How much information is conveyed to voters by the official election information system?	6
29.	How much information about political parties and candidates is conveyed by the news media? And how fairly is this done?	5
30.	How much access do political parties have to the media and how equitable is this?	7
31.	To what extent do the campaigns of political parties reach all sections of society?	3
32.	Do voters know enough about all political parties to be able to make an informed choice?	4
ELECTORAL PARTICIPATION		
33.	How extensively do citizens participate in elections?	7
34.	How are citizens able to influence the electoral process in ways other than the vote?	5
PROGRESS AND DEMOCRACY		
35.	Are there mechanisms for the review of the electoral system and are these open to citizen participation?	5
ELECTORAL OUTCOMES		
36.	Are the announced election results congruent with how the electorate actually cast their ballots?	7
37.	Do citizens believe that their vote makes a difference?	6
38.	Do security forces, government and political parties accept the election results?	7
39.	Do citizens accept the election results?	6
40.	How closely does the composition of the legislatures and the selection of government reflect the election outcome?	5
41.	How far do the legislatures reflect the social composition of the electorate? To what extent are women represented in Parliament?	4
FUNDING ELECTIONS		
42.	To what extent are private donations to political parties permitted and are they subject to regulation (such as transparency and limits), in order to prevent them from having a disproportionate impact on voter choice and electoral outcome?	5

43.	Is campaign finance – both income and expenditure – regulated? Are political parties regulated by accepted procedures and non-partisan bodies? How extensive is the independent oversight of election expenditure?	4
44.	Is there public financing of political parties?	1
SECTION TWO SCORE: 5.5		
SECTION THREE: ACCOUNTABILITY AND DEMOCRACY		
EXECUTIVE ACCOUNTABILITY, LEGISLATIVE OVERSIGHT AND JUDICIAL INDEPENDENCE		
45.	How far is the Executive subject to the rule of law and transparent rules of government in the use of its powers? To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?	7
46.	How extensive and effective are the legislature's powers to scrutinise the Executive, hold it to account, initiate and scrutinise as well as amend legislation between elections? Is the legislature able to hold the Executive to account for the implementation of legislation and policy?	5
47.	To what extent has legislative and executive power been devolved and what impact has this had on popular control?	4
48.	How independent are the judiciary and the courts from the Executive and from all kinds of interference?	5
PUBLIC PARTICIPATION AND ACCOUNTABILITY		
49.	How open, accessible, extensive and systematic are the procedures/mechanisms for public consultation and participation on legislation and policy-making? How equal is the access which interest groups/citizens have to influence the law-making process?	5
50.	How open, accessible, extensive and systematic are the procedures/mechanisms for public consultation and participation on executive policy? And how equal is the access which citizens have to influence executive policy?	5
51.	How far does government co-operate with relevant partners, associations and communities in forming and carrying out policies, and how far are people able to participate in these processes?	5
LAW-MAKING AND THE BUDGET PROCESS		
52.	How extensive are the powers of legislative bodies, and how effective are they at legislating?	6
53.	How rigorous are the procedures for parliamentary approval, supervision of and input into the budget and public expenditure?	5
54.	How much say does the public have in the development of the budget? How well do parliamentary procedures allow the public to participate in decisions relating to resource allocation?	5
ACCESS TO INFORMATION		
55.	How independent and accessible is public information about government policies and actions and their effects? How comprehensive and effective is legislation giving citizens the right of access to government information?	4
ACCESSIBILITY AND INDEPENDENCE		
56.	How accessible are elected representatives to members of the public? What impact does the electoral and party system have on the way in which MPs represent people?	5
57.	How far are MPs protected from undue influence by outside interests? Are potential conflicts of interest regulated?	5



58.	How effective is the separation of public office, elected and unelected, from party advantage and the personal, business and family interests of office holders?	5
59.	How effective and open to scrutiny is the control exercised by the legislature and the Executive over civil servants?	5
60.	How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption?	5
61.	To what extent is the public service protected from corrupt practices? To what extent are public officials protected from undue influence by outside interests? Are potential conflicts of interest regulated?	7
62.	Are public servants who blow the whistle on corruption encouraged and protected? Are citizens who blow the whistle on corruption protected?	6
63.	To what extent can government carry out its responsibilities in accordance with the wishes of the citizens free of interference or constraint from political or economic forces outside of Zambia?	5
64.	How far is government able to influence or control those things that are most important to the lives of its people, and how well is it organised, informed and resourced to do so?	5
SECTION THREE SCORE:5.2		
SECTION FOUR: POLITICAL FREEDOM AND DEMOCRACY		
CIVIL AND POLITICAL RIGHTS		
65.	How free are all people from intimidation and fear, physical violation against their person, arbitrary arrest and detention?	4
66.	To what extent are people able to protect themselves against discriminatory treatment by the State?	6
67.	To what extent are people able to use the legal system to protect their person and property against the State?	6
68.	How effective is the protection of the freedoms of expression, information and assembly for all persons irrespective of their social grouping?	6
FREEDOM OF ASSOCIATION AND PARTICIPATION		
69.	How secure is the freedom for all to practise their own religion, language and culture?	8
70.	To what extent do people feel free to associate with others in order to influence government? To what extent does government action encourage or discourage people to associate with others in order to influence government?	6
71.	To what extent do people organise themselves into associations in order to influence government and to what extent are the associations of civil society independent of government?	5
72.	How far do women participate in political and public life at all levels?	5
73.	How free from harassment and intimidation are individuals and groups working to protect human rights?	6
POLITICAL PARTIES		
74.	How freely are political parties able to form, recruit members and engage with the public?	8
75.	How free are opposition or non-governing parties to organise within the legislature and outside of it?	7
76.	How fair and effective are the rules governing party discipline in the legislature and within the party?	6

77.	How far are parties effective membership organisations, and how far are members able to influence party policy? Are all individual members privy to sufficient information about their party, including details of private donors?	4
78.	To what extent are political parties able to aggregate the interests of all social groups?	4
MEDIA RIGHTS		
79.	To what extent does the legal system ensure that print and electronic media are free to print or say what they want about those in power in both government and the private sector?	4
80.	To what extent are people and organisations able to disseminate their views via print or electronic media? To what extent do citizens have equal access to adequate information, including news and other media?	5
81.	To what extent are the print and electronic media independent from government? How pluralistic is the ownership of print and electronic media?	6
82.	To what extent does media influence Zambian society?	8
SECTION FOUR SCORE: 5.8		
SECTION FIVE: HUMAN DIGNITY AND DEMOCRACY		
SOCIO-ECONOMIC AND CIVIL RIGHTS' PROTECTION		
83.	How far are economic and social rights, including equal access to work, guaranteed and enforced for all? Are civil rights of the marginalised and most vulnerable protected in criminal and criminal procedure law?	4
84.	How effectively are the basic necessities of life guaranteed, including (a) Clean, adequate and reasonably accessible water (b) Adequate food (c) Adequate housing and shelter (d) Adequate and unimpeded access to land?	4
HEALTH CARE		
85.	To what extent is the right to adequate health care protected in all spheres and stages of life? Is treatment available for illnesses such as HIV and AIDS? Is access to this treatment equitable and is the health service of reasonable quality?	5
EDUCATION		
86.	How extensive and inclusive is the right to education and training, including education in the rights and responsibilities of citizenship?	5
POVERTY		
87.	Are vulnerable and marginalised groups such as children, the disabled and women adequately protected from poverty?	5
88.	Is political participation possible irrespective of poverty? To what extent are poor people able to participate in Zambian society or are they excluded?	5
89.	To what extent is the State "progressively realising" social, cultural and economic rights in accordance with its constitutional obligations?	6
JOBS, AND RIGHTS IN THE WORKPLACE		
90.	Is there equal opportunity for all in the workplace?	6
91.	How far are workers' rights to fair rates of pay, just and safe working conditions and effective representation guaranteed in law and practice?	5
92.	How far are wage levels and social security or other welfare benefits sufficient for people's needs, without discrimination/equally?	5



DELIVERY OF SOCIAL AND ECONOMIC RIGHTS		
93.	Are public goods, for example water provision or local services such as waste collection, equally available to citizens and communities at similar levels of efficiency and competence?	5
94.	Has privatisation had a positive influence on the adequate provision of public goods and services?	5
95.	To what extent do public-private partnerships or does privatisation facilitate or impede access to socioeconomic rights particularly for the poor?	5
96.	To what extent are private companies accountable for the delivery of socioeconomic rights as a result of privatisation or public-private partnerships? To what extent is this accountability overseen by citizens or their representatives?	4
97.	To what extent do citizens feel they are receiving equal access to public resources regardless of their social grouping?	4
CORPORATE GOVERNANCE		
98.	How rigorous and transparent are the rules on corporate governance; and how effectively are corporations regulated in the public interest?	5
99.	To what extent are companies duty-bound to play a role in the realisation of socioeconomic rights? And to what extent do they prioritise responsible social investment?	6
100.	Is the private sector meeting its obligations, such as in relation to equity and empowerment responsibilities?	5
SECTION FIVE SCORE: 4.9		
TOTAL SCORE: 5.4		

SECTION ONE

PARTICIPATION AND DEMOCRACY

BY HUMPHREY SIKAPIZYE AND ABDON YEZI

The 1991 elections ushered in a new era of multiparty politics as the Movement for Multiparty Democracy (MMD) replaced the United National Independence Party (UNIP) after 27 years of one-party rule. Since then, Zambia has been widely hailed as a model for democracy on the continent. The period after the first multiparty elections was marked by high levels of euphoria characterised by the formation of new political parties, a growth of emboldened civic movements and increased citizen participation.

It is against this background that this section assesses the state of democracy in Zambia with the focus on participation and democracy. Broadly, the section will examine issues of nationhood, citizen participation and involvement, government legitimacy, citizens' obligations and duties, and political tolerance.

PARTICIPATION

Participation is one of the key principles of democracy and is undoubtedly one of the crucial determinants of the nature of democracy. Political participation is a multidimensional



concept but, broadly conceived, participation concerns “the entire process of how and why people get involved in politics” (Chilcote 1981). More precisely, political participation consists of “those legal activities by private citizens that are more or less directly aimed at influencing the selection of government personnel and/or the actions they take” (Bratton et al 1997).

While Zambia maintains the fundamental tenets of democracy, government struggles to promote and protect the participation of all citizens, particularly those who are most marginalised and vulnerable; namely, women and youth. As this section will establish, obstacles include a lack of platforms to facilitate participation, especially in rural areas, and the centralised government structures that make it difficult to access services, particularly for those who live far from Lusaka.

There have been significant global trends that have enhanced participation. Technology led by the Internet, mobile phones and social media are allowing citizens to engage in politics and the local and global economies in innovative ways that were not possible before. The use of technology to further citizen participation is believed to hold great promise to enhance democratic governance by allowing citizens to access public information and interact with government officials, promoting better accountability among public officials through efficient and convenient delivery of services, and producing fertile ground for a reinvigorated civil society (Joseph & Kitlan 2008).

Political participation in Zambia can be characterised into three distinct periods: the struggle for independence and the First Republic (1960–1972), the majority of the Second Republic (1973–1990)¹ and the modern political period (1990–present). The first period was characterised by the struggle against colonial rule and internal popular mobilisation to gain independence. Participation was revolutionary in nature and engendered national movements, such as the “Cha Cha Cha” civil disobedience campaign, and the formation of political parties; prominent among them being the Zambia African National Congress (ANC) and the UNIP. After independence, the UNIP and the ANC emerged as the two most powerful political parties. The majority party, the UNIP, faced a small but persistent opposition from the ANC, which was the primary opposition between 1964 and 1972. Active participation during this period led to the formation of two smaller parties, the United Party (UP) and the United Progressive Party (UPP).

The second period began with the Second Republic in 1972, when Zambia became a “one-party participatory democracy” and the UNIP was declared the only legal political party. The growth of Zambia’s nascent democracy stalled. The Constitution was amended to abolish all political parties, except UNIP. Political participation among citizens in the affairs of the State was limited as citizens could only participate through the structures of the ruling party.

Between 1970 and 1990, State power became highly centralised and increasingly concentrated in the hands of President Kenneth Kaunda. According to Kaunda, the main reason for ending multiparty politics and transforming Zambia into a one-party state was “to prevent ethnic divisions becoming increasingly politicised and fuelling open conflict that could

turn to violence, so frustrating his post-colonial project to build One Zambia, One Nation” (John 2008). However, others at that time posited that the move was due to fears within UNIP that the party might be about to lose its dominant position (Soko & Shimizu 2011).

Gertzel (1984) notes that, during this period, it was the presidency – not the UNIP – that was the predominant institution. The presidency became increasingly the locus of power in the State during the Second Republic (Gertzel 1984; Erdmann & Simutanyi 2003). Additionally, the State assumed ownership of much of the economy. Participation in the affairs of the State was largely expressed through elections that were held regularly. However, Kaunda’s hold on the presidency was not seriously challenged. Elections during this period were not free and fair as many Zambians were coerced into registering as UNIP members, while intimidation and violence were sanctioned by the UNIP to enforce or implement party programmes and government activities. Government was unable to control the churches, trade unions and other civil society organisations (CSOs). In spite of having little autonomy, CSOs challenged the regime on particular issues, for example, the churches on educational issues related to the compulsory introduction of “scientific socialism”, and on abortion (Lungu 1986 and Erdmann & Simutanyi 2003).

The final phase began in 1990 when the country witnessed high levels of participation from civil society, including trade unions, non-governmental organisations (NGOs), churches and other faith-based organisations (FBOs) that were demanding a return to multiparty democracy. In December 1990 President Kaunda signed legislation ending UNIP’s monopoly on power. He succumbed to the people’s demands by agreeing to amend Article 4 of the Constitution to allow the formation of political parties other than UNIP. This opened up more space for participation and led to the formation of the Movement for Multiparty Democracy (MMD) by pro-democracy groups, the trade unions and student movements. Popular participation was the central foundation of the country’s democratic transition in 1991. This phase continues to date.

NATIONHOOD

1. *To what extent do leaders and legal citizens agree on the identity of the nation established by the territorial and legal state?* (8)

For the purposes of this section, “nationhood” refers to a people who share common customs, origins, history and frequently language. A nation is a relatively large group of people organised under a single, usually independent government; a country in which citizens enjoy their rights, exercise their duties, participate meaningfully and agree on a shared identity.

Despite comprising more than 73 Bantu-speaking ethnic groups with more than 70 different language varieties contained within 15 to 20 distinct language groups, Zambia has remained a unified and peaceful State. With a population of approximately 13 million people, Zambia has not had any internal conflicts like many of its neighbouring countries, such as Angola, the Democratic Republic of the Congo and Mozambique.



Moreover, these traits have been maintained despite deteriorating living conditions suffered by the majority of its citizens. Periodic elections have been held in a largely peaceful manner. Political transitions have also been non-violent. This pattern of peaceful elections and non-violent political transitions demonstrates that Zambians hold a common set of values and principles. Despite divergences in political views and opinions, citizens are able to put their differences aside for the sake of togetherness, which is critical to achieving national obligations.

Citizens also identify themselves as Zambians through the use and association of national symbols, such as the national flag, the coat of arms, the public seal, the national motto and the national anthem, for the purposes of national sovereign identification. Recently, there have been submissions made to the ongoing constitution-making process to change some of the national symbols, such as the national flag, the coat of arms and the national anthem. This suggestion was rejected by a cross-section of society, revealing that Zambians value their national symbols as part of the country's history.

Zambia comprises citizens with many religious affiliations, including Christians, Hindus and Muslims. President Chiluba's 1991 declaration that the country was a "Christian Nation", followed by an amendment to the Preamble in the Constitution to this effect, was initially met with some resistance from other religious communities, but has also added to national identity (GRZ 2006).

Although the declaration was meant to apply to the whole country, the need to uphold the right of every person to enjoy the freedom of conscience or religion is recognised in the current Constitution (as amended by Act No. 18 of 1996). This recognition has been further upheld in the Mung'omba Draft (2007), the National Constitutional Conference (NCC) of 2010, the First Draft Republican Constitution of 2011, and the Report of the Technical Committee on Drafting the Zambian Constitution of 2012 (Zambia Federation of the Disabled 2011). Despite President Chiluba's declaration, Zambians do enjoy religious freedoms.

However, comparative studies have shown that Zambia does not rank very high in terms of nationhood among other countries in the region. In a 2006 Afrobarometer study conducted in 18 countries, Zambia ranked 13th in terms of its nationalism (CHRI 1996). In 2009, a similar survey indicated that citizens maintained a high level of esteem for national identity. The 2006 findings showed that the people's opinions on nationhood was low, while the 2009 findings, which focused on Zambia, noted individually and comparatively the country's sense of nationhood was unsettled.

Most citizens identify themselves by both national and ethnic identities. The majority of Zambians are free to practise their different cultures and cultural activities, which explains why Zambians identify on more than one level.

However, a clear case in which ethnic identity conflicts with national identity can be found within the Barotse who have consistently challenged the notion of the unitary Zambian State. The Barotseland Agreement (BA) of 1964 was entered into between President Kaunda rep-

representing Northern Rhodesia (as Zambia was known before independence), the Litunga, the Barotse Royal Establishment (BRE) and the British government. The agreement promised the BRE powers to manage the affairs of Western Province, while they were to remain part of a unified Zambian state.

Successive governments have not fully implemented the agreement. In fact, different strategies, including appointing key elite people from Western Province and the BRE into key government positions, have been used to mollify disagreements and greater calls for autonomy among the Barotse. As a result of the abrogation of the BA, the Linyungandambo, one of three groups said to represent Barotse interests, initiated riots demanding for the restoration of the BA in October 2010.² Consequently, President Sata appointed a Commission of Inquiry to look into the circumstances surrounding the riots, the plight of the detainees, and to review the BA. The Commission, chaired by prominent Lusaka lawyer Dr Rodger Chongwe, recommended inter alia that government needed to restore the BA.

Table 1: Ethnic or national identity						
	Urban %	Rural %	Male %	Female %	Total % 2009	Total % 2005
I feel only (ethnic group)	3	7	6	5	5	20
I feel more (ethnic group) than Zambian	7	7	7	7	7	10
I feel equally Zambian and (ethnic group)	67	61	62	65	63	60
I feel more Zambian than (ethnic group)	6	4	5	5	5	7
I feel only Zambian	17	20	19	19	19	3
<p>Source Q83 (2009) and Q82 (2005) <i>Let us suppose that you had to choose between being a Zambian and being a [R's Ethnic Group]. Which of the following statements best expresses your feelings?</i></p>						

Upon receiving the recommendations, Sata publicly announced that government would not implement the agreement fearing that implementation would create or calcify divisions among ethnic groups who already felt marginalised and that it would lead to similar demands for separate States (*The Post* 2012). Implementation of the agreement would have deep implications. The boundaries of Barotseland are primarily found within Western Province; however they also extend into North-Western Province and parts of Angola and Botswana. Sumbwa (2000), in a study of political participation in Western Province, observed that the continuous demand for the BA and its restoration shows the strength of attachment that the Lozi continue to have for their traditional authority and the BRE.

There are widespread perceptions that members of government favour their relatives for employment and other economic opportunities. Former President Levy Mwanawasa was accused of promoting a “family tree” in his appointments, an accusation which has also been levelled at former President Banda and current President Sata. Sata specifically has been



accused of planting a “forest” of relatives through appointments. As an example, Lewis Mwanangombe (2012) succulently states that:

He appointed his uncle, Alexander Chikwanda, as Minister of Finance, and his nephew, Miles Sampa, as Deputy Finance Minister. The Local Government Minister is his niece, and cousins have been appointed Ambassador to Japan and Acting Chief Justice. Giving family members government jobs is something of a political tradition in Zambia. Under Mwanawasa, some dubbed government “the family tree”.

These charges which usually emanate from opposition party leaders, political analysts and certain sections of the private media have in fact raised doubts about Zambia’s nationhood. Moreover, the Office of the President has been dominated by one major ethnic group, the Bemba of Luapula and Northern provinces. This has enforced the perception that the country is governed along ethnic lines. Zambia’s elections have been characterised by voting along tribal lines with the Tonga people of Southern Province supporting the UPND where its president, Hakainde Hichilema, hails from. The PF seems to have a stronghold in the Northern and Luapula provinces where President Sata originates from.

2. *To what extent do political leaders and citizens refrain from the use of violence or illegal activity to settle political disputes?* (6)

Zambia has not witnessed any large-scale violence or illegal activities to settle political disputes. Yet, there have been some disturbances, including five attempted coups since independence, anti-democratic legislation, low-scale violence during elections, the 1996 Black Mamba incident and the Barotse riots of 2010.

According to Phiri (2001), at least two of the five coup attempts, 1980 and 1988, were engineered by an alliance of civilians and military personnel. In contrast, Lieutenant Mwamba Luchembe’s coup attempt in June 1990 and that by Captain Stephen Lungu in October 1997, were led by relatively junior army officers. These two attempts do not appear to have been engineered by civilians. A critical note of the October 1997 coup attempt was that collusion took place between those members of the military who led the attempted overthrow and some members of opposition parties who did not have the patience to follow democratic channels to address their grievances (Phiri 2001). Nevertheless, the Luchembe and Lungu coup attempts were a reflection of serious political tensions. The failure of government to respond to political demands by opposition politicians within the political sphere led some soldiers to believe their only recourse was to seek changes using unconstitutional and undemocratic methods.

During the rule of the UNIP and MMD, opposition parties and CSOs often accused government of using the Public Order Act (POA) of 1959, a remnant from the colonial era designed to disadvantage the black majority during election campaigns, to intimidate those who were perceived to be anti-government. In 2004, former vice-president and cur-

rent MMD president Nevers Mumba admitted that the POA was formulated in bad faith and government was committed to revising it. Unfortunately, eight years after this observation was made, no government has revised the POA, even though its repeal has been advocated for by civil society, constitutional and legal experts and the Electoral Reform Technical Committee (ERTC).³ In fact, the POA, which has been condemned by the current PF government, continues to be used by the police to selectively deny certain opposition parties and CSOs the freedom to assemble.

The Commonwealth Human Rights Initiative (CHRI) noted that the misuse of State resources and abuse of power by politicians is used to settle political disputes (CHRI 1997). In 1993, the performance of the economy under Chiluba sharply declined, resulting in a spike in formal unemployment, a contraction of services supplied by the State and an increase in poverty (Simutanyi 2010). As Chiluba's election victory was largely viewed to be pinned on the hope of an economic turnaround, Former President Kaunda, who had retired from politics, saw an opportunity to return with the support of UNIP. With the return of Kaunda to politics, Chiluba was scared of losing the next elections and declared a State of Emergency as a way to block Kaunda's return. Charges were laid against UNIP and Kaunda was jailed along with 23 UNIP members and his three sons. After pressure from Western governments, Kaunda was eventually released. In 2004, Kaunda was placed under surveillance due to allegations that he was receiving support from foreign missions in Zambia.

In April 1996, a dissident group called Black Mamba threatened to execute certain ministers and diplomats if government persisted with its controversial proposals for constitutional reform. Following the threats, the organisation set off a number of bombs around the capital. Black Mamba was a name given by colonial authorities to Kaunda during the independence struggle and, therefore, the MMD accused UNIP of being behind the threats (John 2008).

Elections in Zambia are managed by the Electoral Commission of Zambia (ECZ) under the Electoral Act of 1996 and the Electoral Code of Conduct; these have largely helped to keep participation within the appropriate constitutional and democratic bounds. Disputes over election results have been settled through the courts. In most cases, losing candidates have accepted the results without causing any violence, even when they were perceived to have been rigged, as was the case for the 2001, 2006 and 2008 elections. Opposition leaders grudgingly accept the results because the winner is sworn-in within 24 hours of the results being announced by the ECZ. Once sworn in, the winner takes charge of all State instruments of power and authority, and any appeal can only begin after 14 days have passed. Once a case reaches the Supreme Court, which is the first and only court of appeal, the presiding Chief Justice, who has historically been appointed by the incumbent (who is usually the defendant), is likely to rule in favour of the defendant. The results of three elections have been challenged this way: 1996, 2001 and 2006. In the first, the critical issue was around the qualification of Chiluba to stand for election as his citizenship was questioned. In 2001 the outcomes of the elections were questioned amid high levels of suspicion that the elec-



tions were stolen from Anderson Mazoka of the United Party for National Development (UPND). In short, there is no election petition which has disadvantaged an incumbent.

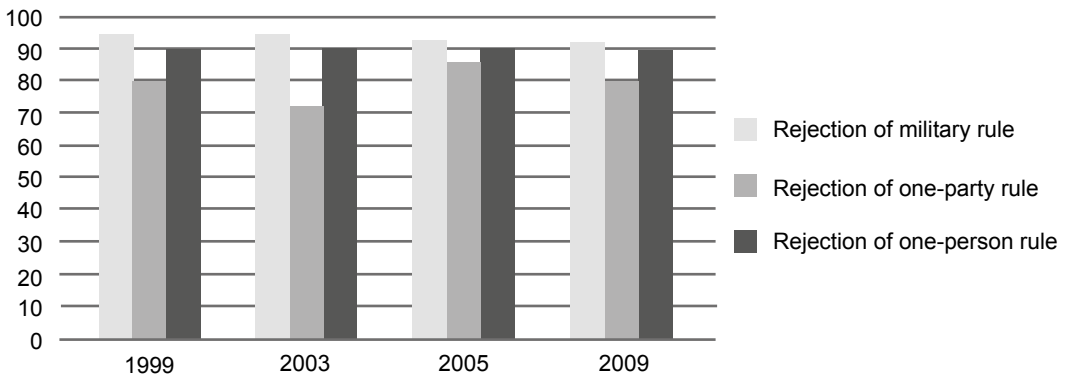
Finally, Di John posits that, faced with rapid decolonisation, intense ethnic and regional and class contestation, African leaders, like Kaunda, sought to achieve political order and electoral competitiveness through the construction of patron-client links in two ways: a reliance on leaders who had large followings, and through the use of patronage politics to bind notables and local voters to emerging parties and candidates supported by such parties. This culture has become ingrained in Zambia's politics.

3. *Do the majority of citizens agree that democracy is the only appropriate form of making collective decisions for their nation?* (7)
4. *To what extent do political leaders agree that democracy is the only appropriate form of making collective decisions over their nation?* (6)

A measure of democratic values can be found in the direct preference of democracy among Zambians. Data from a series of Afrobarometer surveys between 1999 and 2009 has revealed that the demand for democracy has increased among Zambians, following a declining trend between 1999 and 2005. According to the 2009 survey, more than 80% of Zambians are of the view that democracy is preferable to any other kind of government compared to 75% in 1999, 70% in 2003, and 64% in 2005. To get a clearer understanding of the figures, we must remember that in 1991 more than 72% of registered voters cast their ballots for one of the opposition parties, thus implying a vote for democratic change and a multiparty system (Erdmann & Simutanyi 2003). Only 23.8% of voters cast their ballot for UNIP. According to Erdmann and Simutanyi, this data gives clear evidence that a commitment to democracy persists among Zambians.

The increasing support for democracy can be explained by looking at the events that were taking place during that period. In 2003, President Mwanawasa appointed a Constitutional Review Commission (CRC), raising expectations regarding the strengthening of democratic institutions and behaviour. Moreover, in 2005, Zambia was preparing for elections and again this brought increased participation because the electorate were tired of the Chiluba regime. The demand for more democracy could also be attributed to the poor performance of the Banda regime that was rocked by corruption charges, which, though denied, caused people to lose confidence in the regime during the short period Banda was in office.

Dissatisfaction with democracy can be attributed to high levels of poverty in the country. A 2002 study by Simon found that economic trends shaped patterns of political participation during the first five years of Zambia's new democracy, with economic difficulties depressing voter registration and turnout (Simon 2002). In his study, Simon observed that many of the countries that underwent transitions to democracy during the "Third Wave" of democratisation that began in 1974, did so under conditions of severe poverty, a condition that poses a high barrier to the consolidation of democracy.

Figure 1: Rejection of non-democratic alternatives

Simutanyi (2010) made a similar observation when he posited the following:

Under Chiluba, poverty and inequality increased while Zambia's democratic performance regressed. Zambia was much poorer in 2001 than it was ten years earlier, with 8 in every 10 Zambians living below the poverty line. All social indicators were negative, including the high unemployment levels of more than 40 percent, highest maternal mortality rates in the world, high infant and child mortality, inhabitable urban dwellings and homelessness, declining literacy rates and poverty wages. HIV and AIDS prevalence of 16 percent was high by world standards, especially when the absolute number of infected persons was 1,200,000 and close to 900,000 deaths per year against a population of less than 12 million.

The dominance of the International Monetary Fund and the World Bank in shaping economic and social policies reduced policy space and captured indigenous initiatives. They reduced internal capacity to devise economic and social policies that were in the interest of the people. The MMD government executed economic and social policies that destroyed jobs and incomes, exacerbated inequality and favoured the capitalist class. Under Chiluba and Banda, the country regressed into a semi-authoritarian regime.

As Simutanyi (2010) noted above, poverty and inequality increased after 1991. The early optimism with multiparty democracy was replaced with scepticism, cynicism and outright frustration. This frustration was reflected in some national activities, such as elections. According to Simutanyi (2010), a study that was conducted showed that 65% of Zambians did not belong to a political party and less than 50% participated in the 2001, 2006 and 2008 elections. Electoral participation was low and support of it weak, clearly showing the impact of poverty on participation.

Despite the challenges poverty brings, Zambia has continued to improve the state of its democracy. In 2011, the Economist Intelligent Unit (EIU) Democracy Index upgraded Zambia from a hybrid regime to a flawed democracy.⁴ The results show that democracy has been under intense pressure in many parts of the world. In most regions, the average



democracy score for 2011 is lower than in 2010 (EIU 2011). Among the factors that can be attributed to Zambia's improvement is the increase of reliable and accurate information, and government's anti-corruption efforts. President Mwanawasa's fight against corruption and the quest to pursue cases involving former president Chiluba, and the desire to clean the civil service, has improved the general perception of government.

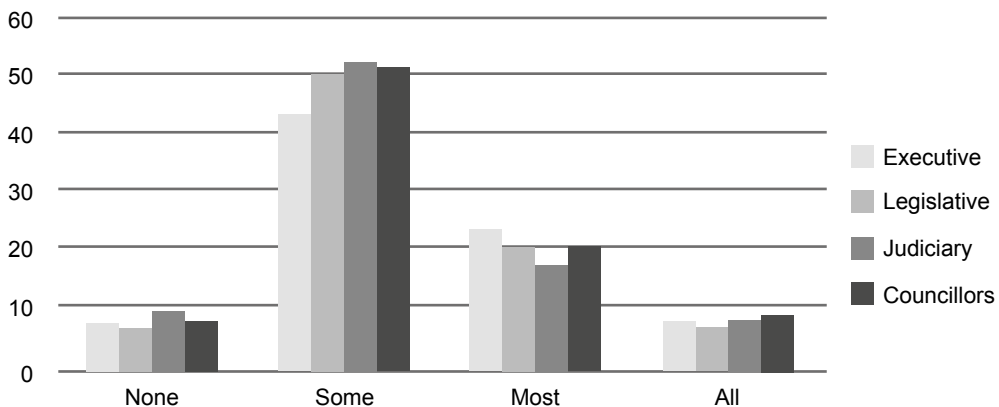
Although the EIU cited access to information as one of the contributing factors, the majority of rural communities still do not have adequate access to major sources of information, such as radio, television and print media. In urban areas, journalists are still struggling to have a Freedom of Information Bill passed by the National Assembly. While the PF government has expressed interest in having the piece of legislation enacted into law, it has not taken any tangible steps to do so. Under the MMD regimes, opposition political parties had challenges in selling their manifestos because they had little access to the public media.

Nevertheless, the 2011 elections were endorsed as being free and fair by the EIU and various other organisations, including the European Union Election Observer Mission, the Commonwealth Observer Mission and the Electoral Institute for Southern Africa (EISA), as well as local organisations, including the Civil Society Election Coalition (CSEC), the Foundation for Democratic Process (FODEP) and Operation Young Vote (CSEC 2011).

Few Zambians (22%) consider their country a full democracy (Afrobarometer 2008). There are a number of reasons that explain the dissatisfaction with democracy. Authoritarian behaviour and patterns of neo-patrimonial governance, legacies of the pre-1991 regimes, continue to exist to various degrees. The majority of Zambians believe that members of government are involved in corruption and this belief cannot be contested because corruption has been confirmed by the late President Mwanawasa, who initiated a fight against the scourge, and President Sata, who has already started firing some of his ministers for alleged corruption in his new government.

Figure 2 demonstrates that the majority of Zambians believe that corruption is endemic within all branches of government.

Figure 2: Perception of corruption in 2009 Afrobarometer survey



There are glaring incongruities of support for democratic standards among Zambia's leaders. Government was slow to act on the African Charter on Democracy, Elections and Governance (ACDEG), which was finally ratified in 2011. Zambia is also a member of the African Peer Review Mechanism (APRM). While leaders accept democratic standards at the formal procedural level, power and wealth are highly centralised, executive dominance obstructs checks and balances, and corruption is deeply ingrained. Government continues to be hostile toward CSOs that it perceives to be anti-government. In 2007, the Southern Africa Centre for Constructive Resolution of Disputes (SACCORD) was deregistered by the Minister of Home Affairs. In 2009 the MMD government enacted a flawed NGO Act with the intention of regulating CSOs. NGOs rejected this Act and its application appears to have been halted. Despite promising to repeal the Act, the PF government has not done so. Harassment of opposition politicians continues. This raises plenty of concerns about government's commitment to democratic values.

PARTICIPATION AND INVOLVEMENT

5. *To what extent do citizens participate in political life? Are citizens willing to participate in elections and become involved in other ways to influence government and hold it accountable?* (4)
6. *To what extent do citizens feel prepared and competent to take part in political life?* (4)
7. *To what extent do citizens feel that participation in political life can give them some ability to influence collective decisions?* (5)
8. *To what extent do citizens feel that the impact of their participation will be equal to other citizens?* (4)

The extent of participation in Zambia can be dissected by looking at voter turnout in elections, organisation and engagement with political leaders. The Constitution provides for the right to participation. Article 21 protects the freedom of assembly and association, thus enshrining the freedom to participate. Voter turnout is often a reflection of the level of political participation. Tables 2 and 3 suggest that the perception of unfair elections, abuse of the POA, and harassment of opposition leaders and supporters have had an effect on turnout.

Table 2: Voter turnout for parliamentary elections since 1991

1991	1996	2001	2006	2011
44.4%	78.5%	68.6%	70.7%	53.7%



Table 3: Voter turnout for presidential elections since 1991

1991	1996	2001	2006	2008	2011
44.4%	55.5%	67.8%	70.8%	45.4%	53.7%

The fluctuations in turnout reflect developments that were taking place. In 1996, people were frustrated with the President's performance and the elections provided an opportunity to remove him. In 2001, Anderson Mazoka emerged to lead the UPND. He was a well known businessman and his entrance on to the political scene reinvigorated the electorate. In 2008, retired politician, Rupiah Banda, stood for the presidency. His candidacy did not motivate many people, especially within the MMD, who felt that Banda had been imposed on the party. Michael Sata (PF) lost three elections before emerging victorious last year, because he offered a message of hope by promising to remove the MMD from power. His popularity led to a small but noticeable increase in turnout.

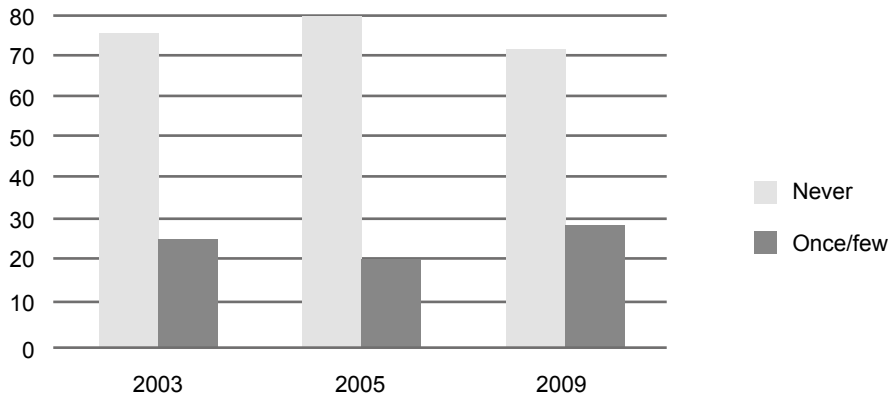
The 2008 Afrobarometer survey shows that most community members in Zambia are active members of religious groups, slightly more so in urban (60%) than rural (56%) areas. The declaration of the country as a "Christian Nation" without any criticism from the majority confirms this. The difference between rural and urban areas could be explained by the number of churches in urban areas in contrast to the rural ones.

In Zambia, a number of voluntary or community associations have helped shape the country's political dispensation and consolidation, beginning with the civil unrest that took place in 1990. Maitra (n.d.) posits that by 2003, approximately 10,000 CSOs were registered. However, many of these organisations are based in urban areas and do not have a national outreach (Chipenzi et al 2011). This has created donor dependency as many CSOs struggle to expand and maintain their activities. Furthermore, government has tried to regulate the establishment of civic organisations through the NGO Act of 2009. The PF government is on record stating that government will not tolerate the registration of NGOs for political expedience.⁵ Despite this, the most recent CIVICUS Civil Society Index (2008–2010) states that Zambian civil society plays a decisive role in the country.

Churches have intervened in certain political impasses that have threatened to turn into political disputes. A case in point was when the Council of Churches in Zambia (CCZ), the Evangelical Fellowship of Zambia (EFZ) and the Zambia Episcopal Conference (ZEC) intervened in resolving a constitutional dispute in the run up to the transitional elections of 1991, which ensued as a result of differences between UNIP and civil society movements including the MMD that were advocating for change in 1990. UNIP feared Kaunda would lose the elections, but intense pressure from CSOs and a meeting held at the Cathedral of the Holy Cross organised by the three church mother bodies resolved the impasse. UNIP was hesitant to change the constitution to allow for the existence of other political parties. With the intervention of the churches, both UNIP and MMD reached an agreement where Kaunda gave in to the demands of the people and agreed to change the constitution. This assignment was given to Professor Patrick Mvunga, one of Zambia's prominent lawyers who

came up with the Mvunga Constitution of 1991, which enabled the MMD to be registered as a political party.

Figure 3: Formal contact between elected councillors and citizens



Citizen interaction with MPs is extremely poor. Afrobarometer indicates that 85% of citizens “never” contacted their MP in the past year. Additionally, the data shows that 88% of the respondents in the 2009 survey indicated that they had never contacted an official of any government agency about a problem or to give their views.

A recent study commissioned by Diakonia and its local partners found that there is ineffective participation by citizens, especially those in rural areas (Diakonia 2012). This is largely a result of limited knowledge of their civic duties, obligations and responsibilities caused by limited access to information. The mainstream media, such as newspapers (both print and electronic), radio and television are absent from these areas. According to respondents, the trend is that there is usually increased participation by both political parties and citizens during elections, but citizens tend to relax once they are over. There is no follow up from the citizens, who tend to leave the governance of the country to the elected leaders and government officials, and expect the leaders to do everything for them. The Council Secretary of Milengi district explained the situation in the following words:

My understanding is that during the period towards the elections, the people are a bit active, but soon after elections our culture has been that the people don't want to even make follow ups on what it is that we are supposed to see or how we are supposed to govern our nation. The citizens tend to sit back as a nation. It's like the citizens especially those in the rural areas forget about governance of the country. They leave everything in the hands of the elected officials and government officials (Diakonia 2012).

Since independence, successive governments have tried to design and implement policies to encourage and strengthen citizen participation in governance. The general aim of these policies has been to enhance service delivery from local authorities and improve citizens'



participation in governance. Service delivery is critical because it enhances participation as it seeks to empower citizens by incorporating them into the development agenda.

Government has embarked on other significant public policy initiatives, including the reform of the local government system in the current constitution and the implementation of the Public Sector Reform Programme in 1993, which was ostensibly aimed at making the civil service more efficient and responsive to the Basic Needs Basket (BNB).

Local governance reform has been transforming the characteristics of governance in Zambia. Since independence, a commitment to decentralisation and popular participation has been an important component of local governance reform strategies (Diakonia 2012). Local government reforms in Zambia have been implemented in four phases between 1964 and 2008. Phase one – 1964 to 1970 – entailed the new government's attempts to establish the inherited political control and district governance structures as cohesive, dynamic organisations that could facilitate sustainability and socio economic development. Phases two, three and four ran from 1971 to 2008, and each phase had its own challenges and successes. Generally, however, common challenges included financial backing, a lack of integrated district management and planning, and insufficient meaningful participation from citizens.

In May 1993, as part of the wide-ranging PSRP, the MMD government committed itself to achieving three objectives: to make the Zambian public service leaner (through a targeted retrenchment programme) so that the costs of running it could be made more manageable; to improve human resource management through performance-related incentives for a smaller and better remunerated work force; and decentralise and devolve administrative power away from central ministries in the capital to field stations and local government structures. But corruption remains high. Currently, a number of civil servants are facing jail sentences or undergoing trials. Although the full implementation of the programme has been delayed, government has already made progress. For example, the setting up of the Decentralisation Secretariat in 2002 gives hope that the exercise will be fully completed. But the PSRP has not produced any noticeable improvement in the performance of the civil service or service delivery.

The current constitution-making process has provided the opportunity for citizens to participate in governance. So far, Zambia has had four attempts at constitution making, starting in 1991 under Mvunga with the CRC, followed by the Mwanakatwe CRC (1995), the Mungomba Review Commission (2007), the National Constitutional Conference (NCC) (2010), and the current constitutional reform process under Justice Annel Silungwe (2012). Although Zambians have been willing to participate in the constitution-making process, many feel that their right to participation has been abused as government has rejected most of the submissions. This is why, in addition to their unhappiness with its composition, key stakeholders in Zambia, such as the churches, CSOs and some political parties, shunned the NCC in 2010.

The secrecy that has characterised the current process has cast doubts in people's minds whether the country will achieve its goals. In fact, the current process is not very different

from the previous ones as government has failed to demonstrate adequate political will toward concluding the process. The composition of the District, Provincial and National Constitutional Conventions are not different from the 2011 NCC process, whose product was rejected in Parliament. The composition of the conventions resembles the composition of the NCC, which was dominated by government technocrats. Further, government has failed to enact two critical processes. Firstly, it has refused, along with the Technical Committee, to disclose the budget for this exercise. Secondly, the Referendum Commission, which was expected to spearhead the adoption process has not been established. As such, the reform process has failed to be people driven and this is why, from 1964 to date, the country has failed to design a sustainable constitutional framework.

Marginalised groups, including women, people with disabilities and youth, face challenges when it comes to participation. For example, Women in Law and Development in Africa (WiLDAF) confirmed that the 2011 elections failed to address the gender gap in terms of women's participation in elections (NFD 2011). For Zambia to meet the Southern African Development Community (SADC) Protocol on Gender and Development, as all member States must, Zambia needs to reach a goal of 50% representation among women and men within decision-making positions. Neither the Constitution nor electoral legislation has provisions for quotas to further the representation of women in publicly elected bodies, at any level, or for appointed positions within the Executive and judiciary. The electoral system's inability to increase women's representation was made evident in 2011 as seats held by women were reduced from 24 to 18 (or 25%). There is a need for a broad policy shift that would help Zambia dismantle the cultural prejudices that disadvantage women in the process of selection of candidates at presidential, parliamentary and local government levels. There is a need for gender-sensitive legislation to be developed. Proportional representation as an electoral system would also improve women's representation compared to the FPTP system.

Most political parties suffer from a lack of internal democracy. This is often cited as a factor that discourages many people from participating in elections. A 2005 study by Jotham Momba in Africa and a study by Ndulo (2000) on political parties, posited that the selection of candidates by political parties at the lower and middle echelons of authority within the party do not follow party democratic procedures.

Moreover, political parties have failed to address significant inequalities among men and women in their ranks. The absence of voluntary quotas by political parties to guarantee the inclusion of women exposes a lack of political and affirmative action. Studies conducted on political parties in Zambia show that none of the political parties provide any quotas for women or youth candidates for parliamentary or local government elections.

Zambia is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). However, the ECZ is accused of having directly discriminated against persons with disabilities as per the provisions of the *Zambian Persons with Disability Act No. 33 of 1996* (specifically, Part 6, Section 19, sub-sections (c) and (d)). The *Zambia Federation of Disability Organisations (ZAFOD)* was founded in 1990 under Cap 551 of



the laws of Zambia to facilitate capacity building and efficient networking with organisations as vehicles for change (ZAFOD Strategic Plan 2004). ZAFOD plays a role in policy and legal framework formulation of disabilities issues and has established itself as a functional, representative umbrella body for people within the discourse on the current constitution-making process.

In September 2011, ZAFOD was prompted to seek a court order to compel the ECZ to respect the rights of persons with disabilities to fully and freely participate in politics and public life, both directly and indirectly. Since Zambia ratified the UNCRPD, it has an obligation to provide for reasonable accommodation for persons with disabilities, as per Article 29. ZAFOD maintained that the ECZ had not done enough to ensure people with disabilities could participate in the elections, citing inter alia inaccessible polling stations. According to ZAFOD, this was unconstitutional and discriminatory (High Court of Zambia 2011).

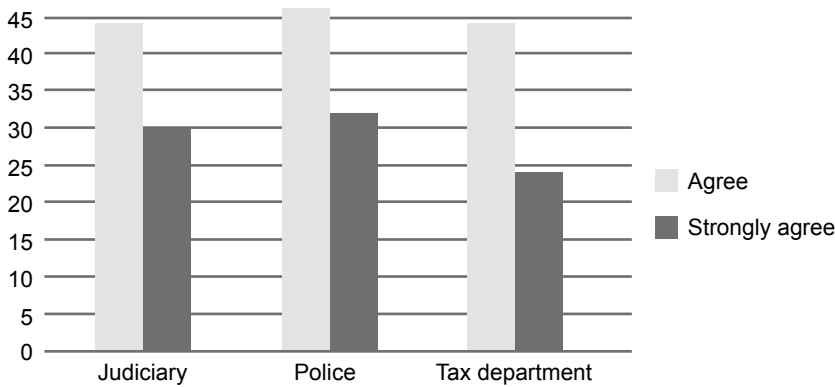
Government has realised there is a need to promote youth participation and has consequently put measures in place to address this. These include the creation of a decentralised Department of Youth Affairs to facilitate youth development and the establishment of the National Youth Development Council (NYDC) under an Act of Parliament to facilitate youth empowerment through the implementation of the National Youth Policy. The NYDC works in six districts in Central Province and implements different programmes including tracking pregnancies among school girls. Despite these measures, youth participation is still wanting.

GOVERNMENT LEGITIMACY

9. *To what extent do citizens feel that government in general and the present government in particular has the right to make binding collective decisions.* (6)

According to Lindeke (2012), high levels of participation are essential to ensuring government does not govern through corruption or repression. By freely electing their own leaders, Zambians express their confidence in the elected leaders. In a 2009 survey, several questions were asked about government's right to make collective decisions. The results, shown in Figure 4, demonstrate that the majority of Zambians agree that the listed agencies have the right to make collective decisions.

However, citizens' perceptions of government's performance has been affected by a number of negative developments, including high levels of corruption within government, abuse of public resources, lack of accountability and abuse of office. President Levy Mwanawasa is credited for highlighting the fight against corruption and placing it on Zambia's political agenda. For example, his government designed the Task Force Against Economic Plunder, an anti-corruption strategy, and reinforced the Anti-Corruption Commission and Drug Enforcement Commission.

Figure 4: Binding authority to make collective decisions

Other measures include the establishment of the Citizens' Economic Empowerment Commission through the Citizens' Economic Act No. 9 of 2006. The commission's principal aim was to uplift the targeted citizens who have suffered marginalisation. It was meant to level the playing field and raise citizens to a position where they can effectively participate in the national economy, especially women, youth and the disabled. Unfortunately, the commission has not achieved its goals as it has failed to empower the targeted citizens. Instead, only the elite benefited from the loan, which the commission has been struggling to recover.

Civil Society for Poverty Reduction (CSPR) also observed that Zambia was experiencing a total collapse of corporate governance due to a collapse of political leadership that allows for abuse of public office as reflected in the Auditor General's report. In 2010, President Rupiah Banda removed the abuse of authority of office law saying it was retrogressive and undemocratic. Banda said the legislation was unjustified because it presumes people guilty before facing trial and because there were already adequate anti-corruption laws to deal with abuse of office. He claimed that the abuse of authority of office offence was already provided for under Section 99 of the Penal Code chapter 87 of the laws of Zambia (*Lusaka Times* 2011). The Zambian people condemned this move by President Banda. Fortunately, the clause was reinstated by the PF government of President Sata when it came to power, in a move welcomed by the public.

The constitution-making process currently happening in Zambia is considered an opportunity for people to participate in making law. However, the process has yet to yield many positive results as citizens' submissions, in the past, have been rejected by government. This has led people to conclude that these exercises are a waste of public resources. The current constitution-making process is estimated to cost over K90 billion although government has refused to disclose the full budget. The previous National Constitution Making Conference which failed to produce a constitution, used up approximately K83 billion (*The Post* 2011).



CITIZENSHIP OBLIGATIONS AND DUTIES

10. *To what extent do citizens meet their legal obligations?* (5)

From 1991 up to 2011 the MMD dominated national politics as it controlled the executive and legislative branches of government. During this period the MMD implemented reforms steering Zambia towards a more liberal and free-market economy. Zambia has enjoyed more than 10 years of sustained economic development with an average annual growth figure as high as 5,8%. The World Bank declared the country a low-middle-income country in 2011. Despite attempts to diversify the economy, growth is still highly dependent on revenue from the mining industry, causing the Zambian economy to be very sensitive to fluctuations in commodity prices on the international market.

Despite having reached middle-income status, Zambia is one of the poorest countries in southern Africa. Most of the vulnerable people, such as women, children, the disabled and the elderly are inadequately protected from poverty, which adversely affects their ability to participate in public life. Zambia's poverty levels are much higher in rural areas than in urban areas. However, in urban areas the most affected are women and children. Although government has put in place social safety nets, such as the Fertilizer Input Support Programme (FISP) and cash transfers, very few benefit from these because the elite hijack such programmes for their own benefit.

As Zambia attempts to consolidate its democracy amid high levels of poverty, issues of participation arise. Due to their dire economic circumstances, many Zambians are less likely to participate actively in their democracy. A UNESCO report (Atal & Oyen 1997), based on comparative studies of developing countries including Zambia, revealed that high levels of poverty go hand-in-hand with illiteracy, malnutrition and general neglect, causing indifference among citizens towards society. For this reason citizens' active political participation through engagement with civil society is reduced. Another study (Simon 2002) specifically focusing on Zambia, shows that less active forms of engagement, such as voter registration and turnout are also depressed when poverty levels rise. The direct result of a large majority of Zambian citizens living in high levels of poverty is low levels of both active and passive participation in Zambia's democracy.

TOLERANCE

11. *To what extent do citizens tolerate ideas, peoples and practices with which they disagree?* (5)

Political tolerance is a critical ingredient to good governance and democracy. However, experiences in Zambia show that political tolerance has not yet fully matured in the country. The recent tension that has been exhibited between opposition leaders Edith Nawakwi and Hakainde Hichilema reveals deep roots of mistrust between the two parties. The violence

in the Mufumbwe by-election of 2010 is a classic example of how political intolerance can be heightened. Nine people were injured and hospitalised during the by-elections due to violence.

According to the Afrobarometer survey of 2008, 65% of the respondents are of the view that party political competition does not lead to conflict. However, the majority of the citizens indicated that they fear political intimidation and violence during election campaigns.

CONCLUSION

This section has examined Zambia's 21 years as a multiparty democracy. It has examined issues related to nationhood, participation and involvement, government legitimacy, citizenship obligations and tolerance. During this period, six presidential elections have been held. Although most of these elections have not met all the conditions necessary for a free and fair election, the belief in democracy is still very high among citizens.

The section has also highlighted the importance of tribal identity on how citizens perceive themselves, national leaders and the democratic system of governance. It is noticeable that citizens' participation in political life occurs mainly during elections. In between elections citizens barely participate in governance processes within the country. Some of the key impediments to increasing political participation have been highlighted in this section. In conclusion, although Zambia has managed to achieve some benchmarks in its democracy, the process of consolidation and maturity to a full democracy is still under way.

SECTION SCORE: 5.5

ENDNOTES

- 1 The Second Republic began in 1973 and ended in 1991 following multiparty elections that were won by the MMD. Mass opposition to the Kaunda regime began in earnest in 1990.
- 2 The three groups that are said to represent Barotse interests are the Linyungandambo, Barotse Freedom Movement (BFM) and the Movement for the Restoration of Barotseland.
- 3 The committee was appointed by President Mwanawasa to revise the Electoral Act in readiness for the 2006 elections which were expected to be held under the new constitution and Electoral Act.
- 4 The EIU Democracy Index is based on these categories: electoral process, pluralism, civil liberties, the functioning government, political participation, and political culture. Countries are placed within one of four types of regimes (EIU 2011): full democracy, flawed democracy, hybrid regimes and authoritarian regimes. For a country to be graded, the category indices, as listed above, are averaged to find the democracy index for a given country. Finally, the index, rounded to one decimal, decides the classification of the country, as quoted: Full democracies – scores of 8; Flawed democracies – scores of 6 to 7.9; Hybrid regimes – scores of 4 to 5.9; Authoritarian regimes – scores of 0 to 3.9.
- 5 <http://allafrica.com/stories/201111030353.html>



SECTION TWO

ELECTIONS AND DEMOCRACY

BY BONIFACE CHEEMBE AND EDGAR HABASONDA

The Third Republic, which saw the inauguration of a new wave of multiparty elections in 1991, has also resulted in Zambia holding five periodic national elections, including a presidential by-election following the death of Levy Mwanawasa in 2008. The last elections which were held on 20 September 2011, saw the opposition Patriotic Front (PF) emerging victorious and unseating the Movement for Multiparty Democracy (MMD), which had been in power for over 20 years. Mr Michael Chilufya Sata became the fifth President of Zambia, ousting Mr Rupiah Bwezani Banda and the MMD from power.

The concept of democracy is based on the assumption that people are able to choose their leaders freely, participate in the political dispensation and be represented in their type of governance without any unreasonable hindrances. As such, one of the most important aspects of democracy is the holding of periodic and regular elections that are free and fair.

The 1964 independence constitution provided for multiparty politics, ensuring that opposition parties existed and that periodic elections were held. During the period 1964 to 1972, Kenneth Kaunda's United National Independence Party (UNIP) was the dominant party,

though it faced opposition from Harry Mwaanga Nkumbula's Africa National Congress (ANC) and Simon Mwansa Kapwepwe's United Party (UP). In 1972 the one-party system came into being under Kaunda, and for the next 20 years, UNIP was the only legal political party in Zambia.

Although Zambia ceased to be a multiparty democracy in 1972, the country remained a participatory democracy, in that citizens could still participate in elections to elect their leaders. The competitiveness of the elections, especially at parliamentary and local levels, remained very high. However, this was not the case at the presidential level. Mass economic discontent among Zambians during the late 1980s saw new calls for Zambia to revert back to multiparty democracy. Enormous domestic pressure saw multiparty elections allowed in Zambia again in 1991 when the Constitution was amended to allow for the participation of different political parties in a democratic dispensation. The 31 October elections ended the rule of UNIP, thrusting the newly formed MMD to power.

ELECTIONS

12. *Is appointment to legislative and executive office determined by popular election?* (7)
13. *To what extent are elections for government based on universal suffrage and secrecy of the ballot?* (6)
14. *Do all citizens believe that their vote is secret?* (5)

Articles 34(1) and 38(1) under the current Constitution proclaim Zambia has an executive president who is elected through universal suffrage for a five-year term. The republican president is elected using the electoral formula of a First-Past-The-Post (FPTP) system, as per the Constitution. The President is both the head of State and government as Zambia is a unitary state. Moreover, the Constitution provides for a cabinet whose members have to be appointed from the National Assembly by the President. The National Assembly of Zambia, which is a unicameral legislature, contains 158 Members of Parliament (MPs) of which 150 are directly elected from constituencies using FPTP, each for a five-year term. The remaining eight MPs are appointed by the President. MPs can also be appointed by the President to serve as cabinet ministers. Therefore, under the Constitution only eight individuals are appointed by the President to serve in the legislature and cabinet. This is a minority compared to the large number of legislative and executive appointments that are largely determined by popular election.

In Zambia there is general agreement that the country's legal framework remains inadequate.¹ These inadequacies include a weak legal and administrative framework that has been perceived to favour the ruling party and disadvantage the opposition, questions regarding the ability of the Electoral Commission of Zambia (ECZ) to manage free and fair elections,



continuous violations of the Electoral Code of Conduct by political players, conduct of campaigns, questions around the professional application of the Public Order Act (POA) of 1959, roles of both State-owned and private media in political coverage, and perceived bias in voter registration. These inadequacies in the electoral process have created controversy among electoral stakeholders, which has resulted in a loss of public trust and confidence in Zambia's electoral process.

In an effort to address these inadequacies, a process was initiated in 2003 by President Mwanawasa through the Minister of Justice George Kunda. The Minister appointed a 25-member Electoral Reform Technical Committee (ERTC), which was chaired by a lawyer. The ERTC report clearly stated that the most important electoral reforms required were constitutional in nature.

One of the most important outcomes of the ERTC report was the repealing and replacing of the Electoral Act of 1991 with the Electoral Act No. 12 of 2006. This Act is the most important law on elections in Zambia as it makes provision for elections and empowers the ECZ, an independent electoral body established under Article 76 of the Constitution. The Constitution stipulates that the country's electoral system is premised on universal adult suffrage and a secret ballot. For example Article 34 (6b) provides for the election of the president by universal suffrage and through a secret ballot.

However, there have been charges of fraud in elections since 1991. For example, in the lead up to the 1996 general elections, unilateral constitutional amendments were pushed through by the MMD.² These sought to curtail competitive elections as presidential candidates were required to prove that both of their parents were Zambian, which disadvantaged former president Kaunda because his father was born in Malawi (Kabemba & Eiseman 2004). The 1996 elections were marred with controversy from irregularities in voter registration and the final vote counting, such that political analysts and civil society organisations (CSOs) questioned the fairness of the electoral process. The lack of legitimacy of election results has been attributed to the ECZ being unable to effectively administer the elections. However, the ECZ has, over the years, improved in administering elections, notably in 2006 and 2011.

Zambia has struggled to guarantee universal adult suffrage and secrecy of the ballot during elections. An example of a violation of the Electoral Code of Conduct has been the buying of voters' cards by different political players, which had the result of disenfranchising eligible voters (AVAP 2006; CSEC 2011). Another challenge to universal adult suffrage in Zambia has been the voters' roll. Section 4 of the Electoral Act No. 12 of 2006 empowers the ECZ to compile, maintain and continually update a voters' roll of all citizens who are 18 years or older and are eligible to vote in a given election. In the past, the updating of the voters' roll was only carried out just prior to an election, not allowing enough time to ensure accuracy.

However, in recognising the need for continuous voter registration under Section 129 of the Electoral Act, the Commission has procedures for registering voters under Statutory

Instrument No. 38 of 2010. This provision of continuous registration, which has not been fully operationalised due to a lack of funding from government, does not require registration before general elections. Zambia has had difficulties in ensuring that the voters' roll does not have anomalies.³ This can be attributed to the capacity of the ECZ to follow up on the latest data of citizens so that their details are accurately captured. In the 2011 elections, the issue of the omission of eligible voters from the voters' role resurfaced. As had been the case in 2006, a number of people were not permitted to vote, even though they had either their National Registration Card (NRC) or provided a voters' card (AVAP 2006; CSEC 2011).

The secrecy of ballots is dependent on certain factors. Illiteracy presents the foremost challenge as it makes it difficult for a person to know how to cast a ballot. Illiterate citizens become vulnerable when seeking assistance from presiding officers, individuals appointed by the ECZ to maintain a polling station, who are able to exercise ad hoc powers.⁴ In some instances, these officers identify the candidate the citizen should vote for, thus eroding the principle of secrecy. Similar concerns are raised for disabled citizens, particularly the blind, whom in some instances come with relatives who may not help them vote for the candidate of their choice. For the 2011 elections, the ECZ provided tactile ballot papers for the blind at the presidential level only and not at parliamentary or local government elections. There was little publicity regarding how the ballots were to be used, how many had been printed, and to which areas in Zambia they had been sent. Moreover, it was not clear how many blind voters there were in Zambia as there is no specific register for them.

During the 2011 elections, the Civil Society Election Coalition (CSEC) observed that the secrecy of the vote was strengthened. This is evidenced by the fact that 98.5% of the arrangements for ballot booths were in place in all the polling streams that were monitored, which guaranteed secrecy of the vote as per the legal provision of Section 18(2) of the Electoral Act No. 12 of 2006 (CSEC 2011).

The ideals of universal adult suffrage and a secret ballot under Article 76(1) are also reflected in the first draft Constitution of the Republic of Zambia released in April 2012 by the Technical Committee on Drafting the Zambian Constitution. Zambia is also a signatory to some international treaties that also provide for the safeguarding of adult universal suffrage and a secret ballot; for example, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) (1966).

15. *To what extent do citizens believe that their electoral system reflects the will of the people?
How much does the electoral system impact on representivity?* (5)

By law, presidential candidates are to be sponsored by a political party, while those at parliamentary and councillor level may stand as independents; for example, only 1.3% of the members of the National Assembly are not affiliated to a political party. However, most of the candidates are nominated through their respective political parties.

The selection of candidates by political parties in certain instances does not follow democratic procedures. For example, during the Mporokoso (Northern Province) by-election



held in early 2011, both the PF and the MMD adopted candidates who were not selected by local structures, but were instead imposed by the party leadership (AVAP et al 2011). This method does not take into consideration democratic principles of inclusivity and transparency. The adoption process for candidates in elections by political parties in many instances highlights serious challenges concerning patronage and accountability. More often than not, party members and citizens in constituencies feel that national leaders do not adopt their preferred members, which erodes intra-party democracy.

In 2005, 87% of Zambians agreed that “we should choose our leaders in this country through regular, open and honest elections” (Afrobarometer 2006). Only 12% of Zambians agree with the opposite sentiment that “since elections sometimes produce bad results, we should adopt other methods for choosing this country’s leaders”. What sets apart the 2011 tripartite elections from those previous is that, although there is divided opinion as to whether the elections were free and fair, an opposition political party won and people regard the result as a reflection of their will. In other words, the general perception among Zambians is that they have been voting for the opposition since 1996, however, the ruling party has seemingly always tampered with their choice, hence the ruling party’s continued winning of elections.

When it comes to the impact of the electoral system on representivity, the system disadvantages already marginalised groups, in particular, women. Zambia is a signatory to the Southern African Development Community (SADC) Protocol on Gender and Development, which mandates government to have a 50/50 gender balance by 2015. Generally speaking, women’s participation has been negatively affected on two levels: at the level of adoption by political parties and at the level of election to Parliament as illustrated below.

Table 1: Women election candidacy			
Party	No. candidates		% of total no. of parliamentary candidates
Movement for Multiparty Democracy (MMD)	21	18.6%	2.7%
Patriotic Front (PF)	20	17.7%	2.6%
United Party for National Development (UPND)	22	19.5%	2.9%
Total	113		14.7%

Source: CSEC 2011 Report on Zambia’s 2011 Tripartite Elections p.52

Table 2: Gender distribution of National Assembly seats					
Party	Female	% Female	Male	% Male	Total
MMD	6	4.1%	49	33.1%	55
PF	8	5.4%	52	35.1%	60
UPND	2	1.4%	26	17.6%	28
Total	17	11.5%	131	88.5%	148

Source: CSEC 2011 Report on Zambia’s 2011 Tripartite Elections p.64

Table 1 shows the low levels of women candidates being adopted to stand as MPs on the tickets of the three biggest political parties in Zambia. Some of the obstacles women face when seeking to be adopted at party level include: the domination of men in adoption committees, limited resources in comparison to their male counterparts, and cultural stereotypes that reinforce misguided gender roles that stipulate women belong in the household and not in public or political arenas (ZNWL 2001). However, the leadership of Zambia's main political parties contend that women are to blame for low female representation in party decision-making structures and at the level of adoption to stand as MPs.

The PF's Secretary General, Wynter Kabimba, posited that women are not active prior to an election.⁵ He carried on to say that women only become active at the time of elections and this disadvantages them because, when the party is adopting candidates, it is more inclined to consider those who were active prior to an election and this tends to be men. In the 2001 general election, political parties, including the MMD, responded to the pressure to have more female representation by adopting female candidates in constituencies where other females were running (Kabemba & Eiseman 2004). However, this political tactic reduced the number of women who were eventually elected.

Additionally, none of the political parties have specific policies that seek to promote women's participation. Table 2 shows that women do not score as many electoral victories as their male counterparts. The political party with the largest female representation is the PF with eight female members (5.4%), followed by the MMD with six (4.1%) and the UPND with three (1.4%). The National Assembly has a total of 18 female MPs from the three biggest political parties in the country compared to 131 male MPs. The next election will be held in 2016, which makes it difficult to conceive how the country will achieve the 50/50 gender balance by 2015 as per the SADC Protocol on Gender and Development. In order to meet the Protocol, government must enact legislation that requires political parties to seek and acquire more women in political parties, and adopt measure to support them once they are in office.

Zambia's FPTP electoral formula has an impact on the extent of gender parity and representation among women and men. The current draft Constitution suggests changing the electoral formula to proportional representation. If the draft Constitution is adopted, Parliament must enact legislation that will mandate political parties to reserve a certain number of parliamentary seats for female candidates.

EQUAL VOTES

16. *Do the votes of all electors carry equal weight?* (7)

17. *To what extent do citizens believe that they have equal influence?* (5)

Zambia's population is approximately 13 million across its 10 provinces. The Electoral Act No. 12 of 2006 stipulates that "no person shall be entitled to vote more than once in the



same election in accordance with this Act and as may be prescribed”.⁶ However, there are recorded cases where voters have obtained multiple registrations in the voters’ roll (AVAP 2001 & 2006). The occurrence of such incidents has resulted in certain individuals voting more than once. Nonetheless, when one compares the number of these incidents to those where electors only vote once, one can conclude that most citizens only vote once and their vote carries equal weight, as per the Constitution.

In support of the above, when a group of rural voters in the Mufumbwe district of the North-Western Province were asked during a focus group discussion whether they thought that their votes carried equal weight, they responded that they did.⁷ This response was justified on the basis that their vote is counted and contributes to the final tally. However, they doubt whether their vote matters when it comes to policy implementation. One of the participants noted that “we have been having problems with unemployment in our communities, but our vote has not made a difference in bringing jobs to our people”.⁸

The Constitution is very clear in terms of delimitation and the management of boundaries of the various constituencies. For example, Article 77 of the Constitution empowers the ECZ to undertake delimitation of constituencies. It is therefore from within these constituencies that each citizen is given the freedom to exercise his or her right to vote. Since 2001, public confidence in the electoral process has been eroded by perceptions that the elections are always rigged. Zambia’s leading private newspaper, *The Post*, in an editorial titled “ECZ’s dangerous inefficiency”, posited that, “Clearly, the organisation and conduct of these elections is below the standards expected by our people. It might have been possible in past elections for the Electoral Commission of Zambia to get away with such high levels of inefficiency and disorderliness but it may not be that easy for them to do so in these elections because the Zambian people have become extremely vigilant – and rightly so – and will not accept anything that may lead to rigging or some other electoral fraud or manipulation” (*The Post* 2011).

This perception of elections being stolen has become entrenched in the minds of many. When people were asked whether they were going to vote or not in the lead up to the 2011 elections, many responded that they would not because they had been voting for a very long time and their vote had always been stolen.⁹

The transfer of power that resulted from the 2011 elections began to erase the mistrust many have regarding the equal influence of their vote. In the short term, the 2011 election remain the only election since the 1991 election in which people feel that they have played a role in Zambia’s political dispensation.

OPEN COMPETITION

18. *Is there equal opportunity for all groups who wish to organise and stand for office? Does social grouping make a difference?* (8)

19. *Are all political parties able to campaign free of threat?* (9)

Open competition in elections requires that all votes cast carry equal weight without interference. Citizens who wish to organise and stand for public office can do so without any barriers. The fundamental aspects to open competition include freedom of expression and association, plurality, freedom of the press and respect for the right to assembly.

The Constitution guarantees the fundamental rights of expression, association and assembly (GRZ 1996). Despite this constitutional guarantee, two pieces of legislation have been used in ways that run counter to the constitutionally protected freedoms mentioned above; they are the amended Public Order Act (POA) of 1996 and the Societies Act No. 65 of 1957. When administered fairly, these two laws create the necessary environment for open competition because people can form societies and political parties, within the democratic framework, and are able to campaign freely and without restriction. However, when these laws are manipulated, they can be used to stifle and muzzle open competition because individuals and political parties are limited as to where and when they can campaign, thereby systematically leveraging their access to and interaction with the voters. The colonial administration created the POA with the advice and consent of the legislative council. At that time, the ordinance had nothing to do with the issuing of permits for public meetings, assemblies and processions. Rather, it was concerned with the prohibition of wearing uniforms in connection with political objects, prohibiting quasi-military organisations, carrying weapons at public meetings and processions, and prohibiting the promotion of hostility between the sections of community and similar matters.

In 1996, under the leadership of the MMD, the POA was amended after the Supreme Court ruling in the case of *Mulundika and seven others versus the State*. The appellants sought to be released after they were arrested for organising a rally without a police permit. In its ruling, the Supreme Court declared that the provisions of the Act that gave unfettered authority to the police to deny or give permits to hold a meeting or a rally were unconstitutional. The Court ruled that the police must only be notified of a meeting or procession, they are not allowed to give or refuse permission for the holding of a meeting or procession. After the ruling, the MMD government sought to amend the POA, to allow for the regulation of the rights of people to assemble and hold processions within the democratic context. This Act is now the bedrock for holding meetings, campaigns or any processions of any kind in Zambia. An amendment to the Act saw the introduction of the seven day notification period to the police, by those who intend to assemble. In the notification, the applicant is required to include the time, place and names of speakers, as well as expected number of people who would attend the meeting or procession. However, despite the amendment, which aligned it with the ruling of the Supreme Court, the MMD continued to use the law in an arbitrary manner to suppress opposing views. For instance on 18 March 2003, the PF, then in opposition, notified the police of its intention to hold a rally on 29 March. In a letter dated 20 March 2003, the police advised that the public meeting could not be approved



due to political undercurrents and the unfavourable security situation in the country at that time. Many civil society groups felt that this was arbitrarily done. Even the Human Rights Commission chairperson, Judge Lombe Chibesakunda, condemned the cancellation of the PF meeting and observed that there was undue influence in the operations of the law enforcement agents (SACCORD 2004).

The Societies Act was enacted by the colonial administration as a means to limit the formation of nationalist groupings by native Zambians, and to regulate groups that would seek to counter the colonial forces in Zambia at that time. Currently, the Act regulates freedom of association. It is used to register churches, associations, political parties and civic organisations, but it does not conform to current constitutional provisions that seek to protect the fundamental freedoms of association. Though not frequently, the Act has been used to muzzle and deregister groups critical to government. In 2004, the Minister of Home Affairs, Ronnie Shikapwasha, used the Act to deregister a civic organisation called the Southern African Centre for Constructive Resolution of Disputes (SACCORD)¹⁰ because it was seen to be very critical of government's position on the administration of the POA. The minister stated that the organisation was a danger to State security. He did not divulge any detailed information as to how the organisation endangered State security.

Following these developments, SACCORD sought an injunction from the High Court and, in 2008, the High Court ruled in favour of SACCORD, stating that the Act gave unfettered power to the minister who could abuse it. It also acknowledged that the minister had abused his discretion for personal reasons. The court stated that the Act did not provide clear benchmarks to determine whether the decision of the minister was personal or indeed in the national interest. Government appealed the decision, arguing that the ruling of the High Court was weak and lacked merit. In 2010, government won the appeal; the Supreme Court agreed that the judgement of the High Court was weak and the case was sent back to the High Court and assigned to a new judge.

At the time of writing, the case has yet to reach conclusion. However the argument is that the Societies Act is not in conformity with the tenets of fundamental freedoms, and undermines citizens' constitutional rights to association as it gives arbitrary powers and unfettered discretion to a minister to deregister societies, rendering the Act prone to abuse for political mileage. In a reversal of fortune for the MMD, the party was deregistered in 2011 by the Registrar of Societies on the grounds that it had not paid its annual fees. This decision was perceived as highly political and, after appealing to the courts, the MMD was allowed to reregister. These cases highlight the manner in which the weaknesses in the Societies Act are exploited for political and other reasons to stifle opposition. Abuse of this Act has a negative effect on the people's fundamental freedom to associate and form societies.

The Societies Act and the POA continue to be contentious during elections. However, during the most recent elections in 2011, there was a remarkable improvement in the administration of the POA and the Societies Act. One of the key factors accounting for this improvement was the decentralisation of the administration of the POA to district com-

manding officers, who were given authority to make decisions on whether to police a rally or not, without having to wait for decisions from the command in Lusaka. This development enabled political parties to campaign freely and without any interference from the Zambia Police. A major challenge was that opposition parties had to rely mainly on their own marshals for security, since very few law-enforcement officers were released to police these rallies. In contrast, Zambia Police provided many officers to police rallies held by the then ruling MMD (Diakonia & EU 2011).

While political groupings are mainly affected by the POA and Societies Act, social groupings have not been negatively affected by these laws because they are rarely a source of controversy when it comes to the freedom of assembly and association. The only time they are affected is when they choose to show public allegiance towards or support for a political party. In essence, social classification is not a basis for violation of these freedoms in Zambia.

While there have been sporadic spurts of violence during some of the by-election campaigns, such as in Chawama in 2002 and in Mufumbwe 2010, in recent years there has been a remarkable improvement as political parties have been able to campaign without threat. The atmosphere has increasingly become more conducive to political campaigning. The environment has been more accepting of and receptive to both political and civil groupings, and has allowed these groupings to conduct their campaigns freely, without State machinery or agents threatening them.

20. *Are all citizens free to form opinions, voice them, persuade others and vote, as they like, free of threat?* (6)

21. *How effective a range of choice does the electoral and party system allow the voters? Is there an open competition of ideas and policies?* (4)

The media has, for a long time, provided platforms for people, groupings, political parties and candidates to sell their policies and ideas. Public access to the media, both print and electronic, is very important for citizens to form opinions, be heard and make sound voting choices. In Zambia there is a large divide between urban and rural areas in terms of media coverage and access. Areas that are closer to provincial centres have greater access to newspapers, television and radio stations than those further away from the urban centres. Rural communities are generally completely cut off from any form of media. Due to limited access to information on electoral issues, rural communities do not actually have the same opportunity and privilege to form opinions and voice them. Unequal access to the media inhibits open competition for rural-based candidates and their voters, who cannot rely on the media to influence and shape opinion on a national scale (Diakonia & EU 2011). However, public media in the form of Zambia National Broadcasting Corporation (ZNBC) is accessible in most parts of the country, but access to it by opposition groups and other critical organisations is highly restricted.

Urban residents have a plethora of media platforms to choose from, including television,



print or online media. This divide between rural and urban voters in accessing the media has an effect on the voting patterns and choices that are made. For instance, for a long time rural communities continued to vote for the ruling MMD, which was popularised by the public media that was accessible in all parts of the country, especially Radio Two which is on short-wave and ZNBC television, while the urban vote in Lusaka and Copperbelt Province has, since 2006, tilted towards the opposition. These provinces have a number of media institutions, which offer a broader range of information, such as Muvi TV, *The Post* newspaper and community radio stations, which are all privately owned.

Furthermore, there are notably deep divisions in the roles of the public and private media. This divide has had an impact on the ability of the State to promote competitive elections. Since the re-introduction of multiparty democracy in 1991, the three major State-controlled media houses, the *Daily Mail*, *Times of Zambia* and ZNBC, have increasingly taken a biased approach to political party coverage by giving more favourable coverage to the ruling party.¹¹ Between 1991 and 1996, the trend was not very pronounced as the MMD was still trying to establish its control within key media institutions. However, the situation began to deteriorate after 1996 and the public media became a ruling party and government propaganda mouthpiece. According to a report by a coalition of election-monitoring organisations created to monitor the 2001 elections, the public media's news coverage of the MMD or government was estimated to be between 65% and 90% of coverage (Coalition 2001). When opposition political parties were covered, it was mainly negative coverage (Coalition 2001). The opposition was seldom acknowledged or given a platform to engage the public.

During the 2011 elections the situation reached unprecedented levels. Political programmes produced and funded by opposition parties were generally restricted, and in most cases rejected by the ZNBC, while the MMD were given every opportunity to air any political programmes they desired. The public media reaches out to more people than any other media in Zambia because the State has restricted the reach of private television and radio stations. This monopoly by public media gave the MMD an undue advantage in reaching voters and shaping opinion over other political parties. Unfortunately, this has continued to be the case, even after the change of government. Now the public media has become more inclined towards giving positive coverage to the PF, despite pronouncements by the PF before coming into power that they would change the way public media operates.

The private media¹² continues to be biased towards selected opposition political parties in their coverage. The birth of *The Post* newspaper in 1991 was really the beginning of a formidable private media.¹³ With Radio Phoenix coming into the fore years later, even if it was limited to the provinces of Lusaka, Central and Copperbelt, it provided a boost to the growth of private media, which increased avenues for opposition political parties to voice and shape opinion. In the 1990s to 2000, there were newspapers such as *The Sun*, *National Mirror* and *The Monitor*. By the turn of 2001, there was a proliferation of community radio stations that countered the public media and provided platforms for opposition political parties, although their reach could still not match that of the public media. But even among the

private media, there were preferences to which opposition political parties they gave positive coverage. *The Post* is currently the biggest privately owned newspaper and it gave very good coverage to the opposition PF in the 2011 elections. The PF's ascendance to power can largely be credited to the media coverage in the urban parts of the country. The private media only reported positively when reporting on the opposition, while the public media always reported positively on the MMD and negatively on the opposition (MISA & PAZA 2012). Based on this, it is evident that during the 2011 elections the divisions in terms of coverage preferences among the different media institutions brought some sort of balance to political coverage, which contributed to the electoral process becoming more competitive (CSEC 2011).

Political campaigns in Zambia are rarely based on values, ideas or policy. From 1964 to 1972, Zambia was a de facto one-party State. In 1972 it became a de jure one-party State under UNIP. Between 1964 and 1972, the only opposition political parties that existed were the ANC led by Harry Mwaanga Nkumbula and United Progressive Party (UPP) led by Simon Mwansa Kapwepwe. These two political parties were a formidable opposition to UNIP until government began to intimidate members of the opposition through political arrests, detentions and other threats. These actions forced the opposition parties to reluctantly accept the idea of a one-party State led by UNIP (Wele 1987).

From 1972 to 1991, opposition political parties were decimated as the Constitution did not allow them to exist. This severely undercut political competition in Zambia. During this period, presidential elections did not offer voters realistic choices because the President of UNIP would be pitted against negative symbols on the ballot paper; for example, the symbol of a frog. Voters could either vote for that symbol or for a person represented by the UNIP symbol.

At parliamentary and local levels, competition was more active. While choice was limited to UNIP during the one-party era, individual candidates had to package their agendas and policies to the people to seek election. Competition was centred on how best these candidates could articulate programmes that they would fulfil within the context of UNIP policies.

Political competition was radically changed in 1991 when Zambia returned to a multi-party democracy. Kaunda had to compete with opposing presidential candidates from other political parties. The change created an opportunity for Zambians to have a wide range of choice at presidential level. The increased competition required election campaigns to be issue-based as people wanted to know the kind of economic policies that would be introduced to improve the economy, which at that time had generated so many grievances. The political parties had no choice but to sell their manifestos, values and policies to the voters. Policies formed the core campaign issues in the 1991 elections; however this slowly began to change in the subsequent elections and the MMD began to emulate UNIP in order to maintain power.



By 2001 most political parties and their campaigns had become centred on personalities. Even the 2011 elections were fairly competitive and there was open competition. Campaigns were rarely based on policy issues and ideas, but rather comprised attacks on individuals who were vying for political office. This was evident when the MMD hired some individuals from small partisan NGOs, that were sponsored by the MMD, to run defamatory programmes on the ZNBC attacking PF president Michael Sata and others who were perceived as anti-government. During rallies, former President Rupiah Banda was heard using derogatory terms against Michael Sata, who also called Rupiah Banda names.

Finally, open competition is affected when political parties make donations to voters during campaigns, effectively buying their votes. This is a violation of the Electoral Act No. 12 of 2006 as Article 79 clearly stipulates that donations and gifts are an act of corruption. Unfortunately, this is a common practice found in most campaigns that gives undue advantage to political parties with greater resources. The ruling party is usually better positioned as it enjoys the advantages of incumbency and often uses government projects to win favour in key constituencies.

In essence, Zambians do have a free choice, but this choice is not based on values, ideas and policies that political parties present. Rather, choice is influenced by factors such as donations and other electoral malfeasance. In the parliamentary by-elections held in Chongwe in 2011, a number of donations were made by the ruling PF. This is an indication that, despite the change of government, these practices are embedded.

ELECTION RULES

22. *To what extent are voter registration procedures independent of control by government or individual political parties?* (6)
23. *To what extent is the management and control of the elections delegated to an independent body?* (5)
24. *To what extent are election procedures independent of control by government or individual political parties?* (5)

The ECZ was established in 1994 under Article 76 of the Constitution. The ECZ is an autonomous quasi-governmental institution that falls under the purview of the executive branch of government, specifically under the Ministry of Justice. The institution is highly dependent on government for financial support. However, the ECZ also receives a substantial part of its funding from international donors through the Basket Fund to Zambia's electoral process administered by the UNDP. Since government funds ECZ operations, it is able to exert influence over the institution, which can sometimes compromise its independence. Funding from international donors helps leverage government control as donors

attach conditionalities to their support. Frequently, this includes measures that uphold the independence of autonomous bodies such as the ECZ.

Under the Electoral Amendment Act No. 12 of 2006, the ECZ is empowered to manage voter registration and all election processes in Zambia. The Act introduced administrative changes that included the establishment of conflict management committees, the obligatory use of transparent ballot boxes, and the introduction of a legal provision that sanctions continuous voter registration. Conflict management committees were created to help resolve electoral-related conflicts and they have been very effective at local level. They have also created expedient, informal channels for dealing with electoral conflicts that are more accessible to the public. Furthermore, transparent ballot boxes have mollified suspicions of vote tampering and have contributed to building voter confidence. The Act also introduced continuous voter registration; however this has not been implemented as stipulated by law, due to a lack of adequate funds.

The ECZ is responsible for conducting the voter registration process. However many citizens encounter hardships during the registration process as they must secure registration cards from the Ministry of Home Affairs. In the past, government set up mobile National Registration Card (NRC) registration that allowed people to easily obtain NRCs, enabling them to vote. However, these were set up in locations that were determined by political authorities and not in areas where there was need. While registration is conducted at district level, it does not always reach every community, particularly those that live far from the district centres. Bureaucratic challenges, such as slow and non-computerised processes, have further impeded registration.

Documented complaints concerning the registration process are not computerised and, therefore, slow to reach those in charge. According to election monitoring reports (SACCORD 2006; CSEC 2011; AVAP 2006), this created opportunities for corrupt officers to take advantage of the bureaucracy. Some began charging people who were seeking registration cards even though these cards are free (SACCORD 2006, 2010a). Acquisition of an NRC is very important for anyone to register as a voter and citizens who are unable to access NRCs are disenfranchised.

In Zambia, opposition political parties do not have control over election procedures, but as they are critical stakeholders in the process. They are highly consulted on issues of ballot printing, voter registration and the general management of elections. This enables them to influence the operations of the ECZ, even if it is ultimately the ruling party and its government that has the most influence. This consultative approach by the ECZ, which at times includes civil society, has contributed positively towards an open and transparent manner of conducting elections in Zambia.

The level of involvement of opposition political parties in election procedures is, however, limited. The ruling party and government are able to determine the date of presidential and general elections, which are then announced by the President, as stipulated by the Electoral Act. There have been proposals in the draft Constitution that the date of elections



be enshrined in the Constitution as opposed to being left at the discretion of the President. In the draft Constitution, it is proposed that presidential and general elections shall be held every five years on the last Thursday of September.

25. *To what extent are the advantages of incumbency regulated to prevent abuse in the conduct and contesting of elections?* (4)

There have been continued concerns by political stakeholders about the use of public resources to campaign. While opposition political parties spend their own resources, the incumbent uses public resources to stay in public office. The tendency is that the President will usually carry an entourage of party functionaries to conduct campaigns using public resources. The costs incurred during these campaigns are in billions of Kwacha and are difficult to regulate as the people in the President's entourage are deemed to be contributing to the functions of the Executive. The Electoral Act No. 12 of 2006 allows the President and Vice-President to use public resources when campaigning. Under the circumstances, it is very difficult to regulate abuse of this law during campaigning as there are no mechanisms to distinguish when the President or other members of the Executive are performing national duties or party duties. Ministers, who are not allowed to use public resources to campaign, have reportedly used public resources during campaigns for public transport. Public vehicles are systematically disguised to look like private vehicles during campaigns (SACCORD 2006, 2010b).

26. *To what extent are voters able to register and to what extent have they registered to vote?* (6)

Government has introduced a number of initiatives intended to boost the electoral process, including the introduction of continuous voter registration in legislation; however continuous voter registration has not been fully implemented due to financial challenges. The ECZ has intensified levels of publicity for registration exercises to capture as many eligible voters as possible. These strategies have seen an increase in the number of registered voters. In 2006, 3,944,135 people were registered to vote. That number, following the registration drives, increased to 5,167,154 in 2011. The extent to which people register to vote is also highly influenced by how much publicity is given to these processes. In the 2011 voter registration process, the ECZ and some civil society groups embarked on an awareness campaign to encourage members of the public to register. Unfortunately, while this was effective in urban areas, mainstream media was not available in rural areas. To cover the gap, structures at district level, including the District Voter Education Committees (DVEC),¹⁴ the ECZ and CSOs used posters and flyers, as well as community canvassing and meetings, to reach out to people on the voter registration processes. This helped to mobilise more people to register as voters (ECZ 2011).

27. *Are election procedures free from abuse? And to what extent do citizens see election procedures as free from abuse?* (5)

Since 1991, Zambia's electoral process has improved. A number of mechanisms, laws and institutions have been put in place to prevent excesses and abuse of election procedures. However, this has not completely freed election procedures from abuse by the ruling party at the time. Various election monitoring reports (SACCORD 2006, 2008, 2011; AVAP et al 2011; EU 2011; CSEC 2011) highlight that the ruling party instructs the ECZ on election procedures, including which organisations can be accredited to monitor elections. For instance, the MMD instructed the ECZ that all organisations that wanted to employ parallel voter tabulation during elections would not be allowed to monitor the 2011 elections. This created an outcry as the ECZ is supposed to be impartial. Moreover, the ECZ failed to control election coverage, particularly on State-owned media organisations that chose to denounce the opposition and campaign for the ruling MMD.

Among members of the public interviewed in Lusaka, Chipata, Mufumbwe, Zambezi, Itzhi-tezhi and Choma, there is a perception that election procedures are not free from abuse.¹⁵ Many people interviewed cited abuse of public media by the then ruling MMD to denounce its opponents as one such case. The other issue that was raised pertains to donations made by the ruling party during campaigns. Furthermore, there was a perception that the ruling party always abuses public resources during campaigns, which they use to influence voters. In essence, public perception is that election procedures are abused particularly by the ruling political party.

VOTER INFORMATION

28. How much information is conveyed to voters by the official election information system? (6)

To ensure that people are aware of their voting rights and have voter information, the Electoral Amendment Act provides for the ECZ to carry out voter education nationwide. Voter education in Zambia is mainly conducted by the ECZ, NGOs and the media. In Zambia there are two structures that are commonly employed to conduct voter education. The first one is through the voter education consortium of NGOs and the ECZ called the National Voter Education Committee (NVEC), which has structures at district level (DVEC). NVEC and its local structures implement voter education activities and facilitate voter information dissemination at both national and local levels. While NVEC and its structures has been a relative success, the challenge has been to effectively ensure that this structure conducts voter education on a continuous basis, even in intervals when there are no general elections. Unfortunately, NVEC only operates when there are general elections, yet people expect to continue receiving voter information so that they are well vested with voter-related issues, which would prepare them for subsequent elections.

The second structure is through NGO networks and the media. This is where civil society conducts civic and voter education with direct support from donors. NGOs carry out activities at national and local levels, disseminate voter-related information and address



apathy. In the previous elections, the United Nations Development Programme (UNDP) was the primary donor of voter education. The UNDP was effective in reaching different targets in a more coordinated approach than most NGOs. However, the challenge is that most of these networks are donor driven and can emphasise agendas that do not meet the real needs of citizens or the State. Local NGOs at odds with donors are often left with no choice but to form networks and collaborate to get funding. In most cases, individual NGOs do not gain much in terms of institutional capacity. These networks are highly complicated and emphasise bureaucracy rather than results.

Since its formation in 2001, NVEC and NGOs have continued to create opportunities for information sharing and dissemination on voting rights and procedures. The biggest conveyer of official election information has always been the media, which NGOs and NVEC have actively used to convey voter-related information. The ECZ sponsors various adverts on radio and television programmes, which are intended to reach out to the masses on voter and electoral information. Through all these channels, it suffices to say that enough voter information is conveyed through official election systems, but there should be more effort to ensure that rural areas can begin to receive more voter-related information.

29. *How much information about political parties and candidates is conveyed by the news media? And how fairly is this done?* (5)

30. *How much access do political parties have to the media and how equitable is this?* (7)

A lot of information about political parties is disseminated through the media; however, the coverage of political parties is not done equitably. While some political parties have easy access and control over certain media platforms, others do not have that privilege. Some political parties receive more positive coverage, while others are not covered at all or receive bad press. During the 2011 elections, there was an unprecedented pattern of the media being biased towards the parties that they supported. The State-controlled media always provided full and positive coverage to the ruling MMD, while giving negative coverage to the UPND after the alliance¹⁶ between the PF and UPND fell apart. Private media gave more coverage to the PF. The largest online publication “The Zambian Watchdog” was biased towards the UPND. The programme, which was sponsored by the MMD, brought much outcry from the critics of government, including the PF, who were targeted and defamed. The programme was aired every week on the national television station (ZNBC), but no opportunity was given to those mentioned in the documentary to respond. When they attempted to seek coverage on ZNBC with similar initiatives, the targeted parties were denied the opportunity.

Zambia’s public media, both print and broadcast, only reported positive stories on the ruling party, and negative or no stories on the opposition parties (MISA & PAZA 2012). The report further states that privately owned media houses, Muvi TV and Radio Phoenix, generally provided fair and balanced coverage of the political parties during the 2011 elections (MISA & PAZA 2012). *The Post* primarily printed positive PF stories and negative MMD

stories. Government, political party officials and other elites dominated coverage, with no critical analysis of how stories affected the public. This gave a sense that the media became a tool of party campaigning, which undermines freedom of expression because some parties had access to the media while others were denied it (MISA & PAZA 2012). The MMD were the major beneficiaries of media coverage because they had all three State-controlled media houses on their side, while other political parties relied heavily on private media for coverage. There was no equitable coverage and access to the media in the electoral process despite the efforts of the ECZ to institute mechanisms for equal coverage by providing radio and television spots for all political parties.

31. *To what extent do the campaigns of political parties reach all sections of society?* (3)

32. *Do voters know enough about all political parties to be able to make an informed choice?* (4)

It is usually difficult for political parties to reach all sections of society during campaign periods. Political parties tend, therefore, to concentrate their campaigns in high population density areas where they can easily reach greater numbers of voters. These areas are generally along railway lines and urban areas. Areas that are remote, flooded or impassable by road are usually inhabited by very poor people, and are often only accessible by the President who can utilise public resources to fly to these areas along with his entourage. This denies people the right to choose from all the candidates available as they do not get to interact with them like other sections of society that contesting candidates are able to reach during campaigns.

In Lusaka, for instance, compounds such as Matero, Kalingalinga, Mtendere and Chawama, have large populations and are therefore major targets of political campaigning. Thus, it can be inferred that the major consideration in campaigning is to target densely populated areas. In urban areas people have enough information about political parties because they have access to media. Rural areas, however, have to rely on information distributed by political parties or campaigns. However, not all political parties are able to reach all parts of the country. Most rural parts of Zambia are very difficult to access and, therefore, political parties cannot promote themselves there. These areas are deprived of the information needed to assist citizens in determining the qualities of the political contestants. Approximately 68% of Zambia's population is rural and it is safe to say that the vast majority do not get enough information about political parties to determine who they should vote for due to difficulties in accessing the media, which is the main form of communication used by political parties (CSO 2010). Rallies do not reach as many people as the media does, and have huge logistical and cost implications for political parties.

ELECTORAL PARTICIPATION

33. *How extensively do citizens participate in elections?* (7)



34. *How are citizens able to influence the electoral process in ways other than the vote?* (5)

Article 113 of the Constitution states that it is a citizen's duty to vote in national and local elections. To that effect, every citizen is guaranteed the right to political choice in Zambia. As a result, citizens exercise their right to political choice through periodic and regular elections, which Zambia has practiced since the country attained independence in 1964.¹⁷

There are a few pieces of legislation that may constrain citizens' ability to undertake democratic participation: namely the POA and the NGO Act No.16 of 2009. The POA controls freedom of association and assembly. However, there have been instances whereby its application is unprofessional and hinders the potential of competing parties or candidates to sell their manifestos. This in itself prevents certain citizens from voting for their preferred candidates or parties, thereby limiting their participation in elections. The NGO Act of 2009 limits the operational space of NGOs, especially where this relates to voter education which helps the electorate to participate in elections effectively.

This piece of legislation has not yet been effected by government and NGOs have not yet started being affected by it, although the fact that it remains in place continue to haunt them. There is a general belief among NGOs that it is not enough to depend on the goodwill of government, when government can at any time give effect to the Act.

Below is a table of how Zambians have been participating in the last three tripartite elections since the turn of the 21st century.

	1996	2001	2006	2011
Registered voters	2,267,383	2,643,010	3,944,135	5,167,174
Votes cast	1,325,053	1,766,356	2,789,114	2,772,264
Voter turnout	55%	67.8%	70.8%	53.7%
Constituencies to date	150	150	150	150

Source: AVAP 2006:49 & CSEC 2011:82

From Table 3 one is able to see that voter turnout has fluctuated. The 2006 elections saw an increase in turnout of about 3% from that in 2001. However, the 2011 tripartite elections saw a decrease in voter turnout of about 17% from the 2006 voter turnout. In addition, the 2011 tripartite elections saw a reduction in votes cast when compared to the 2006 tripartite elections. The explanation for the decreases could be that some Zambians were uncertain that their vote would count and stayed away from the polls.

A clear pattern emerges when it comes to a linear increment in registered voters from 2001 to 2011. Since 2001, Zambia has seen an increase in registered voters of over 3 million.

Other ways that citizens influence the electoral process, other than via their vote, has mainly been done through involvement in CSOs and parliamentary committees. Since Zambia reverted to multiparty democracy in 1991, civil society has played a pivotal role in

the protection of civil and political rights, as provided for in the Constitution, and providing electoral oversight.

The National Assembly of Zambia has opened up parliamentary committees for the public to make submissions on important national matters. However, these committees are usually attended by CSOs, which tend to receive invitations from the National Assembly, although invitations for submissions are publicised through the print media. Public attendance at these committees is low because topics discussed tend to require specialised knowledge.

In general, the Zambian public does not get to interact much with policy makers or to influence policies in a manner that is beneficial to them. This means that the most potent method citizens have at their disposal to influence the electoral process is their vote.

PROGRESS AND DEMOCRACY

35. *Are there mechanisms for the review of the electoral system and are these open to citizen participation?* (5)

Since the 1996 elections, there appears to be general consensus that elections have not been held in a free and fair manner. This is in view of the many irregularities that have been attributed to the ECZ. Irregularities in the voter registration process, the lack of ECZ independence, corruption and abuse of authority in vote buying, biased media, use of State resources during campaigns, and generally poor administration and management of the elections have all led to this general consensus.

The most significant attempts to reform the electoral system began in 2003 when the ERTC was established. The ERTC was constituted to address specific challenges around electoral reforms following the outcomes of the 1996 and 2001 presidential elections petition, and to enable a process of gathering and documenting views from various stakeholders on the best way to enact a new Electoral Act.

However, at the time the ERTC was carrying out its consultations and ultimately submitting its recommendations, there was another government-sponsored constitutional review commission led by Wila Mung'omba.

The first draft Constitution released by the Technical Committee (TC) in April 2012 (the most recent government-sponsored constitutional reform effort) also contains the recommendations made by the ERTC. Some of these recommendations include a 50%-plus-one electoral formula for the president to be elected, adoption of mixed member proportional representation for legislative elections, and increasing the number of MPs to 200 in the National Assembly. The first draft was subjected to public scrutiny so that the public could make input on clauses that they would like to see reflected in a new Constitution.

The ECZ has created a number of consultative frameworks that have facilitated interaction among different stakeholders such as the public, political parties and CSOs. The Zambia Centre for Interparty Dialogue (ZCID) was created to afford political parties a platform



where they can interact with various stakeholders on issues of concern.

In addition to ZCID, the ECZ created NVEC comprising different NGOs to help it conduct voter education around the country (AVAP 2006). In 2006, NVEC decentralised its activities to all the districts in Zambia and these became known as DVEC. The challenges faced by these structures, for example capacity of voter facilitators, have had unintended consequences for these committees discussing important changes that need to be made to the electoral system. The important aspect about NVEC and DVEC is that they involve citizens representing organisations who are drawn from local communities.

Another ECZ structure in all 72 districts is the conflict management committees which were established under Sections 110–111 of the Electoral Act. The committees had a number of objectives¹⁸ that ultimately sought to reduce political tension in the country. This structure has been used extensively to discuss important electoral changes. For example, when the National Assembly of Zambia requested public submissions on how the Electoral Code needed to be improved, the committee made a submission that contributed to the revised Code, which became known as the 2011 Electoral Code of Conduct.

Although the ECZ provides mechanisms that can be used by citizens to contribute to the discussion on reforming the electoral system, citizens who do contribute usually belong to a handful of established organisations. This means that the majority of citizens are restricted because they may not know where these committees are located and, if they do know, they may not belong to any organisation that would help them to participate. There is therefore a need for the country to provide further mechanisms that will help broaden citizenry participation in reviewing the electoral system.

ELECTORAL OUTCOMES

36. *Are the announced election results congruent with how the electorate actually cast their ballots?* (7)

Outcomes from Zambia's elections at presidential and parliamentary levels have largely been contested through the courts of law. Apart from the historic 1991 elections, the 2008 presidential by-election and the 2011 tripartite elections, all other elections have had losing candidates seeking redress in the courts on allegations mostly around corruption and electoral fraud. While the 2011 elections did not have a petition at presidential level, the number of cases petitioned at parliamentary level was not only high, but also unprecedented in the history of the country, indicating the extent to which the recent election remain contentious.

A total of 60 petitions were submitted to the High Court. Given this it is clear that building confidence in the outcome of the electoral process is a big challenge.

For various reasons, the outcomes of presidential elections have always been contested. In 1996, the major reason was around the parentage of the then MMD candidate, former president Chiluba, who is alleged to have originated from the now Democratic Republic of

the Congo. In 2001, the winning candidate, Levy Mwanawasa of the MMD, was petitioned because opposition political parties and some citizens believed that the results did not represent the votes cast.

Despite the courts acknowledging that there were irregularities in the electoral process and that the elections were marred by corruption, the results were upheld. Nevertheless, this election remains one of the most disputed, as people are convinced that their votes were tampered with. Both local and international observers, such as the European Union declared that the elections were not free and fair.¹⁹ In 2006, Mwanawasa was elected for a second and final term. This election outcome was also petitioned, but as expected, the exercise did not yield any substantive outcome on the part of the petitioners. In the 2008 presidential by-election following the death of Levy Mwanawasa, which was won by MMD's Rupiah Banda, beating the now republican president Michael Sata of PF, the losers did not petition because, in part, they had lost confidence in the outcome of previous presidential election petitions and there was a national election anticipated in three years' time. However, there was still a strong feeling of discontent about the outcome of the election.

37. *Do citizens believe that their vote makes a difference?* (6)

38. *Do security forces, government and political parties accept the election results?* (7)

39. *Do citizens accept the election results?* (6)

Despite Zambia being a generally peaceful country, election-related violence has occurred, most notably in 2006 and 2008. This has been one way in which citizens have further expressed discontent about the outcome of the elections. In 2011, a delay in the announcement of the elections, and as a reaction to an alleged different electoral result, riots erupted in Lusaka and Kitwe, which were mostly strongholds for the now ruling PF. Security alerts and reports indicated a potential flaring up of violence in the country had the MMD won the elections. Notwithstanding the outcome of the 2011 elections at presidential level, showing largely that the political trends were in favour of the opposition winning, people believed that their votes were not stolen and their choices respected. So far there has been no indication that any part of the security forces, government or political parties resent the final outcome of the 2011 elections.

40. *How closely does the composition of the legislatures and the selection of government reflect the election outcome?* (5)

41. *How far do the legislatures reflect the social composition of the electorate? To what extent are women represented in Parliament?* (4)



Presently, the voting pattern in Zambia's parliamentary elections is dictated by the popularity of the contesting political parties. For instance, in Southern Province, the UPND is very popular and holds all the parliamentary seats. In Eastern Province, the MMD is very strong and it was able to scoop most of the seats there in the 2011 elections. The PF is predominant in the provinces of Lusaka and Copperbelt where they overwhelmingly won seats, regardless of the candidates that were adopted. Although a political party may be considered to have certain provinces as their stronghold, this does not determine the composition of the legislature. This is because political parties tend to pick up seats even in areas that are not their stronghold. For example, the UPND is considered to be strong in Southern Province, but the 30 seats that it has in Parliament come from different parts of the country. The UPND has 19 seats in Southern Province, six seats in Western Province, two seats in Central Province and three seats in North Western Province. This essentially means that the party has seats in Parliament that represent four provinces. The UPND stands out in this case because it is often alleged that it is a regional party.

Similar trends in composition can be seen in the MMD and PF, which are not only represented in their strongholds, but also hold seats in other provinces. The composition of the legislature is 61 Members of Parliament (MPs) for PF plus eight nominated MPs, 54 MPs for MMD and 30 MPs for UPND. Alliance for Development and Democracy (ADD) and Forum for Development and Democracy (FDD) each have one MP. There are three independent MPs. The PF president has appointed a number of opposition parliamentarians, mostly from the MMD, to be deputies in government. A few independents have also found themselves in ministerial positions. This means that there are fewer opposition voices. So far there are 11 MMD MPs in the PF government. Even if the PF clearly won at presidential level, at parliamentary level the composition shows that voters have varied choices. The composition of Parliament represents the choices of the people countrywide. Furthermore, despite appointing opposition MPs to government positions, this has not fully reflected the people's voting choices because some of the regions are underrepresented in government. The PF recognised this problem and placed opposition members in their government.

At parliamentary level, people voted along party lines. This had an effect on how many women gained seats in Parliament. Women who stood in regions where their parties were popular were able to go through. However, the tendency of political parties in the previous elections was to adopt women in areas where they knew they would not win. In places where they were assured of winning, they adopted men. So the process of adopting women, as a response to demands, was both strategic and politically expedient. Unfortunately, this has had an overarching impact on the final representation of women in the legislature. Currently, of the 158 MPs in Zambia, 16 are women. In the cabinet there are four female ministers out of 22, and only four female deputy ministers. Even with the president having the discretion to appoint eight nominated MPs, he did not appoint any disabled people or women to these posts. It is a source of concern that representation of certain social groups in the legislature and government is very poor. Despite the SADC protocol, of which Zambia is a signatory,

declaring that State parties shall endeavour to have gender equality and equity by 2015, progress in this area still looks very bleak (SADC 2008). CSOs have continued to campaign for the number of women in decision-making positions to be levelled. There have been advocacy initiatives to try and improve the status quo. The disabled have been completely sidelined from parliamentary and government positions. Even voting practices have not taken into account the dynamic needs and special requirements of disabled voters and candidates. Furthermore, the President, in his nominations to Parliament, completely ignored disabled groups in any of his appointments.

FUNDING ELECTIONS

42. *To what extent are private donations to political parties permitted and are they subject to regulation (such as transparency and limits), in order to prevent them from having a disproportionate impact on voter choice and electoral outcome?* (5)
43. *Is campaign finance – both income and expenditure – regulated? Are political parties regulated by accepted procedures and non-partisan bodies? How extensive is the independent oversight of election expenditure?* (4)
44. *Is there public financing of political parties?* (1)

One of the major problems facing political parties, especially among those in opposition, is the chronic shortage of funds needed to finance their operations. Political parties in Zambia are self-funded and are largely dependent on private funding and donations. In most cases the ruling party, due to opportunities arising from incumbency, is perceived to have access to public resources, though almost every political party relies exclusively on membership fees and donations from party members. Legally, political parties are registered under the Societies Act, which is the same legal framework under which most CSOs are registered. As per requirement under this law, organisations submit annual returns to the Registrar of Societies. As part of this procedure, organisations may include their audited accounts. That is the only existing legal procedure for disclosure of income and expenditure of political parties. Most parties do not keep accounting records, nor do they have established accounting departments. The lack of financial controls has led to the misuse of party funds by officials. Because parties do not practice financial planning, most of them do not have operational budgets or financial audits of their expenditure. The fact that there is no mandatory public funding for political parties could be the main reason why there seems to be no stringent measures for regulating donations to and the funding of political parties. The draft constitution proposes a funding provision for political parties. Currently there is no provision in the Zambian Constitution that requires that political parties are financed.



CONCLUSION

In September 2011, Zambia held its third tripartite elections since 2001. These elections witnessed the defeat of the MMD to the now ruling PF. Although there was divided opinion as to whether the elections were free and fair, there was general consensus that the election reflected the will of the people. However, Zambians remained convinced that more needs to be done to improve the country's electoral process so that it is in line with modern democratic trends.

It is clear that, when it comes to laws that govern Zambia's elections and democracy, the country has an abundance of them. Nonetheless, these laws remain inadequate in ensuring that the country has a functional electoral process that satisfies the wishes of the people. It is hoped that ongoing constitutional reforms will improve the electoral system. It is only through such reforms that Zambia can improve its electoral system, which is key to a successful democracy.

SECTION SCORE: 5.5

ENDNOTES

- 1 Southern African Centre for the Constructive Resolution of Disputes (SACCORD) 7 May (2010), Muyoyeta (2006); Kabanda (2008). Laws that govern Zambia's electoral process include: Chapter 1 of the Constitution; the Electoral Act No. 12 of 2006; the Local Government Elections Act Chapter 282 of the Laws of Zambia; the Electoral Commission Act No. 24 of 1996; the Local Government Elections (Amendment) Act 1992; the Electoral (General) Regulations, Statutory Instrument No. 108 of 1991; the Electoral (Conduct) Regulations, Statutory Instrument No. 179 of 1996; and the Electoral Code of Conduct Amended 2011 (Muyoyeta 2006; CSEC 2011).
- 2 Other examples of fraud included the barring of individuals who had not lived in Zambia for 20 years to stand as presidential candidates; the controversial mode of adopting the Constitution while citizens' submissions were overlooked; and grave irregularities in voter registration.
- 3 For example, according to AVAP (2006) the final voters register for the 2006 tripartite elections was certified valid by ECZ on 31 July 2006. Nonetheless, the register still contained some of the following fundamental problems: double and/or multiple voter registration; misspelled details of registered voters; and omission of or incomplete details of registered voters.
- 4 According to the Zambia National Education Coalition (ZANEC), adult education is the sub-sector for those adults who have not been able to attend any formal education or dropped out of school at an early stage. Low literacy levels are of concern to ZANEC. Only 68% of the Zambian population is literate. It is also estimated that, of the 32% illiterate population, about 60% are women. The result is that people cannot participate in development.
- 5 Presentation made at the SACCORD and Friedrich Ebert Stiftung (FES) Dialogue Conference, Cresta Golfview Hotel, Lusaka, 12 and 13 April 2012. Based on CSOs/PF Dialogue Meeting Report 2012.
- 6 The Electoral Act No. 12 of 2006, Section 18(1).
- 7 When interviewed on 31 July 2012, during a focus group interview in Mufumbwe district in the North-Western Province of Zambia, participants confirmed that their votes carry equal weight.
- 8 When interviewed on 31 July 2012, during a focus group interview in Mufumbwe district in the North-Western Province of Zambia, one of the participants noted that "we have been having problems with unemployment in our communities, but our vote has not made a difference in bringing jobs to our people".
- 9 When interviewed on 27 July 2012, a random sample of respondents in Lusaka asserted that they would not vote in the 2011 tripartite elections because they had voted many times in the past and their votes were stolen.

- 10 SACCORD is a Zambian-based NGO that was formed in 1999 and officially registered in 2000 under Cap 119 of the Laws of Zambia. The organisation was formed to promote peace and democracy in Zambia and southern Africa.
- 11 These are media institutions that are fully government controlled and financed by taxpayers' money.
- 12 This includes televisions, community radio stations, newspapers and online publications.
- 13 Media institutions owned by individuals or private organisations other than government.
- 14 Committees of the ECZ that carry out voter education at district level.
- 15 When interviewed 20–30 July 2012, a random sample of respondents in Lusaka, Chipata, Mufumbwe, Zambezi, Itezhi-tezhi and Choma confirmed that there is a perception that election procedures are not free from abuse.
- 16 The PF and UPND alliance was formed in 2010 to remove the MMD from power. It was an alliance of two of Zambia's biggest opposition political parties at that time. However, after failing to agree on issues of position sharing and ideologies, the alliance broke up.
- 17 Zambia is a signatory to the Universal Declaration of Human Rights (UDHR), which also guarantees the right to political choice. For example, Article 21 of the UDHR stipulates that "The will of the people shall be the basis of the authority of a government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."
- 18 The conflict management committees had the following four objectives: monitor adherence to the Electoral Code of Conduct by all stakeholders; receive and investigate all reports of suspected violation of the electoral laws; mediation; and resolution of disputes. These objectives have remained in place and were also at play during the 20 September 2011 tripartite elections.
- 19 A consortium of election-monitoring organisations formed to monitor the 2001 tripartite elections.



SECTION THREE

ACCOUNTABILITY AND DEMOCRACY

BY GOODWELL LUNGU AND FRANCIS KONDWELANI MWALE

Accountability and democracy are mutually reinforcing as they both play essential roles in the prevention and redress of abuses of political power. The 1996 Constitution of Zambia recognised this in its Preamble, which guarantees and pledges the accountability of the State in terms of human rights, adherence to the rule of law and the distribution of resources. It reiterates that the citizens “resolve to uphold the values of democracy, transparency, accountability and good governance” (Republic of Zambia 1996).

Accountability is a concept in which individuals, agencies and organisations – public and private – are held responsible for executing their powers properly (TI 2009). Here, we will focus on both political and fiscal accountability. While these are mutually dependent, we have separated the two in order to examine each role. In this section, political accountability refers to the constraints placed on the behaviour of public officials by individuals or groups with the ability to apply sanctions on them. As political accountability increases, the costs to public officials of making decisions that benefit their private interests at the expense of the broader public interest also increase, thus working as a deterrent to corrupt practices.¹

Fiscal accountability rests with the Minister of Finance in accordance with the Public Finance Act (PFA) No. 15 of 2004. In Zambia, the PFA is the primary piece of legislation that defines the roles and responsibilities for financial management and accountability within the executive arm of government (TIZ 2004). These include, inter alia, to promote government's national fiscal policy; assist ministries, departments and statutory corporations in building their capacity for efficient, effective and transparent financial management; and providing advice and guidance on all matters relating to accounting policy and general financial management.

Accountability of those in power can take many forms: it can either be horizontal, meaning State institutions oversee the actions of one another, or vertical, where citizens oversee the actions of the State. It may be proactive or reactive; it may be centralised or decentralised; and it may be formal (written in law) or informal. As such, there are four objectives this section seeks to evaluate. First, to what extent do Zambia's institutions and legal instruments promote democracy and accountability? This is critical as institutions influence incentives for both citizens and politicians and, according to Hoffman and Gibson (2006) aggregate their preferences into outcomes. These institutions include political systems (e.g. presidential versus parliamentary), electoral rules (e.g. First-Past-The-Post), electoral systems (e.g. single-member districts versus multi-member districts), the degree of separation of powers and various relationships between local governments and central government. Secondly, does the Executive respect and adhere to the rule of law, transparency and accountability? Thirdly, we seek to examine how open and accessible the procedures and mechanisms are for citizen participation in decision-making processes. Finally, this section will examine the effectiveness of Parliament as the legislative body, and its effectiveness in its oversight role. Analysis will also be done on the adequacy of the legal framework for promoting accountability and the use of public resources.

EXECUTIVE ACCOUNTABILITY

45. *How far is the Executive subject to the rule of law and transparent rules of government in the use of its powers? To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?* (7)

Zambia's Constitution provides for a hybrid form of government that combines a strong executive presidency with parliamentary characteristics and traditions inherited from the Westminster system (Burnell 2002). Since independence, the executive branch has been the most powerful of the three branches of government. Executive power is vested in the President and, subject to the other provisions of the Constitution, is exercised by him either directly or through officers that are subordinate to him. These positions include ministers, deputy ministers, and permanent secretaries.

The Anti-Corruption Commission (ACC) is mandated to spearhead the fight against



corruption in Zambia. It was established under the Corrupt Practices Act No. 14 of 1980. The Anti-Corruption Act No. 3 of 2012 was enacted following the repealing of the Anti-Corruption Act No. 38 of 2010. Various public officials have been held to account for crimes committed under these pieces of legislation. However, the current Constitution is not amenable to civil and criminal proceedings in accordance with Article 43(1) and (2) that prohibits any criminal or civil proceedings against a sitting President. He or she only becomes subjected to the rule of law once he leaves office or is impeached and immunity is removed in accordance with Article 43(3). This is a clear example of how the Executive, particularly the office of the President, is above the rule of law.

There have been prosecutions of note. Most noteworthy was the case against former President Frederick Chiluba who was accused of embezzling USD500,000 during his ten year presidency. Chiluba's trial was a legal landmark for both Zambia and Africa as a former president was prosecuted by his own judicial system. The trial was prolonged for six years due to Chiluba's health problems, but the judge returned a verdict that acquitted the former president as the funds could not be traced to government money.

One other example is the 2007 arrest of former Minister Gladys Nyirongo. She was accused of directing a lands officer at the Ministry of Lands to generate letters of offer for land in Lusaka's Foxdale and Chamba Valley areas to several people in contravention of land allocation procedures. Nyirongo was charged with two counts of abuse of authority while in office contrary to Section 99(1) of the Penal Code Chapter 87 of the Laws of Zambia. She was convicted in 2009. Other former ministers who have been arrested and convicted on criminal offences, but have all since appealed, include Katele Kalumba, Ministry of Finance, and Austin Liato, Ministry of Labour. Liato was arrested in 2012 and convicted for being in possession of property suspected of being proceeds of crime contrary to Section One (1) of the Forfeiture of Proceeds of Crime Act No. 19 of 2010.

These examples demonstrate that the core structures of the separation of powers are in place. However, there is lack of capacity, commitment to democracy and respect for the rule of law. The way forward is to ensure that the modest gains in constraining the Executive do not wither away. Measures should be taken to further strengthen them, and new ways should be explored to promote democracy and good governance (UNECA 2010).

LEGISLATIVE OVERSIGHT

46. *How extensive and effective are the legislature's powers to scrutinise the Executive, hold it to account, initiate and scrutinise, as well as amend legislation between elections? Is the legislature able to hold the Executive to account for the implementation of legislation and policy?* (5)

According to Burnell (2002), Zambia's Parliament has never been held in high esteem as the political system has, since independence, maintained a presidential bias. Legislative power is vested within a unicameral Parliament comprising 150 directly elected members and eight

nominated members. Their tenure is a maximum of five years. The Speaker is elected by the National Assembly through a secret ballot immediately after a new term begins. The President may attend and address the National Assembly at any time. Apart from its representative and oversight roles, the primary functions of the National Assembly are to make laws, vote on public expenditures, oversee the administration of government and subject its activities to scrutiny.

The Constitution provides the National Assembly various means by which members have oversight. They are able to question ministers; submit motions as a means to allow members an opportunity to debate government policy on matters of public concern; and review the performance and operations of ministries and departments, State-owned enterprises and other public bodies vis-à-vis committees. These portfolio committees mirror the structure of government in order to ensure that sector ministries are overseen by Parliament. However, the separation of powers between the executive and legislative branches is weakened by the President's constitutional power to appoint the 62 ministers and deputy ministers, emanating from Parliament, that comprise the Cabinet.

Article 51 of the current Constitution makes members of the Cabinet and deputy ministers collectively accountable to the National Assembly (Republic of Zambia 1996). The Constitution, however, does not clearly state what role the legislature, in conjunction with the overlap between the branches plays. This weakens the institution's ability to conduct oversight and critically assess the existing legislative framework and proposed bills.

The Constitution prohibits Parliament from debating any motion or Bill whose implementation could increase public expenditure, thus restricting its accountability in the realms of law making, policy making and budgeting. It is noted that an unfettered and unrestricted executive presidential domination remains, in spite of the spread of democracy and the rise of multiparty politics (TIZ 2007a). The situation still remains the case in Zambia as of August 2012. The Public Accounts Committee (PAC), for example, which scrutinises the Auditor General's (AG's) report, has no mandate beyond merely submitting a report to the Executive. A study done by Chiwandamira (2005) on perceptions of the effectiveness of Zambia's Parliament revealed that the public held largely negative perceptions regarding its effectiveness. About 82% of the respondents indicated that Parliament had very little power and had much less influence over public policy. This affects accountability as citizens consider their MPs not to be in control of or able to influence policies that promote transparency and accountability. Parliament's performance in fiscal oversight and enacting effective laws was also rated very lowly by the respondents (TIZ 2007).

While the Movement for Multiparty Democracy (MMD) was in power, opposition members cited many problems that obstructed their ability to participate and ensure accountability. For example, the selection of committee members was dominated by the Speaker of Parliament and the ruling party, and was usually used to occlude members of the opposition from participating in decision making. Moreover, the three-line whip system, a lack of secret balloting and voting, and pressure for party loyalty weakens the oversight and



budget-allocation functions of Parliament (IPU 2009). The most recent Afrobarometer survey reinforces these concerns. Among citizens surveyed, 33% believed public officials often go unpunished, while a further 42% believe they are rarely punished or never punished (Afrobarometer 2009). To date, there has been no tangible action taken against erring public officials, especially those cited in the AG's reports.

Influence over the national budget is very limited. In practice, Parliament can only reject or accept the proposed budget in its entirety. If the proposal is rejected, Parliament can be dissolved, leading to new elections. This is a major disincentive and effectively suppresses any political will among Members of Parliament (MPs) to reject a proposed national budget. Parliament is unable to follow up on budget recommendations, thereby reducing its ability to hold government to account (IPU 2009).

Government's response to committees, both when they issue demands for information and when advancing recommendations, is critical to the objective of accountability (Burnell 2002). Regarding fiscal accountability, there are a number of committees that undertake a critical oversight role.

The PAC is responsible for ensuring transparency and accountability in the use of public funds. This is carried out by reviewing expenditures and making recommendations on how to account for public finances. Their debates and recommendations are based on reports from the AG's office. The PAC plays a critical role in Zambia as vast amounts of public funds are not accounted for. A study by Transparency International Zambia found that, between 2000 and 2004, Zambia lost an average of K600 billion through misappropriation, theft or misapplication (TIZ 2007b). Moreover, a recent AG report demonstrated that the abuse of public funds worsened from 2008 to 2010, with misappropriation of funds increasing from K70 million to K1.1 billion, while misapplication increased from K8 billion to K221 billion (Mwansa 2012). As reported and analysed by the AG's office, no tangible action has been taken by government (TIZ 2012).

There are major weaknesses in the implementation of recommendations made by the PAC. For example, in order for the PAC to operate more effectively, there are a number of measures that should be put in place. Firstly, the controlling officers (permanent secretaries) must be held directly responsible for not complying with the Finance (Control and Management) Act of 2004. Often, these officers are summoned before the PAC and those who supply unsatisfactory answers are not pressed to give satisfactory responses that would assist the PAC in its role. Next, the permanent secretary should not be a political appointee. Rather, the position should be appointed by the Public Service Commission in order to avoid politicisation of the roles and responsibilities of this position. Thirdly, law enforcement agencies should use reports from the AG's office, especially in cases where public officials are found to be responsible for offences deemed criminal, for further investigations and prosecution. Finally, those officials who are under investigation or have been proven to have been involved in illegal practices should be named and shamed as a deterrent. These mechanisms will increase the risk of engaging in the misuse of public funds.

Positive trends continue to emerge. For example, three years after the induction of the current Constitution, the Speaker appointed the Parliamentary Reforms and Modernisation Committee (PRMC). The Committee made recommendations that sought to strengthen the relationships between MPs and their constituents, the Executive and civil society. The Parliamentary Reform Project (PRP), initiated with assistance from international donors in 2002, was established to take the recommendations of the PRMC and implement programmes that would build legitimacy, become more representative and responsive, enhance efficiency and effectiveness, and increase accessibility.²

47. *To what extent has legislative and executive power been devolved and what impact has this had on popular control?* (4)

Zambia has several hierarchical layers of governance, including the central government as well as provincial and district levels. Since independence, government has initiated several reform programmes that have entailed a mix of deconcentration, delegation and devolution. In 2002, government developed and adopted the National Decentralisation Policy in order to,

...achieve a fully decentralised and democratically elected system of governance characterised by open, predictable and transparent policy making and implementation processes, effective local community participation in decision making, development and administration while maintaining sufficient linkages between central government and the periphery (GRZ 2003).

Following the introduction of the policy, government, led by the MMD, took seven years to develop a Decentralisation Implementation Plan (DIP) for the years 2009 to 2013. The DIP's primary focus is to improve the provision of services. The MMD government delayed the implementation of DIP for fear that opposition parties would capitalise on the increased autonomy and enhanced service delivery, thereby eclipsing the ruling party (Bertelsmann Stiftung 2012).

Other than the lack of political will, difficulties in the implementation of the decentralisation policy exist. At a national level, the division of roles and coordination mechanisms between the players in the decentralisation process are unsatisfactory. Poor communication between elites at the national level and subsidiary levels, as well as a lack of capacity, skills and knowledge, inhibit the process.³

The Fifth and Sixth National Development Plans focus on poverty reduction, with many of the objectives only achievable within a decentralised system. Since colonisation, local self-government and decentralised sector ministries have existed in a parallel structure in municipalities. Undefined responsibilities and a lack of coordination prevent this parallel system from working effectively at local level.⁴ Local authorities receive inadequate financial grants from central government. There is still insufficient poverty and development-oriented planning and implementation, and accounting relating to the use of public funds is not transparent.⁵



A study revealed that decentralisation policy in Zambia had not performed to expected standards in the recent past. The survey conducted by the Southern Africa Centre for Constructive Resolution of Disputes (SACCORD) in 2011 revealed that decentralisation was not reflected as a priority within most district council plans of action (SACCORD 2012). The study also revealed that district councils wait for instructions directives and resources from Lusaka before they undertake activities that are enumerated within the DIP.

According to SACCORD, beyond the structural issue, the survey was able to establish considerable levels of uncertainty among local bureaucratic and political elites on the issue of decentralisation. This was evident in the degree of divergence of perspectives on the subject matter concerning decentralisation among the local leadership elite, signifying a lack of cohesion on this matter. Several reasons could be advanced in relation to this observation.

To date, the DIP has yet to be fully implemented. There is little evidence to suggest that the policy has been implemented in a fashion that has induced change. However, interviews conducted by the authors in 2012 with the Decentralisation Secretariat within the Ministry of Local Government and Housing, revealed that the Patriotic Front (PF) government has earmarked the DIP for implementation.

Decentralisation was a major feature of the PF's 2011–2016 manifesto. Among other things, the PF government has promised to increase the budgetary allocation to councils; devise a formula to share national taxes collected within the jurisdiction of every local authority in order to strengthen the revenue base of local authorities; and introduce ward village councils, district chiefs councils and provincial chiefs councils to ensure a link in the public service governance system below the district councils, and ensure active involvement of the traditional authorities in the public governance system. Government has not yet offered much concrete and tangible action.

JUDICIAL INDEPENDENCE

48. *How independent are the judiciary and the courts from the Executive and from all kinds of interference?* (5)

Part Six of the Constitution stipulates that the judiciary shall be autonomous and provides that judges, magistrates and local justices shall be independent, impartial and subject only to the Constitution and the law.

The judiciary is administered in accordance with the Judicature Administration Act No. 42 of 1994. To safeguard the independence of the judiciary, magistrates, local court justices and supporting personnel are appointed by the Judicial Service Commission (JSC), an independent body chaired by the Chief Justice. The JSC, established by the Constitution, is not directly appointed by the President, although Executive influence does largely shape the appointment process.⁶

An analysis of the Judicature Administration Act reveals that this is a comprehensive

law that prescribes the mandate and function of how the judiciary is supposed to operate in Zambia. Yet implementation of the Act has been hindered by the lack of a number of key ingredients such as adequate manpower, infrastructure and finance. Without these, it cannot be fully operationalised. The functions of the judiciary are also inhibited by a number of other factors. Inefficiency is caused by under-staffing, a lack of capacity and training, poor remuneration, and a lack of adequate facilities and equipment (Bertelsmann Stiftung 2012). The judiciary is strained as it struggles with a significant case backlog, leading to overcrowding in detention centres.

The judiciary is largely free of interference. However, the more politically sensitive a case is, the more likely the autonomy and independence of the judiciary succumbs to political interference, especially at the behest of the executive branch (Bertelsmann Stiftung 2012). A significant percentage of the population believes the courts are compromised. A Zambia Governance Baseline Survey from 2004 revealed that 52% of business managers believed the courts were not independent of government or economic pressures, and that justice was not administered fairly or transparently. In 2009, an Afrobarometer survey found that perceptions among citizens still reflected those of 2004. It revealed that 52% of citizens believed that judges and magistrates were involved in corruption (Afrobarometer 2009). This demonstrates that citizens have little confidence in the judiciary.

Perceptions are important as they are based on real life experiences of citizens. The acquittal of Chiluba reinforced this. The Law Association of Zambia (LAZ), Transparency International Zambia (TIZ) and 16 other CSOs⁷ contended that the Executive influenced the judiciary, positing that government's refusal to appeal the verdict and the non-renewal of the Task Force on Corruption Executive Chairman Max Nkole's position, for refusing to accept government's position and filing an appeal, as evidence. Moreover, concern was raised when President Rupiah Banda thanked Zambians for accepting Chiluba's acquittal approximately four hours before the final judgment was delivered. These events led many to believe that the Executive had influenced the outcome of the case, seriously undermining one of the most important trials in Zambia's history and, with it, people's faith in an institution that is meant to ensure justice.

Nevertheless, some positive signs are emerging, although it may be too early to tell. For example, during the period March to June 2012, there was a cacophony of calls among citizens for judicial reform. As a result, the PF government took steps and suspended a justice from the Supreme Court and two more sitting at the High Court. President Sata appointed a tribunal to investigate their alleged misconduct, which was welcomed by some while others opposed it. Proponents of the suspension believe that this is a step toward cleansing the judiciary of bad elements, while those opposing the suspension argue that it is a political ploy to intimidate the judiciary.



PUBLIC PARTICIPATION AND ACCOUNTABILITY

49. *How open, accessible, extensive and systematic are the procedures/mechanisms for public consultation and participation on legislation and policy-making? How equal is the access which interest groups/citizens have to influence the law-making process?* (5)
50. *How open, accessible, extensive and systematic are the procedures/mechanisms for public consultation and participation on executive policy? And how equal is the access which citizens have to influence executive policy?* (5)
51. *How far does government co-operate with relevant partners, associations and communities in forming and carrying out policies, and how far are people able to participate in these processes?* (5)

There is no Article in the Constitution that stipulates citizens must be consulted and participate in decision making. Only Article 112 of the Constitution, referred to as the Directive Principles of State Policy, guide government in the making of laws, while simultaneously enjoining the courts to take note of such principles when called on to interpret legislation.

Nevertheless, citizens and interest groups in Zambia still have opportunities, although limited, to participate in the formulation of policy and legislation at national level. These opportunities exist at all levels of governance. At national level, the National Assembly fully advertises all the sittings of its committees and openly invites citizens to make submissions on policy and legal matters. For example, the National Assembly invites interest groups and other stakeholders to participate at the committee stage. However, it is difficult to ascertain how equal this process is. The creation of Sector Advisory Groups, a high-level forum that meets to coordinate and discuss the implementation of policy, has created a space where civil society and government share information, experiences and work toward common goals. Currently, a technical committee has been appointed by government to draft and present a new constitution to Zambians. Public submissions have been requested as part of the constitution-making process so that the final constitution reflects citizens' views. However, a key challenge is the lack of access to information that citizens currently experience. Increased access to information would see citizens better informed when they engage in policy and legal debate.

Mulungushi (2007) observes that some of the major weaknesses in policy making is an absence of specific roles assigned to the majority of stakeholders.⁸ The current Constitution fails to demand accountability from structures that bridge government and citizens. A case in point is found in the Cabinet. Members merely provide a content-based guide and not a process-based policy formulation. This has diluted their need to be inclusive. Access to these guidelines is limited to senior government officials. The rest of the public service has no access to them, making it difficult to participate fully in policy development and implementation.

Provincial-level participation is restricted to coordinating activities coming from the national level, and acting as a conduit between the centre and the districts. Most of the participation is limited to technocrats. The only tangible platform for participation is through the Provincial District Development Coordinating Committees (PDCCs), which have been inconsistent in the last couple of years.

At the local level, participation is very limited as there are no formally established channels. A survey found that 53% felt that local councils failed to allow adequate participation (TIZ 2004). Accountability and participation at local level has its challenges. As the PF seeks to implement its decentralisation policy, the importance of local government structures in the management of local resources for development will increase. However, legislation that sets the parameters for the conduct of councils can be interpreted as contradictory to the new policy and inhibit genuine participation at the local level. For instance, Section 29(1) of the Local Government Act, Chapter 281 of the Laws of Zambia, states that all council meetings must be open to the public; conversely, Section 29(2) then allows a council to pass a resolution to exclude the public from any meeting if the presence of the public could jeopardise the proceedings.

This has allowed public officials to withhold vital information from their constituents, hindered transparency and accountability around a multitude of development projects within their municipalities, and has also insulated them from public scrutiny (TIZ 2004).

A number of stakeholder consultations have taken place, mostly in the form of workshops, yet these are rarely extended to citizens at grassroots level. This approach of consultations was used between 2005 and 2008 when anti-corruption policy was being developed. A similar approach was undertaken between 2007 and 2009 when land policies were discussed with CSOs.

Importantly, the challenge remains because stakeholders are not able to control the final product that is submitted to Cabinet for ratification. There are no written guidelines on community or public participation in policy making; however, there is an unofficial policy that states that members of Cabinet must demonstrate that there was a degree of community or stakeholder participation, within a policy-making process, before the submission of a policy can take place.⁹

LAW MAKING AND THE BUDGET PROCESS

52. *How extensive are the powers of legislative bodies, and how effective are they at legislating?*

(6)

Article 62 of the Constitution states that, “the legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly”. Article 46 of the Constitution blurs the separation of powers further by stating that Cabinet ministers, appointed by the President, must be derived from the National Assembly. Article



50 states that the functions of Cabinet are to formulate the policy of government and to be responsible for advising the President with respect to the policy (Republic of Zambia 1996).

This blurring of the separation of powers is critical because it has undermined the authority and autonomy of the legislature to hold the executive branch to account. In 2011, the then MMD government had approximately 70 Cabinet, deputy and provincial ministers. This is important because it effectively meant that one-third of the legislature also constituted the Executive. As of September 2012, the PF government has 20 Cabinet ministers, 33 deputy ministers and 10 provincial ministers. In short, the ineffectiveness of the National Assembly in the legislative process has important implications for not only entrenching a system of non-accountability, but also for the consolidation of democracy and governance.

To enhance the parliamentary role of checks and balances and the principle of separation of powers, it is strongly recommended that the current constitutional reform process ensure that the Cabinet is appointed from outside the National Assembly. Otherwise, parliamentary oversight will continue to ensure accountability to the Executive, not to the citizens of Zambia. To ensure accountability and prevent abuses, the powers of the Executive need to be constrained through checks and balances. Moreover, the National Assembly's core role of legislating must be strengthened.

53. *How rigorous are the procedures for parliamentary approval, supervision of and input into the budget and public expenditure?* (5)

A central function of Parliament has always been to exercise control over the raising and spending of public revenue. Parliamentary oversight of government finances can be separated into two broad phases. First, by consideration and approval of government's plans for the raising and spending of revenue *ex ante*, by consideration of its proposed budget, and secondly, through the monitoring of expenditure *ex post*, in order to ensure that the budget has conformed to the terms Parliament approved. For purposes of analysis, the two phases will be considered separately.

The Executive has the responsibility to draft a detailed annual national budget proposal for the raising and expenditure of revenue by government. The Constitution only empowers the National Assembly to approve the national budget, without the ability to suggest or make changes, thus, more or less becoming a rubber stamp institution that lacks genuine participation in the formulation of the national budget (USAID 2004).

In Zambia, the national budgeting process is not currently governed by any specific (budget) law, other than those provided by the Constitution.¹⁰ The constitutional amendment made in July 2009, on the budget announcement date, did not address the challenges of budget monitoring, periodic reporting, or parliamentary oversight over the budget implementation by the Executive. The introduction of Activity Based Budgeting (ABB) in 2004 was significant in that it explicitly linked budget allocations to service delivery and other targets. ABB has engendered a budgeting process that is more accessible and transparent, while encouraging informative debates among citizens and government.

The accounting of public funds is governed by the PFA (2004) in conjunction with the Financial Regulations (2006) (published as Statutory Instrument No. 111). In the National Assembly, matters pertaining to budget processing are governed by Standing Orders. Standing Order No. 80 has been a major stumbling block to the process of debate over the national budget as it reduces the roles of MPs to mere rubber stamps by prohibiting them from making changes to the proposed budget.

A crucial aspect regarding oversight of the national budget is that MPs have the ability to influence terms for the repayment of loans and donor funds. In 2010, donor funds accounted for 14.5% of the national budget (Mfula 2010). After the approval of the national budget by Parliament, where government has to incur expenditures beyond provided thresholds, a supplementary budget has to be approved by Parliament within the current fiscal year. In practice, supplementary budgets are presented in the third session of Parliament's sitting. In Zambia, there is no clear segregation between provincial, national and local budgets, as all are centrally provided for per sector.

The Constitution does not give Parliament oversight powers on the terms for borrowing and repaying loans. This has resulted in unfair repayment terms and interest rates being agreed to. For example, Zambia's external debt, as at 2011, stood at USD1.9 billion (K10.6 trillion). Domestic debt was approximately USD2 billion (K10.6 trillion) (JCTR 2012).

The new draft Constitution must provide clearly defined oversight mechanisms to allow MPs to have oversight powers over the terms for borrowing and repaying loans. The draft Constitution under Article 282 (borrowing and lending by government) is meant to enhance parliamentary oversight on the Executive with regard to fiscal external borrowing.

According to SACCORD, many MPs expressed concern that their inability to participate in the budgeting process leaves them unable to hold government agencies, in particular the Ministry of Finance, accountable. The post hoc monitoring of government expenditure is carried out by the PAC, a parliamentary committee.

There is a need for the enactment of a budget/fiscal management Act to provide a legal framework for the initiation, development, approval and implementation of the national budget. Current law does not clearly state the role of MPs and citizens in the budget formulation, monitoring and implementation processes, apart from when it is presented and debated in the National Assembly.

54. *How much say does the public have in the development of the budget? How well do parliamentary procedures allow the public to participate in decisions relating to resource allocation?* (5)

The average Zambian citizen has little access to the budget-making process. Access often comes in the form of civil society groups, but they are primarily urban based. The lack of a clearly defined framework and greater inclusion constrains citizens from engaging in and taking ownership of this process.

The NGO Act of 2009 restricted the participation and oversight of the budget-making



process to civil society and CSOs, and limited opportunities to challenge the relationship between CSOs and government. Interviews conducted with key stakeholders such as the Jesuit Centre for Theological Reflection (JCTR) and the Civil Society for Poverty Reduction (CSPR), revealed that there is no clearly defined framework for citizens' participation in budget formulation in Zambia, especially at local level. This was highly attributed to the centralised systems of developing budgets where local communities are not engaged.

It can therefore be assumed that the DIP would have helped alleviate the above cited challenge once implemented across the country. The key areas needing strengthening here are clearly defined structures where citizens can take part in budget formulation, implementation and monitoring, as is the case in Uganda, which has a fully decentralised and devolved governance system that allows citizens to participate in budget formulation processes and thus serves to maintain its transparency.

In Zambia, an opportunity for this lies in the "green paper". To make the budget process more transparent, a "green paper" has been introduced for discussion by the Estimates Committee of Parliament, civil society and donors about the broad policy directions government would pursue. The "green paper" is published after Cabinet approval of the outcome of the top-down process of preparing the draft macroeconomic and fiscal frameworks, and the indicative expenditure ceilings for spending agencies. Government also introduced Sector Advisory Groups (SAGs) which are recognised as important stakeholders in the budget preparation process. SAGs are simply technical advisory groups constituting stakeholders in various sectors and regions. At preparation stage, these technical groups advise on the sector priority policy actions, programmes and projects, and provide input in the budgetary proposals (budget framework papers) for the next Medium Term Expenditure Framework (MTEF) period.

One of the weakest links in planning and budgeting is the extent to which national level plans and budgets are informed from local level. In addition, budgets do not reflect the integrated nature of planning and budgeting. Fiscal decentralisation and local development planning are anticipated only when the decentralisation agenda of a devolved system of governance takes place. The absence of integrated district planning and budgeting, which would inform national level prioritisation and resource allocation, remains a serious impediment. In addition, the national budget is still sector-based and largely designed by technocrats with minimal or no consultation with ordinary members of the public. Information on budget expenditure is rarely available and accessible to citizens and civil society, and this is an area needing improvement.

ACCESS TO INFORMATION

55. *How independent and accessible is public information about government policies and actions and their effects? How comprehensive and effective is legislation giving citizens the right of access to government information?* (4)

There is no law in Zambia that promotes or guarantees independent access to information held by government. Legislation that gives citizens access to information held by public bodies is an important democratic resource, endorsed by the “right to seek information” provision of the International Covenant on Civil and Political Rights (ICCPR), which Zambia acceded to on 10 April 1984. This is distinct from the requirement on public bodies to publish their proceedings and reports, though both may be covered by the same regulations or legislation. Freedom of information provides a resource for use by citizens, NGOs and the media, to improve the transparency of public bodies. Media legislation in Zambia is restrictive and very few licences are provided. The Freedom of Information Bill was one of the PF’s main campaign issues. So far, the PF have formed a committee that includes CSOs that has drafted and agreed on a new Access to Information law, but as of August 2012, it had not yet been released for public debate. The main reason for this is that the AG’s office is still studying the draft Bill. At the time of writing, government had promised to present the Bill to the legislature in January 2013.

The task force comprising government representatives from the Ministry of Information, Broadcasting and Labour and the Ministry of Justice, the Civil Society Access to Information Coalition of the JCTR, Economic Association of Zambia, MISA–Zambia, Transparency International Zambia and the Law Association of Zambia, independent legal experts Kenny Makungu, a lecturer at the University of Zambia (UNZA), and Edem Djokotoe, the World Bank technical team, among others, which, as of June 2012, had drafted the freedom of information legislation for public scrutiny and comments, was still in place (*The Post* 2012). The committee expects the draft to be disseminated for public consultation, then to have a final version presented to the NA, after which it will be enacted as a progressive law. Most government policies are readily available at Government Printers, as well as service charters in a limited number of institutions where they exist.

ACCESSIBILITY AND INDEPENDENCE

56. *How accessible are elected representatives to members of the public? What impact does the electoral and party system have on the way in which MPs represent people?* (5)

It has been recognised that for MPs to be effective, accessible, engaged and represent their constituencies, there is need for interaction. As a result of this, the National Assembly has developed constituency offices with staff that offer both MPs and the public an official place to exchange ideas and information relevant to the carrying out their functions. This is based on the belief that a well-informed electorate is an important component of any good democracy (National Assembly 2000).

Results from the PMRC reveal a significant and positive change, with constituents utilising the facilities. This has improved the quality of MPs’ responses to people’s concerns regarding developmental issues. Similarly, research by the parliamentary liaison programme



of Caritas Zambia indicates that there is widespread support for constituency offices and the steps taken by government to decentralise parliamentary offices. The research confirms that the constituency offices receive a good number of visitors and that, in many instances, such offices have been able to address people's concerns.

These parliamentary offices have been criticised at times for being used as political spaces for respective parties. As a result, the deputy clerk of the National Assembly, Fairchild Chibomba, advised MPs not to use parliamentary constituency offices to serve their personal interests and those of their political parties because they were not set for that purpose (*Times of Zambia* 2005). Similarly, Citizens Forum executive director, Simon Kabanda, observed in 2011 that parliamentary constituency offices were irrelevant because they did not serve any purpose to the electorate. Furthermore, Caritas Zambia's PLP report posited that the creation of constituency offices was a good initiative, but it was difficult to assess their effectiveness. Awareness among constituents was low, and many viewed these new offices as mere political party tools, thereby making voters who did not vote for the sitting MP feel unwelcome. It was also very difficult for voters to link constituency offices to their own livelihoods, with many unable to afford to visit constituency offices at the expense of securing their daily needs. The roles of the MPs in these offices still needs more clarity as it is very difficult to measure the interaction of MPs with the electorates (Caritas Zambia 2009).

Another opportunity that the public have to be involved is through the now well advertised parliamentary committees that the public are encouraged to attend. Some committees invite stakeholders to provide input on legislation at committee stage. The only challenge is that not all of the submissions that are made are taken into consideration. In Zambia the political party and electoral system has a major impact on the way MPs represent the people. Unlike established parliamentary democracies, the party is a driving force in party-parliamentary relations in Zambia. Political parties exercise control over their MPs and ensure that they support party policies and instructions. MPs are nominated and sponsored by political parties and therefore look to the party to provide leadership. Thus, party leaders are very important and are able to discipline MPs for going against party rules. Acts of "ill discipline" can even cause an MP to lose his or her seat. It is not only expected that MPs will vote according to the instructions of their parties, but also accepted that those who do not may risk severe sanctions. These may include not being adopted as a candidate at the next election, suspension or even expulsion. The power and influence of the political party in Parliament is so pervasive that it has serious implications on the consolidation of parliamentary democracy (Simutanyi 2005).

57. *How far are MPs protected from undue influence by outside interests? Are potential conflicts of interest regulated?* (5)
58. *How effective is the separation of public office, elected and unelected, from party advantage and the personal, business and family interests of office holders?* (5)

MPs in Zambia have been provided with guiding legislation to protect them from undue influence. Their behaviour is regulated by the Parliamentary and Ministerial Code of Conduct Act No. 35 of 1994. This Act explicitly protects MPs from, among other things, the improper use of information that comes to them during the course of their duties. This is a key safeguard as outsiders may use this as an entry point to use MPs as a panacea for special favours. Section 4 of the code explicitly states that “a Member shall be considered to have breached the code of conduct if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of pecuniary advantage by another person” (Parliamentary and Ministerial Code of Conduct No. 35 of 1994). Potential conflicts of interest are further regulated by the Anti-Corruption Act No. 3 of 2012. Section 28 of the Anti-Corruption Act prohibits public officials from having or engaging in matters that give rise to conflicts of interest.

The separation of public office, both elected and appointed, from party advantage is clearly outlawed as stipulated in the new Anti-Corruption Act. However, allegations persist about instances in which elected or appointed officials have been involved in breaching laws for personal or private benefit. For example, a former Minister of Lands Gladys Nyirongo, is alleged to have shared large portions of land with her close associates for private benefit, for which she was convicted at Magistrate’s and High Court levels, but has appealed against the sentencing. The Anti-Corruption Act classifies this behaviour as an abuse of official position and it emphatically defines both elected and appointed people as public officials. Section 21 states that, for the purposes of subsection (1), a public officer shall be presumed, until the contrary is proved, to have used that public officer’s position, office or information for an advantage or benefit where the public officer takes any decision or action in relation to any matter in which the public officer, or a relative or associate of that public officer, has a direct or indirect interest. It is common in Zambia to experience incidents of political party cadres and elected local officials (councilors) being involved in the illegal allocation of land to members of their party as a reward for belonging to the ruling party. The effectiveness of the new law is yet to be tested.

59. *How effective and open to scrutiny is the control exercised by the legislature and the Executive over civil servants?* (5)

The civil service in Zambia is under the control of the Executive. The legislature provides an oversight role over public accounts, while various committees in charge of various portfolios, such as committees on Information, Health, Agriculture and Governance, do not have direct control over the civil service. Political leadership in Zambia is provided by the Executive, which is entrusted with the power and responsibility of managing the country’s affairs through the civil service.

The Executive holds civil servants accountable through various mechanisms for accountability that are intended to encourage probity and accountability. Senior officials can review actions of their subordinates. The General Orders also prohibit public officers from giving or receiving valuable presents. However, because of the poor conditions of service in the



public sector, the rules on gifts are rarely, if ever, enforced. There is no register of gifts and no monitoring of gifts occurs as there is no mechanism to do so. What is worse is that there is no code of ethics for civil servants. The Commission for Investigations Act of 1974 empowers the Commission to receive and investigate complaints of maladministration or abuse of office or authority against an officer in the Public Service. The General Orders also prohibit such practices, but nepotism is common in the Public Service. Members of the public can lodge complaints of corruption against public servants; with their superiors, the Anti-Corruption Commission, the Police, the Commission for Investigations, the Service Commissions, the Police Complaints Authority, and the President (Chanda 2003).

60. *How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption?* (5)

It is difficult to discern in the Zambian context how powerful corporations and business interests are kept in check as many of the decisions concerning them are not widely available for public scrutiny.

One of the key sources of influence emanates from political party capture and support that results in powerful corporations having control over business interests. This starts with political party funding, which is not regulated.

Zambia has no laws that specifically regulate the funding of political parties, and the election campaigns of the President or parliamentarians, thus making the country more susceptible to outside influence over the public sector. The only piece of legislation that relates to party finance is the Societies Act No. 65 of 1957. The latter regulates all legal entities and applies to political parties as much as it does to businesses, CSOs and other legal entities registered in the country.

Although the Electoral Commission of Zambia (ECZ) is the agency tasked with administering elections in the country, it is not mandated to scrutinise the funding of parties and/or the election campaigns. According to the Societies Act (Section 16), the Registrar of Societies is the only State institution mandated to ask for and receive annual reports from political parties (defined as “societies”) in a prescribed format and defined timeframe. However, it is not stated explicitly that annual reports should contain financial information. In the event that a party fails to submit annual reports as required by the Registrar of Societies, it sends to that entity, a notice for default or late submission (TIZ 2010). There are conflict of interest laws in Zambia, highlighted in this section, that can be used to mitigate against this scenario. Most of such influence is targeted at the ruling party, which is seen as having the potential to reward powerful corporations with contracts in return for political party financing, especially for elections campaigns.

Another key area in Zambia where there are powerful corporations is the extractive industry. The global Extractive Industries Transparency Initiative (EITI) has become a well-established and a well-recognised, broad-based global coalition of resource-rich countries, donors, major companies, civil society groups, and investors. The initiative encourages gov-

ernment, companies and civil society to work together to develop a framework for the publication of payments and receipts from oil, gas and mining companies. The aim is to promote transparency in the use and distribution of revenues generated by the development of each country's extractive industry. The Government of Zambia announced its adherence to EITI principles in 2008, and committed itself to ensuring better management and use of mineral revenues. This presupposes good stewardship of resources to promote development and raise the standard of living of the Zambian people. The main purpose of EITI in Zambia is to report what mining companies pay to government and government agencies. Thus, under EITI, the Zambian people should know what is being paid to government by mining companies and how these resources are utilised.

61. *To what extent is the public service protected from corrupt practices? To what extent are public officials protected from undue influence by outside interests? Are potential conflicts of interest regulated?* (7)
62. *Are public servants who blow the whistle on corruption encouraged and protected? Are citizens who blow the whistle on corruption protected?* (6)

Government targeted corruption in earnest with the Corrupt Practices Act No. 46 of 1980, which established the ACC. This was the first time corruption was to be investigated and prosecuted by an independent body. This Act was later repealed by the ACC Act No. 42 of 1996, which, inter alia, gave operational autonomy to the ACC.

The current Zambian Code of Conduct for the civil service does not strictly guard against conflict of interest as was the case under the first Zambian government. This is because civil servants are not proscribed from conducting private businesses that can potentially activate conflict of interest transactions. However, the anti-corruption and public procurement legislation in place clearly criminalises conflict transactions. The only question is: to what extent have these provisions been implemented or enforced?

Government recently enacted two pieces of legislation that guarantee the protection of whistle blowers. The Anti-Corruption Act No. 3 of 2012 and the Public Disclosure (Protection of Whistleblowers) Act No. 4 of 2010. Both have good provisions that guarantee the protection of whistle blowers on paper. Section 12(1) of the Protection of Whistleblowers Act provides that a person may make an anonymous disclosure in accordance with this section and the disclosure is protected by the Act. Subsection 3 of the Act clearly guarantees that the personal information of all persons reporting corruption shall be kept confidential by the investigating authority. Section 19(1) of the Act further mandates law enforcement agencies to provide progress reports to whistleblowers, in order to keep them abreast of developments in their reported cases. The Anti-Corruption Act No. 3 of 2012 under section 69(1) provides that “the Director General shall make such arrangements as are necessary to protect (a) the safety of such witness, expert or victim, or (b) any other person from threats, intimidation or harassment”. These two pieces of legislation emanate from the



Anti-Corruption Policy that identified the need to protect and encourage whistle blowing in the fight against corruption.

A weakness of the Act is that it protects the disclosure of information by public officers in their capacities or positions as public officers, but fails to protect citizens who may want to blow the whistle as “victims” of corruption. It is therefore recommended that protection of whistleblowers in Zambia should not be limited to “public officers” but all those who blow the whistle against corruption. The ability to determine to what extent citizens who blow the whistle on corruption are protected in Zambia is yet to be determined under the new law, as it is yet to be tested in its implementation and application.

63. *To what extent can government carry out its responsibilities in accordance with the wishes of the citizens, free of interference or constraint from political or economic forces outside of Zambia?* (5)

64. *How far is government able to influence or control those things that are most important to the lives of its people, and how well is it organised, informed and resourced to do so?* (5)

In 2011, the PF government was elected on their promises to create employment opportunities and improve citizens’ standard of living. Upon taking control of government, the PF faced serious challenges in meeting its promises. Many sectors vital to the State’s economy are underdeveloped. Zambia is also heavily dependent on foreign investors’ willingness and confidence to invest and create sustainable employment. The sectors, which are vital to improving the livelihoods of citizens, including health care and education, demand huge investments. In Zambia, government increased the education sector’s share of GDP from 2% in 2000 to more than 4% in 2009.¹¹ However, the kind and quality of education provided seems to be inadequate to cater to market needs.

Zambia’s current Human Development Index (HDI), comprising those indicators that measure national development, ranks it among the countries with the lowest HDI, currently 164 out of 187. Poverty levels are high, with 63.8% of the population living on under USD1 per day and a further 87.2% living on under USD2 per day (UNDP 2011). HIV and AIDS remain a daunting predicament for government. Estimates are that between 13.5 and 16% of adults are HIV positive (women 18%, men 13%).¹² This high infection rate will prove to be a huge development challenge, along with unemployment, poverty, education, crime and corruption.

Tackling high youth unemployment remains one of government’s foremost policy challenges. As of 2011, a proportion of the total labour force, 63% of young adults 15–19 years of age and 48% of those between the ages of 20–24, remained unemployed (AEO 2012). In rural areas, 16% of 15–19 years olds and 7% of those between 20–24 are unemployed, but these figures mainly reflect informal agriculture employment. Africa Economic Outlook reports that about 300 000 young people enter the labour market in an average year. Government has put in place a National Youth Policy and the Youth Enterprise

Fund aimed at the creation of youth employment through entrepreneurship and the reduction of poverty. Government has also announced plans to transform the Zambian National Service into a Zambian Youth Training Service with a mandate to strengthen youth skills training (AEO 2012).

Population, total	12.9
Population growth (annual %)	1.6
GDP (current USD) (billions)	16.2
GDP per capita (current USD)	1.253
GDP growth (annual %)	7.6
Life expectancy at birth, total (years)	48.5
Mortality rate, infant (per 1,000 live births)	68.9
Literacy rate, youth female (% of females ages 15–24)	67.3
Prevalence of HIV, total (% of population ages 15–49)	13.5

Additionally, the challenges of effective decentralisation, and the implementation of sub-national processes for improved governance, which hitherto remain unfulfilled, add to the perception that service delivery at local level is not up to standard.

The global economic crisis that began in 2008 led to significant job losses in the formal and informal employment sectors, and limited some government services. Increasing domestic revenues and enhancing infrastructure must be a priority for government if it is to attract foreign investment that will allow it to attain the revenue needed to carry out its responsibilities to its citizens. Moreover, maintaining investor confidence after the recent reversal of a corrupt privatisation deal involving Zambia's telecommunications company, and the subsequent downgrading of the country's outlook, pose their own challenges.

CONCLUSION

This section has demonstrated that, while Zambia has a reasonable legal framework, greater compliance among government officials and additional legislation are needed to promote and ensure general transparency and accountability. In relation to the use of public resources specifically, this section shows that an adequate legal framework is in place, yet compliance and enforcement thereof are severely lacking.

Further review of the accountability and transparency of the Executive in particular reveals that, to a certain extent, it is held accountable for its actions and adheres to the rule of law. This has been demonstrated by the arrest of erring members of the Executive. However, this analysis shows that Parliament is not effective as a legislative or oversight body, evidenced in the case of the PAC where a report with recommendations was published but no action was taken by Parliament to implement the recommendations. In addition,



open, accessible, extensive and systematic procedures and mechanisms for public participation in legislation and policy making in Zambia do not exist, even though public participation practices occur on occasion.

Lastly, even though the forecasts for the Zambian economy remain favourable in the medium term, the country is vulnerable to external shocks, including risks from a sluggish global economic recovery. High youth unemployment and slow progress in poverty reduction overshadow any gains made from growth and limited inflation.

SECTION SCORE: 5.5

ENDNOTES

- 1 World Bank definition of accountability <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:20222028~menuPK:1165494~pagePK:148956~piPK:216618~theSitePK:384455,00.html>.
- 2 Parliamentary Reforms in Zambia http://www.parliament.gov.zm/index.php?option=com_content&task=view&id=354&Itemid=105.
- 3 Interview, SACCOR programme officer (Accountability and Good Governance Programme), Michelo Mwangi, 2012.
- 4 Support of the Zambian Decentralisation Process www.giz.de/themen/en/7792.htm.
- 5 Support of the Zambian Decentralisation Process www.giz.de/themen/en/7792.htm.
- 6 By virtue of Section 3 of the Service Commissions Act, Chapter 259 of the Laws of Zambia, most members of the JSC are drawn from positions they already hold elsewhere. The Commission comprises the Chief Justice, who is the Chairman; the Attorney-General; the Chairman of the Public Service Commission or such other member of that Commission as may, for the time being, be designated in that behalf by the Chairman of that Commission; the Secretary to the Cabinet; a judge nominated by the Chief Justice; the Solicitor-General; a member of the National Assembly appointed by the Speaker of the National Assembly; a member to represent the Law Association of Zambia, nominated by that Association and appointed by the President;
- 7 Change Life Zambia, Network of African Youths Against Corruption, Caritas Zambia, Zambia Civic Education Association, Civil Society for Poverty Reduction, Jesuit Centre for Theological Reflection, Centre for Trade and Policy Dialogue, Citizens Forum, Zambia Youths Association in the Fight Against Corruption, Southern Africa Centre for Constructive Resolution of Disputes, Anti-Voter Apathy Project, Transparency International Zambia, National Youth Anti-Corruption Movement, Women for Change, and Foundation for Democratic Process.
- 8 Stakeholders depend on a particular policy and may include civil society organisations, private sector, interest groups, citizens and religious groups.
- 9 Mbinji Mufalo in June 2012.
- 10 The constitutional provisions include Part X (Finance); Article 112, (b), (c), (d), (e), (h) and (i); Articles 114, 115, 116, 117; and Part IX (Directive Principles of State Policy and the Duties of a Citizen).
- 11 Evaluating education assessment in Zambia presentation http://www.iiep.unesco.org/fileadmin/user_upload/News_And_Events/pdf/2012/strategic_seminar_pres_zambia.pdf.
- 12 HIV/AIDS multisector development challenges <http://transition.usaid.gov/zm/hiv/hiv.htm>.
- 13 World Bank Country Indicators Zambia 2010 <http://data.worldbank.org/country/zambia>.

SECTION FOUR

POLITICAL FREEDOM AND DEMOCRACY

BY HOPE B. MUBANGA AND PETER MWANANGOMBE

Prior to democratic transition in 1991, Zambia was a one-party state built on the socialist principle of humanism, where the needs of society were placed high above those of the individual. After independence, all basic human rights, including civil and political rights such as the freedom of association, religion, assembly, etc., were enshrined within the Constitution. However, this era was characterised by autocratic rule and high intolerance for political dissent. State machinery and the legal framework were highly effective in limiting freedom of expression, information and assembly. Citizens who spoke out against the political system were subject to intimidation, threats of violence and arbitrary deprivation of life by State actors, namely the security forces. Prolonged detentions and torture were not uncommon, and people were fearful of associating with others or organising themselves into associations outside of the sanctioned United National Independent Party (UNIP) structures. These fears and restrictions were compounded by the presence of the secret police, known as Bakamucheka, and informants. There was little separation of power as the legal system was manipulated and co-opted by government; for example, people who were perceived as enemies of UNIP were likely to have property expropriated, with little chance of seeking redress and exercising their constitutional rights within the legal system.



The transition to democracy engendered a new dispensation under the Movement for Multiparty Democracy (MMD), a political party that espoused democratic tenets, allowing Zambians to enjoy fundamental human rights and freedoms such as association, assembly and expression. Enforceable laws were introduced that empowered citizens to protect themselves against discriminatory treatment by the State and to organise without interference. Laws also put in place regular free and fair elections, and an independent media. However, more than 20 years into democracy, these fundamental freedoms still need to be protected to allow all Zambians to enjoy the benefits of democratic processes. Under the MMD, opposition politicians, journalists, members of civil society and human rights activists were frequent imprisoned, particularly in the face of a perceived political crisis (1993) and attempted coups by various military officers (1997), during the Chiluba era.¹ Legislation from the colonial era that was designed to oppress the majority of Zambians, such as the Public Security Act of 1960, continues to allow government to hold an individual indefinitely, and makes it impossible for courts to question or override the activities of the security sector.

Despite this, Zambia has seen positive changes that have improved human rights as a result of its consolidation of multiparty democracy and the appointment of the Munyama Commission of Inquiry in 1992. The commission was established to review “complaints of maladministration on the part of government agencies from 1973 to 1991 and to make recommendations thereon to government”.² Some of the findings included: established cases of torture, abuses and human rights violations. Among the commission’s recommendations were the call for an independent human rights body (the Human Rights Commission in Zambia was set up in 1996), a review of legislation on policing, the establishment of a Police Public Complaints Authority, the setting up of a Police Professional Standards Unit, and the introduction of human rights training in the police training curriculum.

This section seeks to provide an examination of the effectiveness of the State’s existing legislation concerning fundamental civil and political rights, and how successive governments have sought to rectify weaknesses and facilitate and consolidate institutions meant to protect and promote the rights and freedoms that are essential to the sustainability of Zambia’s democracy. It will also look at whether these policies have provided accessibility for all, and recommendations will be offered where this has not been achieved.

CIVIL AND POLITICAL RIGHTS

65. *How free are all people from intimidation and fear, physical violation against their person, arbitrary arrest and detention?* (4)

Part III of the 1996 Zambian Constitution has a Bill of Rights that recognises fundamental human rights and freedoms, mostly providing for civil and political rights. However, it does not cover the full range of rights and freedoms, such as equality before the law, the right to take part in government, an enforceable right to compensation for unlawful arrest or deten-

tion, the right to leave one's country, and gender equality. Moreover, in Zambia, these rights and freedoms are subject to a number of limitations, including a lack of respect for rights and freedom among State authorities. In addition to these general limitations, most of the guaranteed rights contain numerous derogatory clauses.

PHYSICAL VIOLATION OF PERSONS

Physical violation of persons was not uncommon during the UNIP era, especially after 1973. The 1996 Munyama Commission Report and various Amnesty International reports between 1997 and 2005 capture evidence of Zambians being harassed by State security wings for exercising their freedom of expression. In March 1996, two journalists were imprisoned for expressing their opinions in *The Post*, their constitutionally-protected personal liberties and their right to a fair trial were violated.³ Even more damaging was that it was not a court of law that found them guilty, but a parliamentary committee that sentenced them to indefinite detention. It took international pressure for government to reverse this decision. This incident propelled civil society organisations (CSOs) to lobby, through calls for respect for the rule of law, for constitutional reforms that would protect freedom of expression.

Table 1: Reporters Without Borders – Worldwide Press Freedom Indices

Year	Rank
2002	81
2003	86
2004	100
2005	90
2006	93
2007	68
2008	74
2009	97
2010	82
2011	86

Table 1 charts respect for press freedom in Zambia since 2002 and gives an indication of how far the country has come in improving press freedom. The table shows some improvement in media freedom in 2007 and 2008. This can be attributed to several factors. For example, in 2007, government established a National Constitution Conference to review the Mung'omba Draft Constitution with a view to setting up a new Constitution. The Constitution-making process was driven by activism within media and civil society so as to include media freedom and freedom of information, among others, in the new Constitution. The same period saw an increase in the number of community radio stations creating a platform for exchange and dissemination of information.



Further, Zambia adopted an Information and Communications Technology (ICT) Policy to regulate and coordinate the ICT industry as the country joined the rest of the world in the digital migration process. Another reason for an improvement in the ranking is the conclusion of the Independent Broadcasting Authority (IBA)/Zambia National Broadcasting Corporation (ZNBC) court case, which led to the IBA being able to operate.

The late Frederick Chiluba, much like Dr Kenneth Kaunda during his presidency, used “emergency legislation” to intimidate or silence those he saw as threats to his presidency.⁴ For example, in March 1993, 27 government opponents were detained without charge or trial when President Chiluba declared a State of Emergency alleging UNIP was plotting to overthrow his government,⁵ an incident referred to as the Zero Option Saga. When some of these detainees claimed to have been tortured at the hands of security wings and the MMD vehemently denied these claims, Chiluba was led to establish the Munyama Human Rights Commission. In May 1996, Chiluba successfully pushed for an amendment of the Constitution that would bar Kaunda from running for President by including a parentage clause that bars anyone whose parents are not Zambian by birth or descent from running for President (Article 34, Clause 3, Section b).

The Munyama Human Rights Commission had a mandate to investigate and establish reports of human rights abuses between 1972 and 1993; it was effectively examining the Kaunda government’s human rights record. The final report was published by government more than a year after its submission. Government’s White Paper on human rights, released at the same time, declared that a permanent human rights commission would be established that would submit annual reports to the President and Parliament. It would also have the power to freely investigate complaints of violations, visit jails and detention centres, and recommend to the President and Parliament effective measures to promote human rights and provide compensation. But there was no clear directive in the report about accountability for past human rights abuses.

The Munyama Commission also investigated prison conditions. It found that conditions in prisons were appalling, with food that was both insufficient and unfit for human consumption, widespread illness, and denial of medical treatment. Prisoners were also denied basic necessities such as soap and clothing. Degrading conditions experienced in prisons is one matter that is being addressed under the Administration of Justice programme being implemented by the Zambian government through the Prisons Service and other law enforcement agencies. A parole system has been introduced in the prison system and ways are being explored of improving conditions to make prisons more reformatory for people who come into conflict with the law.

State security forces, in particular the Zambia Police Services and the Paramilitary Service, have long been viewed with suspicion by many citizens in the country and accused of having a poor human rights record. The Zambia Police Services is responsible for enforcing the Criminal Penal Code, which includes conducting community policing, arrests and prosecutions. The Paramilitary Service is seen more for its exercise of force, and is used in providing

armed guarding services to the State and strategic institutions. It has also been used in quelling riots and demonstrations. It is here that, more often than not, the use of excessive force by the State has been noticed. Many Zambians associate the police with carrying out unlawful killings. The Legal Resource Foundation (LRF), an independent human rights organisation in Zambia, documented unlawful killings by the security forces between 2005 and 2009.

Table 2: Various crimes and numbers

Year	Crimes	Numbers
2004–2005	Unlawful deprivation of life	3
	Torture and false imprisonment	3
	Mob violence	3
2005–2007	Unlawful deprivation of life	2
	Torture and degrading treatment	2
2007–2009	Unlawful deprivation of life	5

After a public outcry, the MMD government issued a directive to restrict the use of force by security forces when apprehending suspects. However, this did not have the desired effect. In April 2007, two police officers allegedly beat suspect Alfred Nyanga to death in Mumbwa. In February 2008, police at Chelstone Police Post in Lusaka shot and killed 20-year-old student Maybin Chongo and the police claimed that they suspected the young man to be eluding capture.

Tensions between police and citizens boiled over in November 2010 as residents in Lusaka's Garden Compound turned to violence, attacking a local police post and setting vehicles on fire to protest the death of a local resident who was beaten to death for loitering, despite the Penal Code clearly stating that police are required to escort loiterers home as a way of ensuring they get to their destination safely. In January 2011, protesters gathered in Mongu and Limulunga and organised a peaceful protest to make demands on government to restore the Barotseland Agreement (BA) of 1964 in Mongu, Western Province. In response, government unleashed a violent crackdown against the protests in the name of national security. The police failed to uphold the Public Order Act (POA), thereby failing to ensure that citizens were able to exercise their fundamental rights. One possible way of ensuring greater respect for rights and accountability can be seen within the draft Constitution (2012), a reform introduced by the parliamentary-appointed Technical Committee (TC). The draft institutes a Constitutional Court as part of the judiciary, and has gone a step further by giving the courts power to make judgments on all civil, criminal and constitutional matters. This will ultimately reduce the incidents of police brutality, especially if civil society, churches and media increase awareness campaigns to make people aware of not just their rights, but the existence of the institutions meant to uphold them.



TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Constitution prohibits torture, cruel and inhuman or degrading treatment or punishment of suspects under the custody of Law Enforcement Agencies (LEAs). An Amnesty International report published in 2006 revealed that “torturers carry out their business in secret places across the country”.⁶ Some of the torture techniques used include the *kampelwa* or swing, where victims have their hands tied behind their back and their feet tied together, and are then suspended from a metal bar by their bound hands and beaten as they swing. There is also a specially designed room at Lusaka Central Police Station, office of the Criminal Investigation Division, commonly known as C5, which victims of torture describe as brutal. The C5 division is known for its ruthless but effective investigative skills. However, the unit has at times been heavily criticised by the public for the high number of innocent civilians that have lost their lives in the crossfire. It is, however, difficult to assess if any of the police officers involved have been prosecuted as such information has not been made public and efforts to get more information from the police public complaints authority proved to be challenging. Some families of victims feel that government has not done much to bring the accused officers to justice and offer compensation to aggrieved families. There have been recommendations that the Police Public Complaints Authority (PPCA) be allowed to recommend to the Inspector General of Police (IG) that police officers be dismissed for misconduct.

The Munyama Commission investigated allegations of police torture and ill treatment of detainees. Government has taken some steps to address the commission’s findings. Since 2006, police officers have been required to go through basic training, which includes education in human rights. The Zambia African Peer Review Mechanism (APRM) Country Self-Assessment Report recommends the need for constitutional provisions to be strengthened through the creation of a specific offence of torture under the Criminal Procedures Code (CPC), in the same way as the amendments to the CPC, the Penal Code and the Education Act have outlawed corporal punishment.⁷ Again, the draft Constitution refers to torture as a specific offence, but this needs to be enforced by reforming the CPC and the Penal Code for it to have effect.

PRISON AND DETENTION CONDITIONS

Zambia’s prison conditions do not meet international standards as indicated by a recent report by civil society,⁸ which found that the Zambia Prisons Service has failed to provide basic nutrition, sanitation and housing for prisoners. As of 2009, Mukobeko State Prison housed 15,300 prisoners, despite being built to accommodate only 5,500. Lusaka Central Prison was initially designed to accommodate 200 prisoners and now holds more than 1,500 prisoners. Prisoners are held in deplorable and inhuman conditions, with no sanitation, dilapidated or zero infrastructure, poor health facilities and inadequate food supplies.

On 5 April 2012, the Vice-President, Guy Scott, became Zambia's first high-level official to visit Mukobeko Maximum Security Prison in Kabwe. He described the poor conditions there as "hell on Earth, to the extent that the current conditions left the inmates de-humanised".⁹ Stemming from this visit, the then Minister of Home Affairs, Kennedy Sakeni, announced that government would review the Prison Act and increase funding to the Prisons Department to improve the conditions of detainees.¹⁰ This was after he inspected police stations, immigration offices and prisons in Mansa, Chembe, Kashiba, Mwense and Nchelenge.

Generally, the criminal justice system faces a number of challenges, ranging from prolonged detentions, a lengthy legal system to a lack of infrastructure, but these are being addressed through gradual judicial reforms in the country. In 2003, the Police Professional Standards Unit (PPSU) was established to investigate corruption, arbitrary arrests and detention and other forms of unprofessional behaviour in the Zambia Police. As of 2009, the PPSU has handled three cases. Additionally, the Ministry of Justice is one of the sector ministries that is undergoing decentralisation by establishing offices at district and provincial levels by January 2013. The aim of this is to improve access to justice for all by speeding up the disposal of cases and taking these institutions closer to rural communities.

The Juvenile Act of 1956 governs juvenile justice, which itself is unable to deliver justice to juveniles. One of the key challenges is that customary law also regulates issues relating to children in constitutional and statutory legislation. The law provides for children to be separated from adults when in detention at police posts and stations, but many police stations lack such infrastructure. In 2005, the following police stations were visited: Lusaka Central, Kabwata, Ndola Central, Choma and Matero, and in all of these children were not separated from adults.¹¹ The Patriotic Front (PF) government has announced plans to build new prisons, but it is not clear if these plans include creating juvenile detention centres.

66. *To what extent are people able to protect themselves against discriminatory treatment by the State? (6)*

Article 23 of the Constitution states that no law shall make any provision that is discriminatory either to itself or its effect, and describes discriminatory as "affording different treatment to different persons mainly to their respective race, sex, tribe, marital status, political opinions or the like".¹² However, persons with disabilities in Zambia have long been victims of stigma and excluded from national development policy. The Zambia Agency for Persons with Disabilities (ZAPD), reports that ignorance and neglect have gravely contributed to the marginalisation and isolation of persons with disabilities, which also has negative effects on national development.¹³ The 2000 Population and Housing Census reported that at least 10% of the Zambian population has a disability with the highest number living in rural areas. The majority are employed formally or informally in the agriculture sector. This data also acknowledges that most persons with disabilities live in poverty. This problem is exacerbated by extremely low literacy levels and the fact that female persons with disabilities face more barriers than their male counterparts.¹⁴ Currently, persons with disabilities are also denied



freedom of movement as there is no law that deliberately requires all public buildings and public transportation to be accessible.

The MMD government was praised by CSOs such as Zambia Federation of the Disabled (ZAFOD) and ZAPD for being steadfast in improving the lives of persons with disabilities by enacting laws and policies that seek to empower them, by supporting their right to decent work, access to basic services, social security and entrepreneurship development. The MMD government had taken some important steps in removing barriers that exclude persons with disabilities and had included their needs in national planning, such as the Vision 2030 agenda, which states that all people must be provided with opportunities to improve their well-being. The Sixth National Development Plan (SNDP) seeks to enhance the full participation, equality and empowerment of persons with disabilities through increased government spending, mainstreaming of inclusive policies, and the continued establishment of systems and organisations that will ensure this goal is met. In addition, the Citizen Economic Empowerment Commission (CEEC) Act of 2008 seeks to empower persons with disabilities to start businesses that will eventually create jobs for others through access to loans. As a result of such policies, many persons with disabilities have formed community-based organisations (CBOs) that help them to generate income. An example of this is the Lwamandamba Disabled Community Organisation in Kasempa District, which was established in 2005 and four years later acquired a hummer mill through the Constituency Development Fund (CDF).

Recently, the PF government reviewed the Persons with Disabilities Act of 1996 to include affirmative action, the recognition of sign language as one of the official languages of the country, the introduction of e-learning and more. The current education system does not favour persons with disabilities; for instance, there is no official sign language that is recognised across the country, making learning at secondary school and tertiary level very difficult. Once enacted, this revised Act will include measures to ensure accessibility to all public buildings and public transport systems. It also includes measures to expand special education to include the deaf to the highest level of tertiary education, and measures for affirmative action in areas of employment.

Article 27 of the draft Constitution further protects citizens from discrimination based on disability, religion, conscience, belief, culture, language, pregnancy, and health, tribal, social or economic status. However, Zambia has a dual system of law, and customary law does not fully recognise women's rights, such as the right to land, the right to change the nationality of their children, and the right to choose a family name. The current draft Constitution has included a provision that explicitly states that any form of customary law that contradicts provisions in the Constitution will be considered irrelevant.

There has been an increase in the number of sexual harassment cases reported to the police by individuals and women's organisations such as Young Women's Christian Association (YWCA). The increase in cases reported may not necessarily mean that sexual harassment has been on the increase, but that people are more aware of it and of the reporting systems in place. In public and private life, Zambian women face discrimination, which can

largely be attributed to retrogressive traditional norms that tend to take precedence over the Constitution. Government is currently reviewing labour reforms and it is hoped that the new legislation will take into consideration stringent measures that will protect women. The Minister of Home Affairs, Fackson Shamenda, has promised to work with organisations to ensure that the reviewed labour laws protect women from all forms of discrimination in the work place and include strong laws against sexual harassment.¹⁵ Progress has also been made in the constitutional reform process. The draft Constitution has provided for Article 52 on further rights for women where women are recognised as decision makers. This is a huge achievement for the women's movement and can become a reality with massive sensitisation ahead of the referendum.

The Intestate Succession Act of 1989 recognises women's rights to inheritance under statutory and customary law. However, this could be interpreted in a contradictory way under Article 23 of the Constitution which explicitly leaves customary issues regarding women to be dealt with under customary law. This often subjugates women to traditional and cultural beliefs that do not adhere to human rights norms.

Article 1.1 of the 1996 Republican Constitution states that all Zambians are equal and entitled to enjoy fundamental rights and freedoms regardless of race, place of origin, political opinions, colour, creed, sex or marital status. However, as in many countries, it does not protect sexual orientation. The Penal Code of Zambia, Cap 87, Section 155-157, criminalises homosexual behaviour, making it punishable by 14 years in prison. Lesbian, Gay, Bisexual, and Transgender (LGBT) persons face societal abuse, discrimination and violence.¹⁶ They are not protected against discrimination in employment, housing, or access to education and health care. A majority of Zambians feel that LGBT persons are an abomination to society and that their behaviour is immoral.

The question one must seek to answer is: How does Zambian society deal with LGBT persons who are Zambian nationals and are entitled to the same rights as everyone else? If the draft Constitution is adopted in its current form, Zambia will find itself in a situation whereby LGBT persons can exercise their right to freedom of movement through a Constitutional Court, as it explicitly states, "Justice will be done for everyone without any discrimination".¹⁷ The National AIDS Control Programme does not address same-sex relationships. This discriminates against those infected with HIV, and hinders accessibility of voluntary counselling and testing. A report by Global Rights asserts that LGBT persons are subjected to arbitrary arrest and detention, "discrimination in education, employment, housing, and access to services, and extortion – often with the knowledge or participation of law enforcement authorities".¹⁸ Amidst vociferous attacks by some churches and citizens, the PF government has taken a bold stance by supporting gay rights in Zambia.¹⁹

A significant ruling was made in a court case, Stanley Kingaipe and Charles Chokoole vs. the Attorney General, in 2011. Kingaipe and Chokoole claimed they were tested for HIV and put on anti-retroviral drugs without their consent. They further alleged that they were dismissed on the basis of their HIV status. While the plaintiffs could not prove they were



dismissed because of their status, the court did find that they were tested without their consent. The judge ruled that mandatory HIV testing was a violation of human rights.²⁰

67. *To what extent are people able to use the legal system to protect their person and property against the State?* (6)

Article 17 of the Constitution provides for the protection of people and their property. The legal system today is far more effective in protecting property. To ensure accessibility for all, government introduced the Legal Aid Board (LAB), which was established under the Legal Act No. 17 of 2000 as one of the judicial reforms. The LAB provides legal services to Zambians who cannot afford to hire a legal practitioner for representation in court. Several civil society organisations, including the Catholic Commission for Justice and Peace (CCJP), the National Legal Aid Clinic for Women (NLACW) and the Legal Resource Foundation (LRF), have come on board to complement efforts of government and to provide free legal services as a means to improve access to justice for the poor. NLACW was established in 1990 under a project by the Law Association of Zambia.²¹ With the ongoing judicial reforms, it is hoped that the LAB will be expanded to serve all 74 districts and that the department will be de-linked from the Ministry of Justice to make it more independent and effective.

68. *How effective is the protection of freedom of expression, information and assembly for all persons irrespective of their social grouping?* (6)

Articles 19, 20 and 21 of the Constitution guarantee freedom of conscience, expression, assembly and association. Yet Clause 3 in Article 20 includes draconian laws that allow for broad interpretation that can restrict freedom of expression. For example, the Defamation Act of 1964 empowers the Zambia Police to arrest and detain anyone found defaming the President or for being in possession of “seditious materials”. In such situations, the law gives too much discriminatory power to the arresting police officer and the Minister of Home Affairs, increasing the vulnerability of citizens.

The State has restricted freedom of expression through the use of the State Security Act of 1969, which limits free speech in the name of national security.

Journalist Roy Clarke was arrested and charged in 2004 for allegedly defaming the President in a column published in *The Post*. Government attempted to deport Clarke, who was a British national, but a 2004 court ruling prohibited deportation. Between March and June 2012, police arrested two men in separate incidents for defaming the President while socialising in public places. Following these arrests, the leader of the United Party for National Development, Hakainde Hichilema, called President Sata a “hyena without a plan”.²² Police did not arrest or caution him, demonstrating how the Act is inconsistently and unfairly applied.

Freedom of assembly is guaranteed under Article 21 of the Constitution. However, the use of the POA of 1996, especially the police powers of detention and restriction, and their

powers to approve or disapprove assembly of persons, is causing anxiety. The use of these powers, exercised by successive governments, interferes with two important fundamental human rights guaranteed by the Bill of Rights, namely, the right to freedom of movement and freedom of assembly. It is thus possible to obstruct the full participation of political opposition groups and parties in the political process.

While the POA has been susceptible to abuse, it has also been applied appropriately, depending on the extent to which the police act professionally. For instance, during the 2006 and 2008 elections, police allowed political groups to hold meetings and conduct campaigns. Election monitoring groups applauded the practice and were encouraged by the nascent trend as it contributed to enabling political parties and citizens to exchange political thoughts to inform choice. It also proved that, where the police place policing responsibilities on citizens, including political organisations, things can run smoothly.

FREEDOM OF ASSOCIATION AND PARTICIPATION

69. *How secure is the freedom for all to practice their own religion, language and culture?* (8)

Zambia has long been a multicultural, multi-ethnic, multiracial and, most importantly, multi-religious State.²³ The slogan “One Zambia, One Nation” was promoted after independence to build a sense of national unity, and avoid notions of regionalism and tribalism. Since independence, the country remains a unitary State despite the evident diversity of its people, and there are no known conflicts or feuds that have been ethnic-based. While undertones have started to emerge, with citizens identifying themselves with regions or particular ethnic groups, this does not subtract from the immense gains that manifest in Zambia having high levels of intermarriages and mobility across the country.

As such, the freedoms of religion, language and culture are constitutionally protected. In 1996, controversy erupted when President Chiluba unilaterally amended the Constitution’s Preamble to proclaim Zambia a “Christian Nation”. It is important to note that this clause could easily be manipulated; for example, government or even private persons could invoke the provision of a Christian nation to discriminate. Since its inclusion in the Constitution, its practice has not been fully explained or subjected to interpretation. The current constitutional reforms have increased the debate on the removal of any explicit reference to State-sanctioned religion from the Constitution.

There are more than 70 tribes in Zambia, each speaking a different language, although English is the official language. Civic organisations, such as Christian Information Network, are advocating for the inclusion of a standard sign language. This is because sign language varies from area to area and Zambia does not have a uniform standard of sign language that can be recognised across the country.

In 1964, Kaunda, the then Prime Minister of Northern Rhodesia, Mwanawina Lewanika III, *litunga* of Barotseland (now Western Province), and the government of the United



Kingdom signed the BA. The purpose of the agreement was to allow Barotseland (which was a British Protectorate) to be part of Northern Rhodesia and become one nation called The Republic of Zambia. The agreement was necessary at that time because it paved the way for the independence of Northern Rhodesia. The agreement recognised the whole of Western Province and other parts of Zambia that form the Barotse Royal Establishment (BRE) as a State within a State. The agreement states that, “The government of the Republic of Zambia shall have the same general responsibility for providing financial support for the administration and economic development of Barotseland as it has for other parts of the Republic and shall ensure that in discharge of this responsibility, Barotseland is treated fairly and equitably in relation to other parts of the republic”.²⁴

BRE autonomy is a deeply contentious issue among the Barotse and government. During the run-up to the 2011 general elections, demonstrators organised peaceful protests in Mongu and Limulungato demanding that government uphold the promises made in the BA. In response, government embarked on a violent crackdown under the guise of national security. As the opposition at the time, the PF recognised a political opportunity and promised the Barotse that a PF government would restore the agreement. After coming into office, President Sata constituted a commission of inquiry into the government crackdown that left two people dead, and allegations of unlawful arrests and torture by police. When the results of the inquiry were presented to the President, Sata said that government would abide by the BA and open a closer dialogue with the BRE to find a mutually acceptable solution.

The BRE leadership remains determined to achieve secession, arguing that government is not willing to restore the Agreement. This position has the potential to create violent conflict as tribes within the province, particularly the Mbundas and the Nkoyas, as well as other disgruntled citizens, rose against the BRE leadership for refusing to join the rest of Zambia. Contact and discussions between the BRE and government are secret, and there has been no public release of information. Although very little information is available from the BRE, reports from the province state that the majority of the people have shunned the Constitution-making process and have not made any submissions. The TC responsible for drafting the new Constitution confirmed that, in places such as Sikongo Constituency, there has been no citizen input on constitutional reform. This has raised concerns over the BRE’s leadership and whether it is allowing citizens to participate.

70. *To what extent do people feel free to associate with others in order to influence government? To what extent does government action encourage or discourage people to associate with others in order to influence government?* (6)

71. *To what extent do people organise themselves into associations in order to influence government and to what extent are the associations of civil society independent of government?* (5)

Levels of participation in Zambia vary depending on the social and economic situation of communities. The majority of the Zambian population is found in rural areas, where most

are occupied with meeting their basic needs. In most cases, breadwinners have to choose between attending a council meeting or going to the market to sell basic foodstuffs to put food on the table. When people are occupied with meeting basic needs, they find little time to associate themselves with others to influence government, unless it is related to securing fertilizer inputs and other farming inputs at the local agricultural cooperative.

Civil society in Zambia comprises non-governmental organisations (NGOs), faith-based organisations (FBOs) and Community-Based Organisations (CBOs); however, many of these institutions are based in urban areas.²⁵ Membership is voluntary and many have operations or networks that spread throughout the country. These associations are regulated under the Societies Act of 1958 (Cap 119 of the Laws of Zambia), which is the primary piece of legislation used to regulate associations. It is widely accused of being incompatible with Zambia's democratic dispensation. This law has been manipulated by various governments to infringe freedom of association. In particular, Sections 13 and 23 provide the Minister of Home Affairs and the Registrar of Societies with broad powers to cancel the registration of any society. In 2004, the Southern Africa Centre for the Constructive Resolution of Disputes (SACCORD) was "deregistered for alleged engagement in activities likely to compromise state security".²⁶ However, this did not hinder the organisation's ability to continue making an impact on policy matters and decisions.

Ruling political parties have also used the Act to score cheap political advantages. In 2012, the MMD, the second-largest political party, was deregistered by the Registrar of Societies for failing to pay society registration fees going back 20 years, amounting to USD75,000. The move attracted a lot of criticism and is widely considered to be the PF's attempt to intimidate the opposition. The MMD took the matter to the High Court, which ruled that the Registrar's action was excessive and unreasonable.

Government launched the State of Governance Report in 2009 in an effort to "systematically monitor governance in the country". One of the broad objectives of the Report was to gather the population's perception on democratic process.²⁷ The Report does not at any point refer to civil society as a platform for people to associate with others to influence policy, but it states that people are free to associate with others through their respective churches. This is where the majority of people can influence government, because the church has emerged as a strong platform for popular participation.

Also, the NGO Act of 2009 specifically targets NGOs, and does not apply to professional clubs or groups, political parties or trade unions. It criminalises unregistered organisations. Anyone operating an unregistered NGO is subject to a fine and/or imprisonment for up to three years.²⁸ The Act requires NGOs to re-register every five years,²⁹ which is a very costly administrative requirement.

72. *How far do women participate in political and public life at all levels?* (5)

Article 2 of the Constitution recognises that every Zambian is entitled to enjoy fundamental rights regardless of sex or marital status.³⁰ Despite this guarantee, many women are ex-



cluded from public life. Government has not enacted legislation that includes affirmative action provisions, such as quota systems, to enhance the participation of women in decision making at all levels of government. As a result, Zambia has a disproportionate number of women serving in the National Assembly and other government posts.

Since 1991, the number of women in Parliament and Cabinet has been reduced because, in the one-party era, there were more women in all sectors of decision making. In as much as the PF, when in opposition, sent the largest number of female MPs to Parliament in the 2006 elections, the party failed to double this figure in the 2011 elections as it had promised in its campaigns and manifesto. This failure can be attributed to the predominantly male Party Adoption Committees. There is a need for political parties to encourage the participation of women in national executive committees and to recognise that women are equally capable of being in leadership positions and taking decisive actions.

To date, the PF government has made up for the poor representation of women in Parliament through the appointment of more women in decision-making positions. For instance, the current Inspector General of Police (IG) is female, and many of the provincial police commanders are women. Women also head the office of the Auditor General (AG), Drug Enforcement Commission, and Anti-Corruption Commission (ACC). As part of initiating judicial reforms, women have been appointed to hold the position of Acting Chief Justice and Deputy Chief Justice. There appears to be a deliberate policy to fill most strategic decision-making positions with women.

73. *How free from harassment and intimidation are individuals and groups working to protect human rights?* (6)

Section 31 of the NGO Act of 2009 provides for the creation of an NGO council, to be appointed by government, which will be established to develop, administer and impose a code of conduct.

Additionally, Section 26 of the Act requires CSOs to reveal their sources of funding. The Act gives discretionary powers to the Minister of Home Affairs regarding the registration of NGOs, but does not provide clear parameters within which the ministry must operate. Through this Act, the Minister can deny any NGO registration, even after the board of the NGO Council makes a recommendation to approve it. The Minister has the power to appoint the chair and vice-chair of the NGO Board. In addition, there is supposed to be a mother body, the Zambia Congress of Civil Society, that appoints board members, but the Minister also has the power to overrule the proposed names. The board of the NGO council is bloated and dominated by ministers (15 of the 16 board members are ministers) and it has been given the functions of registering NGOs, processing applications of NGOs, receiving and discussing annual reports, and approving the work of NGOs operating in the country. What stands out in the Act is that there are no deadlock mechanisms to ensure that the Minister does not use discretionary powers to manipulate the law. This seriously infringes on the operations of civil society. For NGOs working to protect human rights, the NGO Act

of 2009, if fully implemented in its current form, will give government enough powers to aggressively harass and intimidate groups. It is worth noting that, out of the 26 provisions, only 10 are progressive while the rest hinder civic space. Currently, under the Societies Act, organisations that wish to advocate for the rights of LGBTs are not allowed to register their group legally. The PF government has shown commitment to reviewing the NGO Act of 2009, but claims that the laws of Zambia state that an Act must be operational for a period of 45 days before it can be reviewed.³¹ Civil society remains slow in moving towards the establishment of a self-regulatory framework.

POLITICAL PARTIES

74. *How freely are political parties able to form, recruit members and engage the public?* (8)

The formation and registration of political parties is governed by the Societies Act of 1958 (Cap. 119 of the Laws of Zambia). Parties are free to recruit members and membership drives happen at all levels of the party structures, with membership fees remitted to Party National Secretariats as required by individual party constitutions. Membership is voluntary and open to all Zambians over the age of 18 who accept and believe in a particular party's vision. All political parties are free to engage with the public.

75. *How free are opposition or non-governing parties to organise with the legislature and within the party?* (7)

Parliament is open to all elected members, ruling or opposition, and these Members of Parliament (MPs) are required to participate in policy debates in the house. Opposition MPs are allowed to chair select parliamentary committees and sit on parliamentary committees. A local council is made up of MPs in the districts, elected councillors and two representatives of the Chiefs.³² In addition, opposition political parties are free to organise themselves through parliamentary committees and parliamentary caucuses.

76. *How fair and effective are rules governing party discipline in the legislature and within the party?* (6)

Political parties in Zambia are governed by their own constitutions. Parties have central committees or national executive committees that are responsible for the general governance of the party. Political parties elect their leaders through a convention that is held after a specified period, depending on the party's constitution's provision, and that constitution is used to decide whether the process followed was democratic.



77. *How far are parties effective membership organisations, and how far are members able to influence party policy? Are all individual members privy to sufficient information about their party, including details of private donors?* (4)

All political parties in Zambia suffer from poor internal democratic systems, with ordinary members having no influence on party policy, which is usually determined by those who sit in central and executive committees. Thus it was no surprise to find that the general feeling among ordinary party members was that the political parties were not responsive or reflective of their ordinary members.³³

78. *To what extent are political parties able to aggregate interests of social groups?* (4)

Though political parties are relatively easy to form, they have seriously flawed internal systems regarding democracy. Party policies and decisions are highly influenced by their founders or pioneers, which means that only the pioneers of a particular party are allowed an opinion on party affairs. Parties lack the capacity to conduct research to identify issues of national development to support democratic governance. Most parties do not have policies that are inclusive of groups such as youth, women and persons with disabilities. Though parties do have within their structures what they call “youth wings”, little attention is paid to the opinions of these groups and young people are mostly seen as useful in staging demonstrations and campaigning for party leaders.

Women’s participation, even at party level, still leaves much to be desired in the Zambian system of politics. Though there are women in decision-making positions in the respective parties, representation is still poor and skewed in favour of men, reflecting the patriarchy in Zambian society. The centralisation of decisions in the central committee further restricts participation of ordinary party members.

Zambia Centre for Interparty Dialogue (ZCID) has as its mandate to provide a platform for dialogue and promote inter-party relationships among political parties. The institution is a member of the Netherlands Institute for Multiparty Democracy, an international organisation that helps build capacity in political parties in managing their affairs and strengthening their relationships. ZCID has not done enough to live up to its mandate and it has been argued that this is because the organisation lacks funding. Zambian politics are dominated by name calling and non-issue-based debates that are personality-centred. According to the State of Democracy Report, there is a general observation that citizens do not participate in politics because they are not inspired by the behaviour of leaders and the kind of politics they have adopted.

Traditional leaders have a great deal of influence on the stronghold of a party because they are perceived to have authority over particular ethnic groups or tribes. People in rural areas still feel the need to be loyal to their traditional leaders who openly ask them to show their allegiance to a specific political party. Political parties have noted the influence of traditional leaders and use these leaders to aggregate interests of various social groups.

Traditional leaders themselves also use this power to aggregate their interests, believing they have a role to play in building a democratic culture, but feel “high pressure from the government of the day to give unquestionable support to the government even at the expense of their subjects”.³⁴ Traditional leaders would like to see the powers of the President curtailed as this office has the “power to place sanctions or de-gazette a chief if a chief speaks out against the government”,³⁵ despite traditional leaders being responsible for providing checks and balances by speaking out against government policies that do not promote the well-being of their subjects.

MEDIA RIGHTS

79. *To what extent does the legal system ensure that the print and electronic media are free to print or say what they want about those in power in both government and the private sector?* (4)

Although the Constitution guarantees the protection of freedom of information, Zambia has a number of laws that restrict access to information, such as the Official Secrets Act of 1969 and the State Security Act of 1969, which prohibit government officials from revealing information of public interest without official approval. These laws give the government the liberty to question both print and electronic media on what they print or broadcast. The PF campaigned on promises that supported media self-regulatory methods and the enactment of a Freedom of Information Act. A task force was established in 2002 to review the feasibility of such an Act, but the government has yet to make progress on the issues. Media practitioners are anxious to have freedom of information legislation because of the retribution they have faced from State machinery and the challenges the public has experienced in accessing information useful for development across the nation.

80. *To what extent are people and organisations able to disseminate their views via print and electronic media? To what extent do citizens have equal access to adequate information, including news and other media?* (5)

81. *To what extent are the print and electronic media independent from government? How pluralistic is the ownership of the print and electronic media?* (6)

People are generally free to disseminate their views via print and electronic media. During the MMD era, people used community radio stations and *The Post* newspaper. With the change of government, more diverse views are being captured in State-owned media, as witnessed by the increase in the number of letters to the editors in the State-owned press.

Zambia has nine television stations broadcasting across the country, including ZNBC TV1 and 2; Copperbelt TV (CB-TV) which broadcasts on the Copperbelt and some parts of Ndola; Central Broadcasting Company, which broadcasts in Lusaka; and Mobi-TV, which



broadcasts as a free-to-air broadcast. Others are Muvi-TV, which broadcasts across the country via Digital Satellite Television (DSTV); North Western TV; Africa Unity; and Trinity Broadcast Network.³⁶ Zambia has two main State-owned newspapers, one State-owned television station and one State-owned news agency. All government-owned media promotes government development programmes and policies.

There has been an increase in the number of radio stations, especially community radio. There are 40 radio stations across the country, of which three are State-owned, 11 are commercial stations, 16 are community stations, seven religious and three educational. The State-owned ZNBC covers 65 out of 72 districts, while community and religious radio stations are widespread. Programmes on community radio stations are in local languages, guaranteeing participation by local communities and creating a platform for open dissemination and access to information through radio.

The opinions aired on community radio stations, of which many are independent and privately-owned, are largely pluralistic. The Catholic Church in Zambia, which tends not be afraid of criticising government policy, owns seven of the 16 community radio stations in the country.³⁷

Media has been pushing for self-regulation. The process began with the creation of a self-regulatory framework that was spearheaded by the Voluntary Media Council of Zambia (MECOZ) formed in 2002. The MMD government refused to recognise MECOZ, saying it was not inclusive, particularly because *The Post* refused to join.³⁸ In 2009, government prepared a Draft Media Bill aimed at regulating the operations of journalists in the country, and consultations between the media and government culminated in the formation of Zambia Media Council (ZAMEC) as a regulatory body for individual reporters, member institutions and associations. On 7 July 2012, the PF officiated at the launch of ZAMEC and promised to endorse the organisation after receiving minutes of the general meeting.³⁹

82. *To what extent does media influence Zambian society?* (8)

The level of influence the media has on Zambian society can be analysed from two sides: periodic and non-periodic. Periodic influence would be during an election year where a particular candidate is given an audience by the media for various reasons. For instance, the PF presidential candidate was well covered in the leading private newspaper, *The Post*, and several other private radio stations because private media provide space for dissemination of information, is not restrictive regardless of content, and is less administratively bureaucratic compared to State-owned media. The outcome of the 2011 general election confirms that the media has some influence on society. For instance, *The Post* gave unlimited positive coverage of Michael Sata and the PF party, while it had no or limited coverage of other political parties. *The Post* has a daily distribution average of 47,000 newspaper copies, while Times of Zambia has a daily circulation of 9,900 copies, and Zambia Daily Mail distributes 8,800 copies a day.⁴⁰

Non-periodic refers to the everyday role of the media and is based on several issues,

including policy, politics and governance. Both print and electronic media have an influence on Zambian society. The different phone-in programmes on most radio stations stimulate debate on issues of the day. A notable case in point, where the media made an impact in influencing society, was around extreme cases of gender-based violence. The media's consistency in reporting such cases resulted in an appeal to the Zambia Police Service to increase their protection of women. However, in general, Zambian media lacks consistency in the way it reports; journalists lack the capacity to follow up stories and provide adequate information to the public to enable them to make decisions. The trend of reporting has been to leave stories hanging.

In Zambia, as in many other countries, the media plays an important role in disseminating information. It is important to stress that the role of the media is not just as a vehicle for expression in the narrow sense. The media is also important as a means to enable the public to exercise their right to freedom of information. It plays a role of watchdog over the activities of government and other powerful institutions. Clearly those in the media cannot play this role if they owe a narrow loyalty to the ruling party of the day.

Media also has great potential to influence societies. In the run-up to the September 2011 election, the then ruling MMD had indirectly, through the then Minister of Broadcasting, sponsored a television programme on ZNBC. The documentary was mainly targeted at discrediting the leader of the strongest opposition political party, the PF. At first viewers showed some interest in the documentary, but they soon recognised that it focused only on an individual and was not purporting principles of democracy.

The community radio landscape is dominated by the Catholic Church, followed by Seventh Day Adventists. These community radio stations have the power to influence a large percentage of their believers; for instance, 80% of the Zambian population is Catholic. The print media has the challenges of representing diverse views and is more pluralistic, while community radio stations provide a platform for vigorous debate on political governance. Local issues can be debated on community radio stations and this is where the media can influence Zambian society.⁴¹

CONCLUSION

Zambians recognise the need to further protect and safeguard civil and political rights. The State has a good record in compliance with international and regional standards and codes of good governance. Out of the 80 instruments related to good governance, Zambia has ratified 44 of these since 1964.⁴² The country, however, has challenges in implementation, which is mainly due to lack of infrastructure, especially at local level. It is hoped that with the acceleration of the decentralisation policy, effective use of resources and political will, these challenges can be addressed.

The 2011 Mo Ibrahim Index of African Governance rates Zambia as having improved its quality of governance overall, particularly between 2006 and 2010, and the country thus



received a score of 57 out of 100 for governance quality. This ranking could be attributed to the number of reforms that were undertaken in this period, such as the review of the Police Act, targeted judicial reforms and the fight against corruption. According to the Mo Ibrahim Index, the country is ranked 16th out of 53 countries. The Zambia Afrobarometer survey of 2009 shows that, from 1999 to 2005, the country's democratic process was in decline and, even though support for democratic processes remained high, about 50% of Zambians were dissatisfied between 2005 and 2009. This could be attributed to the lack of institutional capacity to strengthen and uphold human rights, and the poor quality of elections and human rights as outlined in this section.

To overcome the challenges of implementation of government policies and programmes, government must ensure that it works hard to put in place measures that will curtail corruption and promote and strengthen transparency and accountability. There is need for a committed pool of policy makers and others that will implement the various recommendations for improving and safeguarding the protection of human rights. If the PF government fails to seize the opportunity with the current constitution-making process, and fails to adhere to the rule of law and provide access to justice for all, there is no way it will follow on its promises of domesticating the international and regional instruments to which Zambia is a signatory. Nor will it fulfil any of its promises as articulated in the PF Manifesto. UNIP gave Zambians freedom, MMD laid the foundation of economic growth, and now the PF must build on the positives, which did not come instantly, but have been an ongoing process since 1964. Since the PF came into power, the judiciary has proved to be more independent in its work than ever before and many are pleased with the ongoing judicial reforms.

Most of the challenges that the country faces require the review and repeal of legislation that infringes on civil and political rights, as noted in this section. It is through such measures that the existing legal framework can be strengthened to allow accessibility for all. Government should seriously look at the findings and recommendations in the Zambia APRM Country Self-Assessment Report, the 2009 State of Governance Report and the APRM National Action Plan of Action (NAPOA), which is a starting point in improving the quality of civil and political rights, and a way of safeguarding the peace and stability of the nation.

There is need for civil society to complement the efforts of government as it seeks to implement the Decentralisation Implementation Plan (DIP), by providing capacity-building support to elected and traditional community leaders. Civil society should also champion non-partisan support in the constitution-making process to ensure that all stakeholders support provisions that will guarantee the protection of rights for all Zambians, because the current Constitution places little emphasis on civil and political rights.

Zambia's existing legislation needs to be strengthened and while both successive governments have contributed to rectifying a number of weaknesses and moving towards democratic consolidation in the area of political freedom and democracy for all, the process has been painstakingly slow. The challenge has also been the lack of a clear road map in effective implementation plans and lack of agreement on which policies should be prioritised. This

analysis comes at a time when Zambia is undergoing its fifth constitutional review process and the country remains the only one in the region that has failed to produce an end result. This current national process is an opportune time for all interest groups to ensure that democratic reforms are consolidated. It also provides the new government with an opportunity to support and endorse the process as the current draft Constitution includes provisions that will certainly promote and protect fundamental human rights. Civil society already has issues with the process and argues that there is no legal framework to support the work of the technical committee drafting the Constitution; however, the committee was instituted under the Inquiries Act No. 45 of 1967, which was amended by Act No. 13 of 1994. It is worth mentioning that all the Constitutional Review Commissions (CRCs) were appointed using that Act. Government must avoid putting political interests first and devise mechanisms that effectively deal with corruption, inadequate human resources and possibly political interests.

SECTION SCORE: 5.8

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SECTION FIVE

HUMAN DIGNITY AND DEMOCRACY

BY CHARITY MUSAMBA AND MALEKANO MWANZA

There are three main constitutional provisions that can be directly associated with human dignity and democracy. These are the Preamble, Part Three entitled “Protection of the Fundamental Rights and Freedoms of the Individual” and Part Nine entitled “Direct Principles of State Policy” (GRZ 1996).

In the Preamble of the Republican Constitution the following commitments are explicitly stated to guarantee and uphold civil rights in Zambia (GRZ 1996:1):

- **RECOGNISE:** the equal worth of men and women in their rights to participate, and freely determine, and build a political, economical and social system of their own free choice;
- **PLEDGE:** to ourselves that we shall ensure that the State shall respect the rights and dignity of the human family, uphold the law of the State, and conduct the affairs of the State in such a manner as to preserve, develop, and utilise its resources for this and future generations; and
- **RESOLVE:** to uphold the values of democracy, transparency, accountability and good governance.



Part Three outlines the rights in relation to life, liberty, security and protection of law (GRZ 1996:4).

Part Nine is the most directly related part of the Constitution that contains provisions addressing socio-economic and cultural rights (GRZ 1996:52-53). In terms of purpose, Article 110(1) of Part Nine states that:

“The Directive Principles of the State Policy set out in this part shall guide the Executive, the legislature and Judiciary as the case may be, in the:

- a. Development of national policies
- b. Implementation of national policies
- c. Making and execution of laws
- d. Application of the constitution and any other laws

The provisions contained in Articles 110(2), 111 and 112 outline the actual rights, the extent of provision and the limitation of its enforcement. The main point with regard to socio-economic and cultural rights in Zambia is that it is the only part of the Republican Constitution that has not been amended since Zambia gained independence in 1964, and whilst these rights are wholly recognised and provided for, as illustrated further on, they are legally not justiciable (GRZ 1996:52).

This does not, however, mean that Zambia has not pursued these rights. Instead, as discussed in the following section, different regimes have employed various approaches to pursue these rights.

FROM NATIONALISM TO LIBERALISATION

A description of the mixture of approaches to socio-economic and cultural rights is helpful in understanding how the country has performed in this regard. The first Republican regime, the United National Independence Party (UNIP) led by Kenneth Kaunda, pursued an extensive State-led socio-economic development programme (Maifaila 1997:50). This approach had three key features: long-term National Development Plans (NDPs), State-Owned Enterprises (SOEs) and the Zambianisation Policy. In comparison to the conditions present at the time of independence, Zambia witnessed significant social and economic changes (Osei-Hwedie 2003; Andersson et al. 2001:11).¹

The move from a short-lived period of multiparty politics to a “one-party participatory democracy” in 1972 entailed a roll back of the extent to which citizens could claim and enjoy their civil rights. Anchored on the principle of the “Party and its Government”, the UNIP claimed to be the “authentic” representative of the people and, therefore, suppressed alternative claims of representing the people (Williams 2003:35). In fact, the articulation of dissent and opposition was only possible through the procedures provided by the Party and its Government (Erdmann & Simuntanyi 2003; Larmer 2006). A combination of economic crisis and ideological paralysis led to the overthrow of the Kaunda regime in preference of

the neo-liberal and multiparty democracy approach to development that had ascended and dominated the ideological arena by the end of the 1980s in Africa.

SOCIO-ECONOMIC AND CIVIL RIGHTS' PROTECTION

83. *How far are economic and social rights, including equal access to work, guaranteed and enforced for all? Are civil rights of the marginalised and most vulnerable protected in criminal and criminal procedure law?* (4)
84. *How effectively are the basic necessities of life guaranteed, including: (a) Clean, adequate and reasonably accessible water, (b) Adequate food, (c) Adequate housing and shelter, (d) Adequate and unimpeded access to land* (4)

CLEAN, ADEQUATE AND REASONABLY ACCESSIBLE WATER

The importance of water cannot be over-emphasised. It is impossible to engage in any meaningful activity of production, remain healthy, or maintain hygiene in the absence of clean water. Sanitation, agriculture, industry or domestic processes cannot be sustained in the absence of water.

Article 112(d) of the Constitution states:

The State shall endeavour to promote clean and safe water, adequate medical and health facilities, and decent shelter for all persons, and take measures to constantly improve such facilities and amenities (GRZ 1996:52).

Drawing from this constitutional commitment, it is stated in Vision 2030 that government will strive to provide: “A Zambia where all users have access to water and sanitation, and utilise them in an efficient and sustainable manner for wealth creation and improved livelihood by 2030” (GRZ 2006:186).²

Consequently, one of the six objectives on Water and Sanitation in the Fifth National Development Plan (FNDP) is:

To provide adequate, safe and cost-effective water supply and sanitation services development with due regard to the environment, and provision of sustainable service to more people in the rural, urban and peri-urban areas (GRZ 2009:91).

These instruments are supported by a policy framework consisting of the National Water Policy and two pieces of legislation, the Local Government Act No. 22 of 1991 and the Water Supply Act No. 28 of 1997 (CSPR 2010:73).

The performance of this sector presents a mixed picture during the period under review. There are several notable administrative and institutional achievements attained under this sector (CSPR 2010:77). These include: the launch of the National Rural Water Supply and



Sanitation Programme in 2006; the launch of the integrated water resources management and water efficiency implementation plan in 2008; and approval of the revised National Water Policy in 2010. These instruments provide a comprehensive policy and institutional set for the implementation of programmes and projects focused on increasing public access and the quality of water provision. The documents also set the parameters for the participation of various interested actors in the sector.

In addition, the National Water Resources Management Bill was presented before Parliament in 2010 (GRZ 2011:89). Also notable about this sector is the increasing role that non-State actors such as international agencies and civil society organisations (CSOs) occupy during the period under review. For instance, KfW (a German Bank) financed a total of K22.5 billion for the completion of a total of eight water supply projects with a potential to serve 107,636 people (GRZ 2010:78). In addition, civil society in partnership with international agencies such as Water Aid and UNICEF implemented projects such as the D-WASHE aimed at improving access to water in low-income communities located both in peri-urban and rural areas. Partly due to the advocacy work of various non-State actors, government made an effort in 2009 to increase financing to the water sector. The budget for water resources infrastructure development received a boost of an additional K10 billion to the usual annual K4 billion allocated to the sector for the construction of dams (GRZ 2009:91).

However, overall access to safe water is generally poor and remains a major challenge for many Zambians, especially those living in rural areas and high-density urban settlements (MoH 2009:25; *Sunday Times of Zambia* 2012). Overall funding to the sector has been low. The budget has been predominantly funded by the cooperating partners, providing almost 80% of the funding, while government's commitment only covers about 20% (CSPR 2010:75).

Some 56% of households in Zambia do not have access to improved water sources, the majority of which are located in rural areas (CSPR 2010:110). Of the 83% of households with improved sources of water in urban areas, only 49% have water inside the house (*ibid*). Only 19% of the households in rural areas have access to improved water sources (ZDHS 2007:23–24). Institutionally, this sector has continued to face challenges in the form of inadequate institutional and human resources, poor regulatory and enforcement mechanisms, and poor management.

Government itself has concluded that Zambia is unlikely to meet the Millennium Development Goal (MDG) of halving the proportion of people without access to safe water and sanitation by 2015 (GRZ/UNDP 2011:43–44).

ADEQUATE FOOD

The Vice-President of Zambia was recently quoted as having said that food security had “notably contributed to the consolidation of independence, peace and unity that Zambian citizens have continued to enjoy” (*Sunday Mail* 2012).

This statement aptly captures the link between food security, human dignity and democracy. In the case of Zambia, food entitlement for rural households is linked to agriculture, while crop production risk is a primary determinant of food insecurity. Insufficient food production capacity, lack of income, diversification and unfavourable weather conditions are the main causes of food insecurity in rural households (MoH 2009:17). Urban houses, on the other hand, dependent on wages or self-employment to address their food needs, are susceptible to insufficient income and price increases of food and other basic necessities such as fuel and housing (ibid).

There are two issues worthy of note with regard to constitutional provisions relating to access to adequate food. The Constitution provides for socio-economic, cultural and political rights contained in Part Nine, but it is without an explicit provision on access to food (GRZ 1996:52–53). Secondly, most of the official guiding documents focus largely on the element of “nutrition” and scatteredly refer to “food security”. Instead, “food security” is often attached to the agriculture sector. This is largely because emphasis has been much more on “food sufficiency” rather than “nutrition”. As a result, there has been a tendency of depending on a limited range of food products, hence compromising the nutrition status of most communities, especially those in rural areas.

According to government, “good nutrition is an important element of social and economic development, and will contribute towards achieving most of the MDGs and Vision 2030. Good nutrition also leads to enhanced education and health outcomes that consequently contribute to enhanced productivity” (GRZ 2011:6). Government acknowledges that nutritional status is determined by a number of factors, including access to adequate food, good health and sanitation; affordable food prices; steady food availability; stability of sources of income and that poverty is the major underlying factor of poor nutrition and food insecurity (GRZ 2006:320).

In line with this, government has committed itself to provide “Optimal nutritional status for all sections of the Zambian population” (GRZ 2006:322). To accompany this vision, government has also pledged “to achieve sustainable food and nutrition security” (ibid). On this basis, government adopted the following as the main objectives for the nutrition sector under the FNDP (GRZ 2009:162):

- To develop and/or advocate for policy formulation and programmes that will ensure food and nutrition security, food quality, and safety at individual household, community and national level.
- To effectively formulate, coordinate and monitor food and nutrition programmes in order to improve delivery and access to nutrition services.
- To conduct comprehensive surveys and research on food and nutrition in order to provide appropriate interventions.
- To develop human resources in the food and nutrition sector in order to improve the delivery of nutrition services.
- To reduce all forms of malnutrition, including micronutrient deficiencies, and establish safe levels of nutrient intake for Zambia.



- To provide food and nutrition awareness for positive nutrition behaviour change.

There are a few notable achievements with regard to these objectives during the period under review. First, government developed and launched the Food and Nutrition Policy in 2008 as the main guide to programme implementation (MoH 2008). Second, in 2009, government rolled out the National Nutrition Surveillance System to all nine provinces of Zambia, covering 32 districts, under the monitoring and evaluation programme (GRZ 2009:161). The purpose of this instrument is to provide timely and accurate information required for policy and programme intervention. Third, government-supported programmes such as Project Urban Self-Help (PUSH), Food Security Packs, Farmer Input Support Programme, and Rural Food for Work to supplement food availability for vulnerable groups. There was also a notable improvement in the proportion of under-five children who were underweight, falling from 19.7% in 2007 to 14.6% in 2008 (GRZ 2009:109). This was mainly due to interventions such as nutrition programmes, growth monitoring and promotion, immunisation and other child health programmes.

However, the sector continues to encounter a number of challenges. Funding and qualified human resources are usually inadequate to cater for the increasing population of low-income groups (GRZ 2009:161; MoH 2009:19). It is important to note that Zambia did not have a policy on food and food security until 2008. This might largely explain the reasons behind the poor coordination, lack of information and inadequate resources to manage this sector. In fact, government failed to meet the food security target set out in the FNDP (GRZ 2010:38). This is because much of the focus was directed towards large-scale farming activities at the expense of small-scale activities. The smallholder sector did not experience any significant increase in productivity and failed to sustain the imperative of self-sufficiency (*ibid*). During this period, although the national food balance sheet showed an upward trend, it was unstable, with food products such as fish and livestock showing a decline. In addition, Zambia experienced two maize deficit seasons between 2004 and 2008 (*ibid*). Although government rhetoric on the importance of diversification remained strong during the period under review, a significant proportion of government expenditure in the agriculture sector was devoted to maize production (*ibid*:39).

According to the Jesuit Centre for Theological Reflection (JCTR), the Basic Needs Basket (BNB) index, a monthly survey that shows the bare minimum cost of essential food and non-food items needed by an average-sized family to live a decent and healthy lifestyle, has increased substantially since 2005 by up to 96% (JCTR 2011:36).³ Unsurprisingly, Zambia continues to be challenged by both food security and high levels of malnutrition (FESNET 2008). According to the World Health Organisation (WHO) Severity Index, Zambia is rated “critical” for stunting, “medium” for wasting, and “serious” for underweight (WHO 2007). A high proportion of both rural and urban households are vulnerable to food insecurity, increased malnutrition, and the majority of Zambians are unable to purchase the basic food basket (MoH 2009:17; NFNC 2009). Furthermore, the prevalence of stunting, which stood at 45% in 2008, is considered high by WHO standards (GRZ 2009:109). This is mainly as a

result of the prevalence of both chronic and transitory food insecurity among the population (ibid).

ADEQUATE HOUSING AND SHELTER

As with food, housing and shelter are two key elements that humans cannot do without. Within the FNNDP framework, government has acknowledged that:

the availability of adequate housing is an important pre-requisite to national economic development as it is a basic need after food and clothing. Any shortfall in the housing sector, therefore, could trigger severe negative impacts on social welfare, the environment and on the general performance of the economy. Indeed housing is one of the most important indicators of poverty in the country (GRZ 2006:197).

Yet, this is one of the least developed and poorly managed sectors of society in Zambia. In 1991, the total national housing stock was estimated at 1,501,898. This increased to 2,311,988 in 2001. About 80% of the houses were informal and poorly serviced or not serviced at all (GRZ 2006:197). Furthermore, the sector operated without any comprehensive policy until 1996 (ibid). Constitutionally, the right to adequate housing and decent shelter is provided for in Part Nine (9) Article 112 sub-clause (d):

The State shall endeavour to promote clean and safe water, adequate medical and health facilities, and decent shelter for all persons, and take measures to constantly improve such facilities and amenities.

Under the FNNDP, government has espoused the following vision:

Provision of adequate and affordable housing to the majority of Zambians by 2030 (GRZ 2006:199). This vision was accompanied by the goal: “To provide adequate affordable housing for all income groups in Zambia” (ibid).

On this basis, the following are the key objectives set out in the FNNDP (GRZ 2006):

- To increase the housing stock in districts for both home ownership and rental;
- To improve the environment of unplanned urban settlements;
- To promote the development and use of local building materials for housing;
- To revise and update the National Housing Development Programme;
- To mobilise cheap, long-term finance on market for housing development in local authorities; and
- To promote adequate, affordable low-cost housing for the poorest of the poor in urban areas.

During the FNNDP, government embarked upon the construction of low-cost housing and upgrading informal sectors in 10 and 11 outlying districts of the country respectively (GRZ 2009:98). It has also been observed that this sector experienced growth that was largely



spurred by individual and private initiatives. In terms of achievements, a total of 68 low-cost housing units out of the targeted 120 and a total of 12 resettlements were upgraded country wide (GRZ 2011:69). The upgrading process included the provision of municipal services such as electricity supply, roads, street lights, drains, solid waste management, play parks, markets, bus stations, water and sanitation facilities (GRZ 2011:69).

These achievements are meagre given the extent of adequate and quality housing demands in Zambia. The situation in Northwestern Province illustrates the case in point:

The spur of various social-economic activities related to the mining industry has led to an influx of people and this influx of people has in turn caused a very high demand and pressure for existing housing stock. This is evidenced in the mushrooming of unplanned settlements and increasing property rent and number of application for plots. Therefore, it is important for government to address this problem of housing shortage in the province... (CSPR 2010:150).

It has also been observed that the National Housing Authority, the largest public institution mandated to construct public housing units, concentrated on building high- and medium-cost housing as a mechanism for it to raise resources (GRZ 2009:98–99). This focus implies that the housing needs of the poor, especially in urban areas, were not prioritised. Government acknowledged this limitation when it admitted that the lopsided pattern of development between rural and urban areas has resulted in very high rural-urban migration without a corresponding effort to provide appropriate housing in the expanding urban regions (GRZ 2011:16). However, there were also notable initiatives, mainly undertaken by non-State actors, to improve housing in Zambia. For instance, the agreement to upgrade and increase the low-income housing stock in Lusaka was finalised in 2011. Moreover, donor agencies have played a key role in upgrading unplanned settlements in various towns in Zambia. For instance, the Japanese International Corporation Agency and the Government of Zambia, through the Ministry of Housing and Local Government, embarked on a programme to upgrade most of the unplanned settlements in the capital city of Lusaka. The upgrading of the settlement will include developing water, roads and sanitation infrastructure, market development and lighting.

ADEQUATE AND UNIMPEDED ACCESS TO LAND

The connection between land and human dignity is strong. This is because all forms of human activities – economic, political, culture and social – are associated with land. Therefore, access, or a lack thereof, has serious consequences on living conditions. In terms of provision of adequate and unimpeded access to land, the Constitution states that the “State shall provide sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generation” (GRZ 1996:53).

Land administration and management in Zambia falls under two main categories, namely customary and statutory systems. Although Zambia has a total land area of 75.26 million hectares, only 35.37 million hectares or 47% of the total land is arable, and a large proportion of this land is not available for public use mainly because it is reserved for forests, national parks and game managements areas (CSPR 2010:52). Therefore, only 6.77 million hectares of land, or 9% of land, is actually available for agriculture (ibid). It has been observed that land administration in Zambia continues to face a number of challenges. These include the lack of a comprehensive land policy, and a tedious and unclear administrative and legal framework. It might be on this basis that some analysts have made the following observation:

The current system fails to adequately address emerging public issues of gender equity, poverty reduction and climate change. The main reason behind this weakness is that the existing land tenure system was initially established for the purpose of settler land acquisition... Government should effectively protect the lands rights of the poor in rural and urban areas (CSPR 2010:53).

Customary land that is affordable to the majority, especially the poor, is regarded as inferior, and its value artificially restricted, thus making it difficult to use as a tool for poverty reduction in Zambia (CSPR 2010:53). Furthermore, the official management system is riddled with tedious procedures, particularly with regard to determining, record keeping and publication of information about value, use, payments, applications, ownership and use of land (Machina 2002).

Government has also failed to meet its pledge of ensuring gender balance in accessing and ownership of land in Zambia during the period under review. Government's own accounts confirm this observation based on the following table:

Table 1: Offers issued				
	2006	2007	2008	2009
Total number of offers issued	7,253	5,867	6,654	6,880
Number of offers issued to women	1,612	1,001	1,035	1,135
% of offers issued to women	22.2	17.1	15.6	16.5
<i>Source: CSPR 2010 (Source of information – Ministry of Lands)</i>				

It is clear from the table that government has failed to meet its own policy goal of ensuring that 30% of the total land allocated is given to women. Perhaps even more worrying is the rising competition between international, national and local/traditional forces over access to and ownership of land in Zambia. Based on the work of CSOs such as the Zambia Land Alliance, Caritas-Zambia and Non-Governmental Coordinating Council, cases of land grabbing and evictions, especially in rural areas, facilitated by either the statutory or customary systems, have become common.



Moreover, there has been incremental success. According to government, the most notable progress attained in this sector during the period under review relates to the empowering of citizens and non-citizens with access and ownership to land. For instance, 6,880 land offers were issued, 4,699 properties were surveyed and 24,509 properties were registered (GRZ 2009:17). This means that members of the public were granted ownership of land through the offers issued, and were in the process of owning property and legalising their property ownership through registration.

While there was an increase in the number of women benefiting from land during the period under review, the overall percentage of women receiving offers, in comparison to their male counterparts, has declined. Based on government's policy to allocate at least 30% of all land to women, a total of 1,135 offers were issued to women in 2009, representing 16.5% of the total offers issued (GRZ 2009:18). This represented an increase of 9.7% over the 2008 figure of 1,035 offers issued to women. Land is one of the main means of production, thus ownership of land is one of the most sustainable ways of empowering women economically and financially. This is particularly true of those engaged in agriculture, infrastructure development such as housing, and industrial entrepreneurial activities. Land is also one of the main instruments used as collateral when accessing resources from financial institutions.

HEALTH CARE

85. *To what extent is the right to adequate health care protected in all spheres and stages of life? Is treatment available for conditions such as HIV and AIDS? Is access to this treatment equitable and is the health service of reasonable quality?* (5)

According to the United Nations Committee on Economic, Social and Cultural Rights, access to health care is determined by various factors, including: qualified staff, essential medicines and medical supplies, the availability of well-equipped facilities, and sufficiently funded services to ensure fair access, whether provided through affordably priced State insurance or services delivered by the public sector (United Nations Committee on Economic, Social and Cultural Rights, 2000).

In the case of Zambia, Article 112 of the Constitution contains the following two sub-clauses:

- (d) The State shall endeavor to promote clean and safe water, adequate medical and health facilities, and decent shelter for all persons, and take measures to constantly improve such facilities and amenities.
- (h) The State shall strive to provide a clean and health environment for all.

Under the FNDP, government combined its objective on health with the three specific goals under the MDG framework (GRZ 2006). To this end, the overall goal of health under the FNDP is to improve the health status of people in Zambia in order to contribute to socio-economic development, in addition to:

- MDG 4: Reducing Child Mortality
- MDG 5: Improving Maternal Health
- MDG 6: Combating HIV and AIDS, Malaria and Other Diseases

In 2011, UNDP posited that health service delivery had improved, leading to a decline in child and maternal mortality rates; a reduction in the spread of new HIV infections and incidences of TB and malaria (UNDP 2011:14). Under-five and infant deaths reduced from 190.7 per 1,000 live births in 1992 to 119 in 2007 and 1,000 live births in 1992 to 70 in 2007, respectively (*ibid:iv*). Additionally, the proportion of under-five children who were under-weight fell from 19.7% in 2007 to 14.6% in 2008, but is still below the MDG target of 17% (GRZ 2009:13). Significant reductions in maternal mortality, from 649 deaths per 100,000 live births in 1996 to 591 in 2007, were registered (GRZ/UNDP 2001:33).

Zambia registered significant progress with regards to HIV and AIDS and diseases such as malaria and TB during the FNDP. By 2007, the national prevalence rate was 14.3% (GRZ/UNDP 2011:iv, GRZ 2009:14). This means that the country met the target of keeping the HIV and AIDS rate below 15.6%. This achievement was spurred by the scaling up of treatment services to reach 7% of all people living with HIV eligible for anti-retroviral treatment. The period also saw a reduction in the number of estimated new infections in children, reduced from 13,733 in 2006 to 11,028 in 2007 and 10,028 in 2008 (GRZ 2009:121).

Although showing an upward trend after 2010, before that, deaths related to HIV and AIDS reduced from 55,347 in 2006 to 38,105 in 2007 and to 47,429 in 2008 (*ibid*). Furthermore, the number of adults and children with advanced HIV infection receiving anti-retroviral therapy increased from 344,407 in 2010 to 415,685 in 2011 (GRZ 2011:19). Through the implementation of the Prevention of Mother to Child Transmission Programme, the number of infections averted in 2002, 2005, 2010 and 2011 were 167, 1,286, 9,797 and 12,584 respectively (*ibid*). The country also registered notable gains on malaria targets, with the proportion of children under-five with access to insecticide-treated nets rising from 6.5% in 2001-2002 to 41.1% in 2008 (GRZ/UNDP 2011:iv). With regard to TB, the rates of notification from 545 per 100,000 in 2003-2004 to 425 per 100,000 in 2009, and the treatment success rate, reached 86% in 2008 (*ibid*).

The sector continued to face numerous challenges during the period under review. In terms of institutional and service capacity, the health care system in Zambia was characterised by five national hospitals, 21 general hospitals, 72 referral hospitals, 265 urban health centres and 1,029 rural health centres (CSPR 2010:61). Of these, 1,354 facilities are government-owned, 117 are owned by missionaries and 92 are owned by the private sector (*ibid*). Government pledged to expand on the number of establishments as a way of meeting the overall FNDP objective on health (GRZ 2006). The available and proposed new health facilities will still not meet the increasing demand for health services, especially given the growth in population. Currently, long distances and inadequate supply of resources continue to hamper the effective operation of the sector. Secondly, a shortage of skilled human resources to work in these establishments has persisted. It is estimated that the staff shortage



stands at 60% for doctors, 60% for nurses, 53% for midwives and 74% for pharmacy staff (CSPR 2010:62).

As a result of these limitations, the performance of the sector during the FNDP has been mixed. Government has posited that Zambia is unlikely to meet the goal of reducing child mortality as set under MDG 4 by 2015 (GRZ/UNDP 2011:28). Similarly, other analysts observe that child and maternal mortality rates remained high during the FNDP (JCTR 2009:17). Although the country registered notable reductions in maternal mortality during the period under review, government has acknowledged that maternal mortality remains high and the possibility of reducing deaths by 429 to meet the set target of 162 in 2015 is unlikely (*ibid*, 24). In addition, there is need for concerted efforts to tackle the rate of new HIV infections currently estimated at 200 per day (CSPR 2010:64).

EDUCATION

86. *How extensive and inclusive is the right to education and training, including education in the rights and responsibilities of citizenship?* (5)

The right to education is provided in Part Nine of Article 112 of the Constitution in the following sub-clause:

(e) The State shall endeavor to promote equal and adequate educational opportunities in all fields and at all levels for all.

The vision of the education sector articulated under the FNDP is innovative and commits government to taking steps that will increase access to the tools that engender productivity: education and training for all by 2030 (GRZ 2009:73). In this regard, the FNDP has placed emphasis on improvement of quality of education, in addition to increasing access to all levels of education and focusing on early childhood care (GRZ 2009:73).⁴

Several developments were witnessed during the period under review. Education might be the only sector where Zambia is likely to meet the targets set under the MDG on education by 2015 (GRZ/UNDP 2011:iii, GRZ 2009:13).

The net enrolment of children in primary education has increased from 80% in 1990 to 102% in 2009 (GRZ/UNDP 2011: iii). This means that the enrolments rates have gone past the target of 100%. With specific reference to the FNDP, enrolments increased by 14.9% from 2,852,370 to 3,352,365 (GRZ 2009:70). This is accompanied by an increased construction of schools, the removal of user fees, and adoption of the Free Basic Education and re-entry policies, resulting in an increase of 27.7% in primary school completion rates (from 64% in 1990 to 91.7% in 2009) (GRZ 2009:76). The policy of Free Basic Education entails that children receive free education services between grades 1 and 9. The policy of re-entry allows for girl-children who fall pregnant during their schooling to return to school after delivery. University enrolment grew at 12% a year, with low dropout rates and high completion levels (*ibid*).

Second, there was a drop in the pupil-teacher ratio during this period, a development that is largely attributed to the revival of teacher recruitment and deployment exercises. Over 25,000 teachers were recruited and deployed between 2005 and 2009 (GRZ 2009:77). To facilitate deployment of qualified staff in rural areas, government embarked upon the construction of 280 teachers' houses, 50% of which were completed by the end of 2009 (GRZ 2009:70).

Third, close to 3,000 school classrooms were constructed during the period under review (ibid:70, 78). It is important to note that the progress registered under this goal has also taken a gender dimension. Moreover, there were significant improvements in gender parity in education. The ratio of girls to boys in primary education has improved from 0.90 in 1990 to 0.96 in 2009 (GR/UNDP 2011:26). However, the case is different with regard to secondary school levels as demonstrated in the reduction from 0.92 in 1990 to 0.88 in 2009 (ibid). Two factors have been identified as contributing factors: early marriages, especially in the rural areas and the reluctance of girls to re-enter school after pregnancy.

Fourth, government has provided a policy environment highly conducive to participation for the other actors in the sector. For instance, schools operating under the Community School Learning Mode, catering for over 500,000, enjoy more than 34% share of the total numbers of schools in Zambia (CSRP 2010:81).⁵

There were some reversals witnessed in the education sector. For instance, there was a reduction in the number of orphans accessing basic education, a rise in the number of girls dropping out of school, as well as poor quality and standard of education services and infrastructure. Also notable in the education sector during the period under review is that both the upper primary and high school levels of education could only accommodate half the number of qualified students, largely because the rise in enrolment was not matched with expansion in infrastructure, teacher numbers and other services (GRZ 2009:78). Consequently, the observed high completion rates exist alongside low learning outcomes, at least in comparison to other countries in the region (ibid). For instance, a majority of the school construction projects did not include housing for staff and this has discouraged the retention of staff, especially in rural areas. In addition, although progressing, the gender parity index in higher levels of education remain a concern, with a recognisable proportion of school going children, such as orphans and children with special needs, being denied their right to education (CSPR 2010:82).

POVERTY

87. *Are vulnerable and marginalised groups such as children, the disabled and women adequately protected from poverty?* (5)
88. *Is political participation possible irrespective of poverty? To what extent are poor people able to participate in Zambian society or are they excluded?* (5)



In terms of protection from poverty, Article 112 directly addresses the situation of marginalised groups and provides that the “State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment”. Subsection (e) states that: “the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable.”

Government has implemented a number of pro-poor policies, such as free basic education and health, the provision of subsidies in the form of seed and fertilizer, and the purchase of maize from small scale farmers. Subsidies have constituted almost a third of the entire budget allocation to the agriculture sector in the years 2006, 2007, 2008 and 2009 (GRZ 2010; CSPR 2010). This period witnessed notable increases in budget allocations to “pro-poor” termed budget lines. These sectors include health, education, infrastructure and agriculture (CSPR 2010; GRZ 2008, 2009). Government has also implemented social welfare and protection programmes. An estimated 75,469 orphans, vulnerable children and other individuals received social support in the form of food rations, clothing and educational support through the Public Welfare Assistance System (PWAS). In 2011, 28,660 households received assistance via the Social Cash Transfer in the form of books, bursaries, uniforms and food supplements, a rise from 2,905 in 2006 and 7,476 in 2007 (GRZ 2011:19).

Despite the implementation of these policies, 68% of the population was living below the national poverty line, earning less than USD25 at the start of 2005 (GRZ 2006:12). Since then, on the whole, poverty levels have fallen slowly from 62.8% in 2006 to 60.5% in 2010, an indication that Zambia is far from attaining the MDG of halving poverty by 2015 (GRZ 2011:xviii; JCTR 2009:16). Poverty has continued to manifest due to the rising cost of living and simultaneously declining opportunities to access decent employment, healthcare, education and other social services (JCTR 2011:4).

According to CSPR, poverty eradication continues to be evasive largely because of inappropriate policies on poverty reduction, a lack of discipline in the efficient use of public funds, gross mismanagement of public funds and a lack of political will (ibid). Overall, the recent observations made by the United Nations Resident Coordinator aptly capture the current situation of poverty in Zambia:

The MDG target of reducing extreme poverty is one of the toughest to reach. Our target as Zambia is to reduce it to 28–29% but right now extreme poverty stands at 40%. We need to have significant acceleration if we are to reduce poverty (*Daily Mail* 2012).

Possible solutions to poverty in Zambia, particularly for rural and peri-urban areas, primarily rely on the deliberate creation of job opportunities and income (re)distribution through public works, good social security and diversification towards agriculture among the poorest in the community (*Daily Mail* 2012).

Poverty in Zambia has a regional rural-urban dimension. At present, urban poverty stands

at 27.5% while rural poverty is estimated to be standing at 77.9% (GRZ 2011). According to government, rural poverty in Zambia has persisted during the period under review, largely because of a lack of growth in the agriculture sector (GRZ/UNDP 2011:11). Since most of the people who are classified “poor” are located in this sector, the absence of growth translates into a lack of improvement of the social and economic wellbeing of citizens. In addition, social protection programmes proved to be ineffective during the period under review largely because of inadequate funding, non-existent interventions and the narrow targeting of affected populations (GRZ 2011:105).

Poverty in Zambia has a feminine face (CSPR 2010:116). Poverty among women manifests itself in a number of ways. Women in Zambia do not have access and power to participate in decision-making processes relating to national affairs – be they economic or political. For instance, women only hold 14% percent of parliamentary seats, and only 19% have a secondary or higher level of education compared to 34% of their male counterparts (UNDP 2011:35). There is health-driven poverty among women in Zambia. For every 100,000 live births, 591 women die from pregnancy-related causes (ibid), while women, especially in rural areas, continue to have to walk long distances to fetch water (Bridge June 2008:5).

Women are also economically disempowered (Gender Barometer 2012). About 47% of women are employed compared to 76% of men, but most of the women who are employed in the agriculture sector are not paid for their labour (ZDHS 2007). In addition, women who are self-employed or work in the informal sector have limited access to credit, technology, extension services and agricultural input requisites such as fertilizer (CSPR 2010:109). Programmes such as the Citizen Economic Empowerment Commission (CEEC) are in place, but do not have gender-sensitive guidelines and remain beyond the reach of most women (ibid: 112). Reviews of budget allocations to different sectors have shown that sectors that directly affect women, such as agriculture, health and education, have received fewer allocations than budgeted for (CSPR 2008). Women also face serious social and human rights violations. For instance, almost all the victims of gender-based violence (GBV) (85–90%) are women and mainly fall in the 16–24 age group (CSPR 2010:114).

In Zambia, poverty is more pronounced among the younger section of society. This sector is crowded with a plethora of regulations and policies aimed at preventing and curbing poverty among youth. These include the National Youth Development Council (NYDC) Act 1986, and the National Youth Policy 2006 whose strategic focus is: youth and education; youth and employment; youth leisure and recreation; the situation of girls and young women; youth and health issues; youth and drugs; juvenile delinquency; youth participation in decision making; HIV and AIDS among the youth; and information and communication technology usage among young people (CSPR 2010:85)

Approximately 78% of youths are unemployed (CSPR 2010:92). The most notable programmes implemented under the FNDP by government focused on vulnerable children such as street children. For instance, a campaign held between 2005 and 2007 to assist children living on the street recorded progress. A total of 1,630 children were assisted. Of



these, 446 were successfully reintegrated into their families, while 185 children were taken to children centres. However, in 2008 there was a reduction in the number of children captured under the programme; only 922 children were removed from the streets (CSPR 2010:99). It has been observed that economic empowerment programmes, including the much publicised Youth Development Fund have not benefited young people. Representatives of youth initiatives have complained about the tedious and stringent requirements attached to accessing these funds. Furthermore, the youth have not benefited from the CEEC, largely because of the difficulties associated with meeting the conditions required to qualify for funding.

89. *To what extent is the State “progressively realising” the social, cultural and economic rights in accordance with its constitutional obligations?* (6)

While the Constitution places an obligation on the State to provide for socio-economic rights, the lack of justiciability has engendered a lack of commitment within government.

In Part Nine of the Constitution, which elaborates on various provisions outlining rights, operationalisation and application, Article 112 entitled “Directive Principles of State Policy” highlights that the State shall only “endeavour” to meet these rights⁶ (GRZ 1996:52-53). The principles therefore do not have the force of law, as the Bill of Rights does, and are only meant to guide government in the making of laws, while simultaneously enjoining the courts to take note of such principles when called on to interpret legislation.

Article 112 falls among the State directive principles and policy which, according to Article 111, cannot be legally enforceable in any courts, quasi-judicial or administrative entities. Put differently, the realisation of these right rights is limited by the accompanying provisions, namely Articles 110(2) and 111.

Given the above legal constraints, there are basically three main instruments that Zambia has to promote economic and social rights, including equal access to employment during the period under review. These are the MDG framework, the FNDP and National Vision 2030.

The change of government in 1991 was premised on the notion that the new Multiparty Movement for Democracy (MMD) under the leadership of Fredrick Chiluba would spur the country towards higher economic growth and improve the social living conditions of the Zambian people (Rakner 2003; Van de Walle 1999). Operationally, this regime pursued a private-sector-led economic development project supported by short-term cash-budget planning and cost-share financing of social services (Rakner 2003:68–7; Fagernas & Roberts 2004:9; McCulloch et al 2003:237).

Zambia has witnessed a significant expansion of citizens’ entitlement to civil rights (Bratton 1992:76; Erdmann & Simutanyi 2003:43). However, as observed by several analysts, this reform project became embattled and had limited outcomes as a result of various factors that included deviation from both the economic and political reform agenda by the Chiluba regime (Rakner 2003; Van de Walle 2001; Meyns 2005; Burnell & Randall 200). For some analysts, this “promising” reform project failed largely because of the persistence of the well-known long-standing political patterns of rule in Zambia (Bratton & Van de Walle

1997; Rakner 2003; Rakner et al. 2000; Burnell 2001).

The socio-economic living conditions of the majority of Zambians had deteriorated in some cases to levels below those of 1975 by the time Chiluba left office in 2001 (UNDP 1997; GRZ 2005). Some analysts have observed that Zambia has continued to experience a persistent increase in poverty, even under favourable economic and political conditions (McCulloch et al. 2000; Situmbeko & Zulu 2004: 38-40; Saasa & Carlsson 2002b:38). Interestingly, government has conceded that cost-sharing measures did not result in any economic benefit, but merely served to curtail access to basic economic and social services for the poor (GRZ 2002:76,83).

FROM THE PRSPS TO NATIONAL DEVELOPMENT PLANNING

Arising from its commitment to address socio-economic challenges, government produced the Poverty Reduction Strategy Paper (PRSP) in 2002, which outlined the strategies aimed at reducing the high levels of poverty in the country (GRZ 2002; CSPR 2005). These strategies targeted nearly all economic and social sectors, but excluded the sectors of defence, military and home affairs. In terms of operationalisation, the Mwanawasa regime adopted the PRSP as the mechanism to facilitate development planning in Zambia (Seshamani 2005:137; GRZ 2002b, 2004b; Eberlei et al. 2005). Some of the major measures undertaken to protect the socio-economic rights of the people included the removal of user fees/cost-sharing schemes for social services and the re-introduction of welfare and social security schemes such as the PWAS (GRZ 2006:46, 146, 210, 218).

Other important measures taken were the re-introduction of subsidies, particularly in the agriculture sector and the return of government stewardship in the marketing of maize and other cash crops, and the provision of Food Security Packs. Government also embarked upon a process of recruiting human resources into the public service, particularly in the health, agriculture and education sectors. These measures were undertaken with the aim of improving the socio-economic conditions of the people, especially by tackling poverty (Booth 2005; Bwalya et al. 2004). The principles that guided the PRSP, such as participatory, national ownership and accountability, guaranteed a people-led approach and encouraged civic mobilisation and engagement on poverty reduction in Zambia.

Three years after the implementation of these strategies, the poverty situation in the country largely remained the same, and in some cases it was worse (GRZ 2006). From government's perspective, it was argued that PRSPs, by their design, were incapable of effectively tackling Zambia's myriad development challenges, especially poverty. However, analysis undertaken by non-governmental agencies attribute this limited impact to other factors, namely lack of political will, poor planning, inappropriate policy, inadequate funds, and the misuse of resources earmarked for poverty reduction programmes (CSPR 2009, 2010).

Premised on the minimal outcomes of the PRSPs on development in general and poverty reduction in particular, government re-introduced long-term planning as the main approach



to development in Zambia (GRZ 2005, 2006) and developed Vision 2030 (GRZ 2005). This Vision has four main goals, namely:

- Enhancing the delivery of services and creating an appropriate institutional environment for attaining and sustaining socio-economic development;
- Sustaining the adequate supply of competent, highly skilled and motivated human resources;
- Investing in education and training to ensure job creation and socio-economic transformation; ensuring corporate social responsibility by the private sector;
- Providing equitable and affordable housing, safe, clean water and proper sanitation; and reducing the incidence of major diseases.

With specific reference to the guaranteeing of economic and social rights, goal 3.1.7 of Vision 2030 states that:

Seeking justice along with development, Zambia's long-term goal is to eliminate gender inequalities in social economic development. Thus Zambia will work towards improving educational attainment and eliminate gender gaps at all levels of human and social economic development (GRZ 2005).

To begin with, government prepared the FNDP in 2006. This plan encompassed all the social and economic sectors, with specific focus on disability and development, housing, social protection, gender and youth and child development. In the plan, government committed to develop:

A Zambia where all individuals and families have an opportunity to earn a dignified living, raise healthy and educated families, participate in economic, political, cultural and social decision making in a safe and secure environment with respect to the Constitution and fundamental rights and freedoms, especially for women and children and where the rule of law prevails (GRZ 2006:115).

The economic sector registered significant improvement during this period (GRZ 2009:10; GRZ 2011:4). For instance, the country received significant debt relief (a total of USD3.5bn out of debt stock of USD7.2bn) under the Heavily Indebted Poor Countries Initiative (HIPC) in 2005 (GRZ/UNDP 2008:2). Secondly, the average growth rate rose to 6% accompanied by single-digit inflation (GRZ/UNDP 2011:4; GRZ 2010:4; GRZ 2011:4-5). The mining sector resumed operations thereby expanded opportunities for resource mobilisation on the side of government (GRZ/UNDP 2011:2). Although fluctuating, the country witnessed increased donor support, increased trade transactions and a rise in direct foreign investment (GRZ/UNDP 2011:51). Government interventions in the economy, particularly in the sectors of agriculture and small-scale entrepreneurs were re-introduced (GRZ 2010:18; GRZ 2009:10; GRZ 2011:16).

The move from a short-lived period of multiparty politics to a one-party participatory democracy in 1972 entailed a roll back of the extent to which the citizens could claim and

enjoy their civil rights. Anchored on the principle of the “Party and its Government”, the State claimed to be the authentic representative of the people and therefore suppressed alternative claims of representing the people (Williams 2003:35).⁷ In fact, the articulation of dissent and opposition was only possible through the procedures provided by the PIG (Erdmann & Simuntanyi 2003; Larmer 2006a). A combination of economic crisis and ideological paralysis led to the overthrow of the Kaunda regime in preference of the neo-liberal and multiparty democracy approach to development that had ascended and dominated the ideological arena in Africa by the end of the 1980s.

While acknowledging a few areas of progress, assessments undertaken by government and non-governmental agencies have concluded that the performance outcomes of the FNDP have been largely unimpressive (GRZ 2009; CSPR 2010). This is particularly true in social and economic areas, such as small-scale farming, trading and employment, where the majority of the poor are located. The lack of equity, poor service delivery and poor governance in the management of resources remained a great concern during this period (CSPR 2010:2). Resources such as the Fertiliser Input Support Programme (FISP) and PWAS, which were designed to assist the vulnerable, were hijacked for political and personal interests (CSPR 2009).

Unsurprisingly, the country failed to register an impressive development performance during this period. About 64% of Zambians were classified as living below the national poverty line, with rural poverty rates standing at approximately 80% (GRZ 2009:10). Such indicators should be a source of concern given that, out of a total population of 13 million, 49.9% are men, 50.1% are women, and 52% are youths (CSO 2010:3, 13–14). Translating economic gains into social benefits continues to be the most daunting development challenge in Zambia (GRZ 2010; GRZ 2009; UNDP 2010:11; JCTR 2011). Government acknowledges that, during this period, access to civil and criminal justice was limited as the judiciary continued to be inundated with a backlog of cases and remained understaffed, while the system was characterised by many revisions, applications and adjournments and delays in concluding cases (GRZ 2011:xviii). For this reason, government has prioritised the implementation of the “Justice for All” programme under the Sixth National Development Plan (SNDP) (GRZ 2009:146; GRZ 2010). Under this programme, government intends to improve access to justice, especially for the poor.

JOBS AND RIGHTS IN THE WORKPLACE

90. Is there equal opportunity for all in the workplace? (6)

Employment, particularly formal employment, is an important ingredient for human development and poverty reduction. In the case of Zambia, it has been observed that the evolution of employment indicators is consistent with trends in poverty and social indicators (UNDP/CDPR 2007:43). As posited by JCTR:



There is a direct correlation between employment and poverty reduction.

Employment guarantees income, and income is necessary for the acquisition of and access to basic needs and property. The larger the proportion of the formally employed, the lower the poverty levels of a country will likely be, provided that those employed get decent and just remuneration (JCTR 2011:16).

In the case of Zambia, the right to employment and job rights is provided in Part Nine, Article 112, under the following clause:

(c) The State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment.

91. How far are workers' rights to fair rates of pay, just and safe working conditions and effective representation guaranteed in law and practice? (5)

Part Nine of Article 112 clause (i) of the Constitution says that the State must recognise the right of every person to fair labour practices and safe and healthy working conditions.

Following these provisions, a number of related Acts exist to regulate the sector. These include the Employment Act; Industrial and Labour Relations Act; Employment of Young Persons and Children Act, Factories Act; and Statutory Instruments on minimum wages and conditions of service. In addition, Zambia has ratified the Discrimination (Employment and Occupation) Convention of 1958 (No. 111).

Four out of the eight objectives outlined in the FNDP directly address the subject of right to work, namely: (GRZ 2006):

- To promote decent work (i.e. promotion of employment, fundamental rights and principles at work, social dialogue and social protection.
- To promote and enforce occupational health and safety standards at places of work to ensure a safe and healthy working environment.
- To strengthen the regulatory and legislative framework for the employment and labour sector.
- To eradicate the worst forms of child labour.

There were a few notable developments undertaken by government towards achieving the objectives outlined in the FNDP. These included the alignment of the various domestic Acts and instruments in line with regional and international standards. Zambia has ratified the core International Labour Organisation (ILO) Conventions that seek to uphold the fundamental human rights of workers at places of work. In addition, with the support of the ILO and in partnership with other stakeholders, government began implementing the Decent Work Country Programme. With regards to outcomes, the most notable progressive change in the employment sector was in the mining sector. According to government, the size of the labour force grew by 10% from 4.9 million in 2005 to 5.4 million in 2008 (GRZ 2010:2). During this period, the mining sector created about 10,000 jobs (CSPR 2010:93). In addition, the period saw a growth of employment in the informal sector mainly spurred by the

growth of medium- and small-scale entities supplying the mining industry (ibid). However, this development was undermined by the global financial crisis, which led to the loss of a total of 8,500 jobs in the sector (GRZ 2010).

Notwithstanding these developments, levels of unemployment in Zambia remain critical (CSPR 2010:92). According to government, out of the total working age population, which constitutes 6.8 million out of the total population of 12,363,879, only 5,413,510 were in the labour force while 1,344,931 were inactive (GRZ 2010:vii-viii; 2). Some 15% (812,027) of the total labour force is unemployed, with youth unemployment standing at 28% (ibid). Unemployment in Zambia has a gender dimension; it is more pronounced amongst women than men. Of the total employed, 51% are men and 49% are women (ibid). Several factors have affected outcomes in this sector. It is important to note that unemployment and other accompanying challenges persist in Zambia largely because the steady economic growth witnessed during this period of focus was in the mining sector. The mining sector, however, only employs 1.52% of the national labour force and thus the growth witnessed in this sector, ultimately, has not led to greater employment or earning opportunities for the poor (JCTR 2011:16).

Second, there were notable weaknesses in the enforcement of regulatory provisions. Although, Zambia has a national employment and labour market policy that guides activities and implementation in the sector, ensuring that these pronouncements are translated into tangible practices remains a challenge (ibid). Government has been unable to adequately promote and enforce occupational health and safety standards at places of work. As a consequence, a number of injuries and deaths continue to occur in places of work (ibid). Compensation for such incidences is also not standardised or stringent enough to encourage employers to invest more in occupational health and safety.

Third, the country experienced a fall in wage employment as opposed to self-employment. Within this context, it has been observed that a major factor in the rise in poverty in Zambia is the fall in wage employment, compounded by a marked deterioration in working conditions in formal employment, both public and private (UNDP/CDPR 2007:42). Various media reports and government inquiries have observed that most employers, including the mines, have been failed to provide living wages and safe working conditions, and do not adhere to government stipulations (ibid).

Fourth, the quality of employment has remained a major challenge in the employment sector in Zambia. The problem has worsened given the withdrawal of government as the main employer and the expansion of foreign investment (CSPR 2010:92). A recent example provides a case in point where a South African manager was deported “for allegedly abusing her employees ... dismissing those who were HIV-positive as well as those who fall pregnant (*Times of Zambia* 2012).

Fifth, informal employment expanded during the period under review. Out of a labour force of 5,413,518, only 522,761 (9.7%) are employed in the formal sector, while the remaining 4,699,585 (90.3%) are in informal employment where they are paid very low wages, paid



irregularly, or not paid at all (JCTR 2011:16). The informal sector has become the pool where a growing mass of youth and adults affected by retrenchment and deteriorating conditions gather as a means of survival (UNDP/CDPR 2007:43). It is characterised by lack of dynamism, precarious work conditions, insecurity and saturation (ibid). In addition, unlike the formal employment sector, which has been crowded with many statutory instruments, there is no legislative framework to protect the informal sector (CSPR 2010:92).

92. *How far are wage levels and social security or other welfare benefits sufficient for people's needs, without discrimination/equally?* (5)

Social protection encompasses policies and programmes aimed at reducing poverty and vulnerability by promoting just labour markets, minimising vulnerable people's risks and enhancing their capability to protect themselves (CSPR 2010:97). Some elements of social security are dealt with in Articles 112 and 124 of the *Zambian Constitution*. These Articles set out that the State should seek to provide persons with disabilities, the aged and other disadvantaged persons with social benefits and amenities (GRZ 1996). However, these provisions are undermined because they only apply to those in the public service and the country has witnessed a significant migration of labour from the public to the private and informal sectors as a result of privatisation and retrenchment exercises (GRZ 2012:109).

There are several Acts dealing with social security in Zambia: the National Pension Scheme Act No. 40 of 1996, the Public Service Pension Act No. 35 of 1996, the Pension Scheme Regulation Act No. 28 of 1996, the Local Authorities Superannuation Act, Cap 284 of the *Laws of Zambia* (enacted in 1963), and the Workers' Compensation Act No. 10 of 1999. Additional legislation includes the Employment Act Cap 268, the Minimum Wage and Conditions of Employment Act Cap 276, the Income Tax Act Cap 323, and the Land (Perpetual) Succession Act Cap 186, which also have great bearing on the provision on social security. The National Pensions Scheme Authority (NPSA) is the largest social security scheme in the country, which was conceived to provide universal coverage to public sector and private sector employees. The protection of wages is provided for in Part VII of the *Conditions of Employment Act*.

Government acknowledged that the PRSP did not comprehensively address issues of social security and protection and furthermore, admits that Zambia lacks a reliable social security system (GRZ 2006:210, 211). On this basis, the vision adopted under the FNDP focused on achieving "a nation with capacity to promote and provide sustainable security against constant or periodic critical levels of deprivation and extreme vulnerability by 2030", while setting the goal to "contribute to the security of all vulnerable Zambians by ensuring that incapacitated and low-capacity households have sufficient livelihood security to meet basic needs, and are protected from the worst impacts of risks and shocks"(ibid:212).

Overall, the current social security system is made up of four schemes, which focus on retirement, disability, the loss of a breadwinner, and protection in the event of industrial injuries and occupational diseases (GRZ 2012). Although relatively new and of

limited coverage, there are additional schemes that provide social assistance. These include the PWAS, Social Cash Transfer Scheme, Food Security Pack, the School Feeding Programme, and the Project Urban Self-Help programme (ISSA 2010:2). It is important to note that the impact of these interventions has been minimal largely because of their limited coverage. Furthermore, the sustainability of these interventions is undermined by a lack of predictable and inadequate funding.

This sector continued to experience significant challenges in the period under review. To begin, legal provisions on social security are inadequate and lacking. The main problem is that Zambia has not ratified and domesticated the most relevant conventions on social security.⁸ Therefore, the sector lacks both the policy and institutional conditions required to manage and monitor the performance of government on social security development. The problems of low wages and casualisation of work remained common and rampant in Zambia, and exist in both the public and private labour sectors. For instance, it has been observed that the Committee of Experts on the Application of Conventions and Recommendations has repeatedly noted the Government of Zambia's failure to pay local government workers regularly and their failure to settle outstanding wage arrears (GRZ 2012:34). A recent incident where a Chinese manager was detained for "beating up his Zambian worker after being provoked over salaries" provides a case in point (*Sunday Times of Zambia* 2010).

One contributing factor to the problem of low wages is the minimum legal wage of USD83 per month, which some employers have taken advantage of as the maximum level of payment. Yet, it is estimated that an ordinary worker requires at least USD400 to support him or herself and their families (JCTR 2011:17). Government has acknowledged these limitations:

Non-compliance with labour law standards has been mentioned as one of the challenges to Zambia's aspiration to achieve her Vision 2030. Labour laws and social security laws are not rigorously enforced, leading to acute non-compliance among the employers. Considerable numbers of employees have no clear employment status as they have no formal employment contracts (GRZ 2012:124).

DELIVERY OF SOCIAL AND ECONOMIC RIGHTS

93. *Are public goods, for example water provision or local services such as waste collection, equally available to citizens and communities at similar levels of efficiency and competence?* (5)
94. *To what extent has privatisation had an impact on the adequate provision of public goods and services?* (5)



95. *To what extent do public-private partnerships or does privatisation facilitate or impede access to socio-economic rights particularly for the poor?* (5)
96. *To what extent are private companies accountable for the delivery of socio-economic rights as a result of privatisation or public-private partnerships? To what extent is this accountability overseen by citizens or their representatives?* (4)
97. *To what extent do citizens feel they are receiving equal access to public resources regardless of their social grouping?* (4)

By the start of 2000, it was evident that the outcomes of the privatisation programme were generally unimpressive. The total removal of the State and the speedy transfer of State assets and responsibilities into private hands, alongside the introduction of cost-sharing/service charges for basic social services, failed to alleviate poverty (GRZ 2006). Privatisation has had a heavy impact on communities as most of the private interests discontinued most of the social services, such as local hospitals, schools, maintenance of infrastructure, activity and recreation centres, whilst local authorities lack the capacity and resources to adequately provide these services (Counter Balance et al. 2010:9).

Highlighting the state of a town on the Copperbelt that was at one time considered prosperous:

One is shocked with the extent of poverty and the deterioration of the infrastructure. The houses are dilapidated, there is no street lighting, and open sewers are overflowing ... The roads are badly damaged... (ibid).

The major weakness in this scenario is the unbalanced development agreements entered into between government and private investors, who are mainly from outside the country. These development agreements overlooked critical areas of local community development such as the provision of basic social services (HRW 2011; Counter Balance et al. 2010; Fraser & Lungu 2006). Second, the Public Service Reform Programme (PSRP) has failed to reform the system in such a manner that local authorities are well capacitated and have sufficient power, authority and resources to perform their duties in a satisfactory manner.

Consequently, the performance of local authorities, who have the main responsibility for delivering basic services, has remained poor in most parts of the country during the period under review (SACCORD 2011). Most of these institutions are encountering daunting challenges that range from inadequate or a total lack of qualified human resources, the necessary equipment required to undertake the stipulated responsibilities, and an inadequate or total lack of financial resources. While the continuation of financing of some of the activities of the local authorities using Constituency Development Funds (CDFs) has led to positive results in a few cases, the links between CDF, developmental outcomes and community benefits is increasingly coming under question (*Sunday Times of Zambia* 2012). There is a growing number of initiatives aimed at mobilising communities to demand accountability from duty

bearers at local level. However, the response of government (both at local and national level) to the concerns of communities has largely been slow, negative or non-existent.

CORPORATE GOVERNANCE

98. *How rigorous and transparent are the rules on corporate governance; and how effectively are corporations regulated in the public interest?* (5)
99. *To what extent are companies duty-bound to play a role in the realisation of socio-economic rights? And to what extent do they prioritise responsible social investment?* (6)
100. *Is the private sector meeting its obligations, such as in relation to equity and empowerment responsibilities?* (5)

The concept of corporate governance is new in the context of Zambia. In fact there is no legislative framework governing guidelines, including a common consensus on the role and value of corporate governance in Zambia. Instead, this concept is still viewed as a “voluntary mechanism” that business interests are expected to consider given the overall investment, commerce, trade and labour laws of the country. In this regard, although Zambia’s regulatory framework on investors can be described as one with relative respect for property rights and well-developed legislation providing mandates for regulatory agencies, it is also characterised by significant shortfalls such as weak institutional capacity, weak reporting and accountability systems and pervasive political interference (Haglund 2008:559).

This notwithstanding, one of the major developments that took place during the period under review was the introduction of Public Private Partnerships (PPPs). PPPs are viewed as a development mechanism for speeding up the process of social and economic development in Zambia. In this regard, government approved the policy on PPPs in 2008 and enacted a law on the same in 2009. The Public Private Partnership Act No. 14 of 2009 aims at promoting and facilitating the implementation of privately financed infrastructure projects and the effective delivery of social services by enhancing transparency, fairness and long-term sustainability, and removing undesirable restrictions on private sector participation in the provision of social services and the development and operation of public infrastructure (GRZ 2009). Furthermore, the Zambia Development Agency Act was amended to expand opportunities for developing, managing and investing in the Multi-Facility Economic Zones programmes (*The Post* 2009).

By the end of 2009, government had sanctioned the commencement of various PPPs, mainly construction projects. Some included the creation of one-stop-shops at all the main border posts in Zambia, the rehabilitation and building of inter-regional highways, and the construction of low-, middle- and high-cost housing units throughout the country. One economic zone, Nasangu Farming Block, was commissioned during the period under review.



There was also a notable rise in the number of firms and corporations engaging in social responsibility activities. Mining firms such as Kansanshi and Lumwana are actively involved in projects focused on improving the education, health and water facilities within the areas of their operations. Mobile phone firms also engaged in giving back to the community mainly in the form of supporting infrastructure development in outlying areas of the country. The finance sector has also been playing a key role in promoting interventions on women empowerment, and HIV and AIDS prevention and support. However, it is important to note that engaging in corporate responsibility activities is voluntary. There are no legislative frameworks or policy guidelines mandating firms to engage in such activities.

Although it is too early to judge, positive outcomes with regard to these efforts are potentially threatened by the weak capacities in institutions, insufficient political will, and entrenched corruption and patronage. Consequently, cases of unfair treatment, inequity, and violation of labour and environmental standards have been common during the period under review (Fraser & Lungu 2007; GRZ 2010; Counter-Balance et al. 2011). However, pressure from organised civil society groupings, politicians, experts and local communities demanding adherence to best practices in corporate governance and social responsibilities has continued to grow on both the policy makers and the investors.

PROSPECTS AND CHALLENGES

The Zambian people have continued to face immeasurable hardships in response to the rising costs of living and simultaneously declining opportunities to access decent employment, healthcare, education and other social services (JCTR 2011:4). Similarly, development agencies have observed that poor people lack enough food, decent shelter, clean water and medical care (UNDP 2010). Poverty eradication has continued to be evasive (ibid).

The Patriotic Front (PF) government under the leadership of President Michael Sata, took office in September 2011 on the platform of “putting more money” in people’s pockets, especially the poor. This is unsurprising given the fact that the PF’s campaign was characterised by mass grassroots support, especially from low-income communities and the youth (especially the unemployed, self-employed and those in the informal sector), and a number of political, academia and policy elites. From the onset, the PF pledged to review the Constitution and re-visit the NGO Act No. 16 of 2009 with the purpose of addressing the key concerns of NGOs (*The Post*). Furthermore, government has pledged to revamp the role of local municipalities and councils in development. The aspiration is mainly based on instituting mechanisms that would guarantee the prudent use of resources such as central government grants to the councils and the CDFs as a way of improving the delivery of basic social services and the participation of ordinary local citizens in the governance of development affairs. Also notable during this period has been the increase in the appointment of women to various public and quasi-public offices of authority.

It is important to note that there has been increasing demand for constitutional changes since the re-introduction of multiparty democratic rule in 1991. Significant among these demands has been the call to make socio-economic and cultural rights justiciable and the reduction of executive powers, particularly with regard to the presidency. Many stakeholders, particularly from the civil society sector, see the justiciability of socio-economic and cultural rights as the main way of ensuring their enforcement. On the promotion of civil rights, some analysts have argued that excessive executive and presidential powers are a threat to the enjoyment of civil rights by citizens.

At present, the first draft of the new Constitution has been prepared and circulated for public consultation. This version of the Constitution contains provisions on socio-economic and cultural rights, and has gone so far as to suggest their justiciability. The draft version also provides for the establishment of a Constitutional Court. There have been minor changes recommended with regard to the powers of the Executive and the Presidency. With reference to socio-economic, cultural rights and civil rights, certain developments are worthy of mention in the ongoing constitutional review process in Zambia and State–civil society relations under the leadership of PF government. Many believe that a referendum on a new constitution will usher in a period where government will be forced to comply and meet socio-economic and cultural rights, just as they do political rights.

ENDNOTES

- 1 The Zambianisation Policy was developed in the First Republic as a way of economically empowering indigenous Zambians who had not benefited from the economic resources during the time of colonialisation.
- 2 Vision 2030 was developed in 2006 by the Government of Zambia, in partnership with non-State actors, to provide a basis and direction for all national development plans.
- 3 The index excludes additional everyday costs such as education, transport, healthcare and clothing.
- 4 The following were the six FNDP objectives: To ensure universal basic education provision to the children; To ensure that opportunities exist for all citizens to have equitable access to Early Childhood Care and Development Education (ECCDE), basic and high school, tertiary education and/or technical and vocational training; To improve quality and relevance of education and training; To promote efficiency and cost-effectiveness; To enhance institutional coordination in both public and private education and training institutions; and To ensure that library services are improved to contribute to high standards and quality of education in Zambia.
- 5 The Community School Learning mode refers community-initiated education services managed by community members, or with some assistance from NGOs focusing on education for the low-income communities.
- 6 Directive Principles of the State Policy include: (b) The State shall endeavor to create an economic environment which encourages individual initiative and self-reliance among people and promotes private investment; (c) The State shall endeavor to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment (d) The State shall endeavour to promote clean, and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities (e) The State shall endeavour to promote equal and adequate educational opportunities in all fields, and at all levels for all (f) The State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable (g) The State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom and language in so far as these are not inconsistent with this Constitution (h) The State shall strive to provide a clean and health



environment for all (i) The State shall provide sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generation; and (j) The State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

- 7 Under the First and Second Republics 1964–1990, the ruling party structures were merged with public service structures for the purpose of ensuring effective governance and management of public affairs. All national decisions and operations were anchored on party and government relations.
- 8 For instance, Zambia has not ratified any of the Conventions that the ILO has classified as the top most updated (GRZ 2012:106). These are the Social Security (Minimum Standards) Convention, 1952 (No. 102); Employment Injury Benefits Convention, 1964 (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168) and the Maternity Protection Convention, 2000 (No. 183). Instead, Zambia has ratified five social security Conventions. These are the Workmen's Compensation (Accidents) Convention, 1925 (No. 12); Workmen's Compensation (Accidents) Convention, 1925 (No. 17); Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117); Workmen's Compensation (Occupational Diseases) Convention, 1925 (No 18) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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4. The Lands Act of 1995.
5. The Land (Perpetual) Succession Act Cap 186.
6. The Minimum Wage and Conditions of Employment Act Cap 276.
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9. The Pensions Scheme Act No. 40 of 1996.
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11. The Privatization Act No. 386 (Repealed By Act No. 11 2006).
12. The Workers Compensation Act No. 10 of 1999.



For Further Reading

IDASAs DEMOCRACY INDEX SERIES

2013

Compromise or Compromised: an assessment of democracy in transitional Zimbabwe. Edited by Kuda Chitsike and Amy Eaglestone.

2012

A Fine Balance: Assessing the Quality of Governance in Botswana. Edited by Karin Alexander and Gape Kaboyakgosi

Unfinished Business: Democracy in Namibia. Edited by Bryan M. Sims and Monica Koep.

2010

Testing Democracy: Which Way is South Africa Going? Edited by Neeta Misra-Dexter and Judith February.

2005

Democracy in the Time of Mbeki. Edited by Richard Calland and Paul Graham.

KEY ORGANISATIONS

African Union, www.au.int/en/content/republic-zambia

Anti-Voter Apathy Project, <http://antivoterapathyproject.org/>

CARITAS-Zambia, <http://www.caritas.org/worldmap/africa/zambia.html>

Civil Society Election Coalition, <http://csec2011.com/about/>

Civil Society for Poverty Reduction, <http://www.csprzambia.org/>

Council of Churches in Zambia, <http://www.ccz.org.zm/>

Electoral Institute for the Sustainability of Democracy in Africa,
<http://www.eisa.org.za/WEP/zambia.htm>

Foundation for Democratic Process (FODEP), <http://fodep.blogspot.com/>

Idasa, an African democracy institute, www.idasa.org

Jesuit Centre for Theological Reflection, www.jctr.org.zm/

Media Institute for Southern Africa, Zambia Chapter, www.misazambia.org.zm/

Norwegian Church Aid Zambia, www.kirkensnodhjelp.no/en/What-we-do/Where-we.../zambia/

PANOS Institute Southern Africa, <http://www.panos.org.zm/>

Rural Net, www.ruralnet.co.zm

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Transparency International Zambia, http://www.transparency.org/whoweare/contact/org/nc_zambia

United Nations Development Programme, www.undp.org.zm
 Women for Change, www.wfc.org.zm/
 Zambia Council for Social Development, <http://zcsd.org.zm/home/>
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KEY DOCUMENTS AND INDICES

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 BTI 2012: Zambia Country Report, <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Zambia.pdf>
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 Country Self-Assessment Report: Zambia 2010, <http://www.aprmzambia.org.zm/docs/aprmcountryselfassessmentreport.pdf>
 Decentralization Implementation Plan 2009–2013, <http://unpan1.un.org/intradoc/groups/public/documents/cpsi/unpan040332.pdf>
 Draft Constitution of the Republic of Zambia 2012, <http://zambianconstitution.org//>
 Electoral Code of Conduct, http://www.elections.org.zm/media/electoral_code_of_conduct_2011.pdf
 Fifth National Development Plan, http://www.mofnp.gov.zm/index.php?option=com_docman&task=cat_view&gid=71&Itemid=122
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 Report on Zambia's 2011 Tripartite Elections 2011, <http://csec2011.files.wordpress.com/2012/01/csec2011-election-report.pdf>
 The State of Democracy in Zambia 2012, <http://fodep.blogspot.com/>
 2009 State of Governance Report Zambia, <http://www.zamstats.gov.zm/nada/index.php/catalog/50>
 Africa Media Barometer Zambia 2011, <http://library.fes.de/pdf-files/bueros/africa-media/08630.pdf>



This inaugural Democracy Index for Zambia is intended to set a benchmark for democracy to be measured against. The tool, developed and honed by Idasa over many years, assesses the depth of democracy in a country through five focus areas: participation, elections, accountability, political rights, and human dignity.

The research relies on expert analysis to answer a set of questions that interrogate how closely, in practice, democracy meets the broad ideal of self-representative government. More specifically, to what extent can citizens control elected officials and government appointees who make decisions about public affairs? And how equal are citizens to one another in this accountability process?

The purpose of the scores is to assist citizens in making their own judgements, based on the information made available, to stimulate national debate and to provide democracy promoters with a tool for identifying issues and needs that can be addressed by education, advocacy, training, institution building and policy revision.

Idasa's Democracy Index – initially developed for South Africa – is being expanded into Southern Africa in an effort to broaden the capacity of individuals and organisations monitoring and supporting democratic governance efforts in the region.

If governments created the SADC, citizens need to bring life into it. The Index will enhance citizen understanding of the elements of democratic processes, and how to interact with them to shape the future of one of the most promising regions of the world.

Prof Njabulo Ndebele –
Chairperson of the Idasa Board, academic and author.

Democracy should be home-grown and nationally determined by citizens who define, monitor, refine and live the values examined in the Democracy Index. This process will strengthen our democracies in Southern Africa through informed citizen participation.

Dr Michele Ruiters – Sector Specialist: Regional Programmes,
Development Bank of Southern Africa

EMBASSY OF DENMARK

