



POLITICAL GOVERNANCE IN ZAMBIA

A Civil Society Perspective

for the Consultative Group Meeting
held on 7th July 2002
at Mulungushi Conference Centre

Foreword

This paper provides the Civil Society position on political governance in Zambia. The paper is informed by the existing good governance premise of the Zambian government – Donor partnership. The underlying assumption of the partnership is that observance of human rights and democratic tenets are critical to socio-economic growth.

In recognition of this assumption and in pursuit of its goals, Civil Society in Zambia endeavours to carry out its activities in a manner that can lead to a sustained observance of human rights and democratic tenets. The activities range from education and awareness, to (human rights) monitoring and reporting.

The paper addresses itself to the state of political governance in Zambia, relative to the concerns that question the premise of the government – Donor partnership, and it is prefaced by an Executive Summary.

The Executive Summary provides a concise brief of Civil Society concerns that need redress by the government and also asserts its dismay with Donor dialectics.

The body of the paper, in the main, constitutes the justification for the concerns (and arguments) in the Executive Summary.

We hope all concerned parties will be cognisant of the fact that our position is **first** informed by the universality and inviolability of human rights – basic, civil and political, and socio-economic, and; **second** our right to exist in a world order that is congruent to accepted practices of political governance.

Thank You.

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June 2002

Afronet

Executive Summary

First, Civil Society in Zambia acknowledges that good governance is a socio-economic and political process and, by its very nature can have substantial fiscal implications. Civil Society is mindful of the fact that since emergent democracies like Zambia are trapped in a self-impoverishing international debt, the demands on fiscal resources can induce government behaviours that negate the enjoyment of human rights – basic, civil and political, and socio-economic rights.

Second, Civil Society affirms that in Zambia, redress of the most critical derogations to the Zambian people's assertion of democratic governance **is not** wholly a question of fiscal resources, **but** the lack of political will and perpetuation of political hegemony.

To argue our case, we here, outline the most critical and priority areas of good governance that the Government needs to redress, and which do not have (comparatively) substantial fiscal limitations.

These are:

- Review of the Constitution of Zambia. The Zambian constitution is still not an acceptable instrument of good governance and political conflict resolution. A constitution **must** allow the people ownership of the fundamental law of the land.
- Domestication of international human rights instruments ratified by Zambia.
- Review of the Bill of Rights to provide for only minimal derogations, and all other laws where archaic and discriminatory provisions occur.
- The cessation of toleration of human rights violations. Perpetrators must be held accountable and impunity must have punitive and preventive measures, and; compensations for victims of human rights violations should be accorded.
- Control of abuse of the exercise of public authority. Individuals that abuse public authority should not be allowed to continue holding public office.
- Enforce of provisions of equity in the electoral process, so as to foster legitimacy of whosoever is elected, and provide for the enjoyment of the right to political choice by every citizen.
- Redress exclusivity attitudes in government appointments, hate or sectarian attitudes from persons holding public office.
- Affirmation that widespread poverty is a product of human rights deprivation.
- Enacting of a Freedom of Information Act to provide access to public information.

Further Civil Society, recognises the need for a well-founded and well-intentioned partnership between the Zambian government and Donor Community.

The dialectics of foreign policy diplomacy should never promote a culture of impunity and the breakdown of democratic governance. A violation of human rights – basic, civil and political, and socio-economic - is a violation, irrespective of the scale at which such violation has occurred.

The Donor attitude with respect to good governance in Zambia should reorientate itself to that which asserts the universality and inviolability of human rights, in recognition that poverty reduction will be meaningless if human rights violations are excused.

Therefore, Civil Society urges Donors to assert to the government of Zambia, the recognition that the priority political governance questions are not critically limited by fiscal constraints, but political will and perpetuation of political hegemony.

In conclusion, at this year's Consultative Group meeting, we affirm that:

- Support to the government should be contingent on the immediate implementation of the priority concerns outlined above.
- Donors should not exhibit foreign policy behaviours that perpetuate a culture of impunity.

Contents

Foreword	.2
Acknowledgements	.3
Executive Summary	.4
1.0 Introductory Notes – Governance and Democracy	.7
2.0 Political Governance in Zambia – The Government's Position	.8
2.1 Scope of the Policy	.8
2.2 A Civil Society Note on the Policy	.9
3.0 The Consultative Group Meeting for Zambia - September 2000	.10
3.1 The general concerns	.10
3.2 The specific concerns	.10
3.3 A Civil Society Note on Concerns	.11
4.0 Political Governance in Zambia – The Realities	.12
4.1 The Specific Observations	.13
4.2 The General Concerns	.23
4.3 Good Governance Policy Implementation	.25
4.4 Civil Society Concerns vis-à-vis Donors	.25
5.0 Retrospect and Conclusion	.27
Appendices	
Appendix I - Extracts from the Good Governance Policy Document	.29
Appendix II - List of International Instruments ratified or acceded	.32
Appendix III - Extracts of Conclusions by Monitors and Observers on the 2001 Elections	.33
Appendix IV - FODEP Recommendations on the Electoral Process in Zambia	.37
Appendix V - Some Recommendations of the Mwanakatwe Constitutional Review Commission	.38

1.0 Introductory Notes – Governance and Democracy

Governance¹ and democracy are independent constructs. In the absence of an accepted political congruence grounded on a people's choice of the form of their governance, governance and democracy do not in any way imply a similar construct or practice.

In providing a position on political governance in Zambia, critical recognition should be made of the fact that in Zambia the people have asserted congruence between governance and democracy. This then prescribes that the Zambian people have opted for the choice that governance in Zambia will be founded on democratic tenets.

This chosen polity or political governance system necessitates that:

- The people (shall) have controlling influence on the decisions and affairs of government;
- The people are supreme to government². In recognition of this³, government should institute responsive mechanisms that ensure that the people are treated with equal respect and as of equal worth in the exercise of their controlling influence.

Premised on the foregoing argument, this paper is informed by the Zambian government's undertakings in its attempt to respect the Zambian people's asserted congruence between governance and democracy, and thence providing an environment that can sustain socio-economic growth. The Zambian government's undertakings are provided in the government documents - Governance: National Capacity Building Programme for Good Governance in Zambia of March 2000 and CG 2000 for Zambia – Minutes of the Consultative Group Meeting for Zambia of September 2000.

An overview of the provisions in the good governance document is provided in section 2.0. Section 3.0, provides Donor concerns, section 4.0 the Civil Society position on the gaps in political governance, and section 5.0 the retrospect and conclusions.

2.0 Political Governance in Zambia – The Policy (Document)

The fundamental policy on the Zambian government's position on political governance for years 2000 to 2010 is provided in the National Capacity Building Programme for Good Governance in Zambia document. The document provides a policy guide aimed at both

¹ Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs." (Commission on Global Governance 1995: 2)

² Government here in this context is defined as an institutional entity constituting a group of individuals tasked with the management of the common affairs of the country.

³ The tenet of the supremacy of the people is informed by the assumption of the constitution (the assumed embodiment of the people's choice and will) being the supreme law

the affirmation of the tenets of the Zambian people's asserted congruence between governance and democracy and the consequent well identified and intentioned requisites of institutional reforms⁴ and human resource capacity⁵.

2.1 Scope of the Policy

Political governance priority areas identified in the government's good governance policy include constitutionalism and human rights; democracy, decentralisation and strengthening of local government, and; accountability and transparency.

This scope also accounted for most of government's statements at CG 2000.

The government's commitments are extensive and the focus covers:

- reform of legislation likely derogating from basic human rights and freedoms, and domestication of international instruments ratified and assented⁶;
- institutionalisation of human rights in government agencies through capacity building and retraining;
- control of the exercise of public authority.
- recognition of the importance of electoral equity in a democratic society;
- recognition of scope for broader and inclusive consultation and collaboration, and;
- harmonisation/ conciliation of the operations of the law enforcement and investigative agencies of government.

Appendix I, provides a detailed overview of priority items of the government's good governance policy.

⁴ Legal and institutional reforms

⁵ The need for human resource capacity building is a similar recognition for the areas identified, thereof.

⁶ c.f., Appendix II

2.2 A Civil Society Note on the Policy

It is the resolve of civil society that these undertakings, first, form the core of the Zambian government's commitment to the people. And second, the basis of the expected Zambian government - Donor partnerships, and the likely provision of donor funding needed to supplement government's shortfalls. Hence, that any derogation from the undertakings, is a derogation of the inviolable need by any government to respect a people's assertion of democratic governance.

Zambia is one of the many emergent democracies entrapped in international debt and poverty. Therefore, due recognition is made of the likely fiscal limitations in implementing the policy. However it is clear that the critical human rights concerns identified in the policy document are of an implementation nature that can not substantively be constrained by availability of fiscal resources.

Poverty in Zambia is endemic. It afflicts about 85 percent of the population. Poverty not only affects the ability of an individual to meet his or her socio-economic needs, but his or her ability to actualise his or her civil and political needs. The later, inarguably predicates that poverty is symptomatic of human rights deprivation.

Implementation of and adherence to the tenets of democratic governance, in particular those aimed at ensuring equity in the exercise of an individual's controlling influence on government, can control government excesses, and in so doing developmentally empower the people.

Consequently, it is imperative that the critical good governance provisions in the government's policy document be implemented without delay. Ensuring adherence to basic rights and electoral equity, do not have severe fiscal implications. The only severe implications are the reduction of assertion of political hegemony and monopoly of the exercise of public authority. This makes the limitations more a question of political will than the age-old argument of fiscal constraints, as shall be evident in subsequent sections.

3.0 The Consultative Group Meeting for Zambia - September 2000

This section provides an overview of the Donor concerns at the CG 2000, and limits itself to only those concerns that categorically centre on political governance⁷. The underlying assumption is that Donors are also cognisant of the expectations of an asserted

congruence between democracy and governance, and hence that their concerns will not be at variance with the concerns of the people as observed and or monitored by civil society organisations. If a variance exists, then it is imperative that Donors are made aware of their derogation of fundamental and universal tenets of democratic governance.

The political governance concerns raised at CG 2000 are herein provided in two categories: general and specific.

3.1 The General Concerns

The general concerns were that the Zambian government needs - to undertake measures to implement the good governance programme; institute legislative reform inline with the good governance policy; respect for human rights; civil society recognition, and; redress of corruption and abuse of the exercise of public authority.

3.2 The Specific Concerns

Categorical specific concerns cited are:

a) Elections

- Provision of information on Electoral Commission recommendations on amending the Act to provide for continuous voter registration and broader representation on the Electoral Commission, which was submitted to Government in April 2000.
- The Zambian government should as a means of ensuring free and fair elections meet the following conditions: the composition of the Electoral Commission must change to give people the confidence in the electoral process; transform the Electoral Commission into an organisation that would have representation from each political party participating in the election; equal and fair access to the media; freedom of assembly for all, and; implement voters education exercise smoothly.

b) Corruption

- Address misuse of power and public resources and irregularities in public procurement, and;
- There is need for action with respect to Auditor – General's reports of financial malpractices in public institutions and control corruption in institutions like Zambia Electricity Supply Company (ZESCO) and the Food Reserve Agency (FRA).

⁷ The assumption here is **not** that other issues (like economic management, poverty reduction, gender) do not affect political governance, but the recognition that other papers shall provide the relevant categorical

c) Human Rights Protection

- Need for respect of human dignity (police use of excessive force), and; upholding freedom of expression (tolerance of diverse opinions).
- Improvement of Prison conditions.

d) Accountability and Transparency

- implement human rights, governance and corruption programmes by instituting concrete and feasible measures for implementation of Good Governance programme, and prioritisation of the programme, and;
- Need for government actions to be consistent with Good Governance document, e.g. corruption, media control, application of Public Order Act, transparency in public spending.

3.3 A Civil Society Note on Concerns

Deriving from the Donor concerns, Civil Society indicated that the pledged support is contingent on the country's consolidation of democratic governance, respect for human rights, promotion of transparency and accountability in government, and adherence to equity in political competition during elections.

In short, the challenge for government arising from the Donor concerns is that it should act on cases of corruption, bad governance (such as abuse of the exercise of public authority), human rights abuses and other state failures likely to constrain good governance, and as a consequence socio-economic growth.

4.0 Political Governance in Zambia – The Realities

The realities of political governance in Zambia that this section addresses itself to are, here, first reflected in the commitment to good governance as captured by President FTJ Chiluba in the preface of the Republic of Zambia's good governance document. Without seeming snide, an understanding of the construct of good governance by the country's leaders is critical and instructive to the implementation of good governance strategies and indeed the implementation of commitments made to fora where Donor assistance is solicited.

"For us to ensure that the Zambian government governs at the pleasure and to the satisfaction of the Zambian people, we will strive for and guarantee the Zambian people, constitutional legitimacy, accountability, transparent decision making procedures, participatory development, democracy, respect for human rights and adherence to the rule of law." (c.f., Preface, Good Governance document)

These remarks provide an embodiment of the government's commitment to respecting the congruence between governance and democracy that the Zambian people have asserted.

The realities of political governance in Zambia as observed by Civil Society in the period 2000 to date, however show a critical variance. This was especially made glaring during the years to the 2001 tripartite elections. Elections, constitutional review processes, it must be accepted (in addition to human rights reports), provide an unassailable measure of a government's strides to good governance. The performance in these areas as this paper will show is wanting. It is apparent that the assertion of political hegemony and the consequent behaviours has been the core business of government and not the expected effort to actualise not only its commitments, but also uphold the people's asserted congruence.

This section, first provides Civil Society's specific observations on the government of Zambia's evidenced practices and or attempts relative to the Donor concerns discussed in section 3.0. Second, general observations on implementation of actions defined in the good governance policy document and comparative analyses of commitment premised on fiscal resource allocations. Lastly, the section addresses itself to civil society concerns relative to Donors.

Recommendations are provided for each area of concern cited.

4.1 The Specific Observations

Civil Society categorical and specific contentions in political governance relate to the electoral process, corruption, human rights protection, and issues of accountability and transparency.

(a) Elections

Government's obligation as of CG 2000 and indeed, its own policy document on good governance is the provision of equity in the electoral process. However, civil society observations, in addition to those of international NGOs showed a severe lack of the governments commitment to implement not only the recommended means to ensure equity in the electoral process, but also the will of government to implement its own developed policy guidelines.

In brief, on December 27, 2001, Zambia held presidential, parliamentary and local government elections. In most constituencies, the local government elections were suspended as the Electoral Commission realised that it could not cope with the three tier electoral system. In the presidential race, the incumbent, Mr. Levy Mwanawasa of the ruling MMD polled 29 percent, followed by Mr. Anderson Mazoka of UPND who polled 27 percent. The parliamentary elections resulted in a 50 percent split of the 150 member seats in the National Assembly between the ruling party and the opposition.

The electoral related events and process, either arising out of political competition and those required for the conduct of free and fair elections "can at best be described as "a planned disaster" to the detriment of people's expectations, but to the interests of a continuum of governance decay instituted by the political party in government.⁸"

A significant number of the elections monitoring and observing groups note that the elections occurred in a manner that undermined the legitimacy and probity of a leadership so elected. Confidence in the electoral process and respect of the right of a people to freely make political choices was not upheld.

For instance the Carter Centre notes:

"...the Centre concludes that the election results are not credible and can not be verified as accurately reflecting the will of Zambian voters. Unless and until the ECZ provides clear evidence to dispel doubts about the accuracy of official results, the Centre believes the legitimacy of the entire electoral process will remain open to question."

⁸ Elections in Zambia: A Question of People, Law and Governance, Afronet Position Paper Series, Jan/Feb 2002

In general, The elections monitoring and observing groups cite inadequacies in:

- the timing of the elections;
- logistics (adequacy in preparations and execution of voter registration and actual balloting);
- transparency (especially in ballot result declaration), and;
- adherence to conduct that allows electoral equity,

Appendix III provides summations of local and international NGOs that monitored and observed the 2001 elections in Zambia.⁹

The two local NGOs, NOCE and ZIMT that hold a contrary assessment on the elections, however do acknowledge the occurrence of irregularities that put into question the legitimacy of the 2001 elections, but conclude that the irregularities are "mere incidences and occurrences of omissions, human error and procedural misplacements." It must be inarguable that omissions or procedural misplacements of a grand scale as evident in the 2001 elections do not, however explained, reflect an acceptable people's political choice.

Further, the behaviour of government in negating electoral equity is still very evident.

In view of the forthcoming by-elections in Lufwanyama constituency, in early June 2002, government through Minister of Home Affairs, Mr Lackson Mapushi, "donated" resources worth Kwacha 164 million to government institutions. The government "donated" medical drugs worth Kwacha 14 million to three Health Centres, and a Kwacha 150 million cheque to Kafushi High School for infrastructure rehabilitation.

Since when did health and education services become the responsibility of a Minister of Home Affairs? There is no other explanation of this behaviour other than the fact that this is a clear case of electoral fraud and abuse of the exercise of public authority

This conduct is undoubtedly indicative of government's lack of resolve to uphold electoral equity, as it is a clear parody of government's action of discontinuing the discredited and discontinued presidential discretionary fund (slush fund) that was overtly used to coerce people into voting for the party in government.

It is apparent, therefore, that there is need for government to, as a matter of urgency, expedite implementation of mechanisms aimed at promoting electoral equity and combating abuse of the exercise of public authority during elections.

⁹ These include the Carter Centre, the EU, the SADC Parliamentary Forum, the Ecumenical Observer Team, FODEP, Coalition 2001, and NGOCC.

It is, hereof hence, asserted that the government should uphold the need for electoral reforms. The Electoral Act of Zambia and the Electoral Commission Act (No. 24 of 1996), should be amended (and in line with the consequent constitutional review argument herein section 4.2(a)) so that¹⁰:

- Elections are managed by an autonomous body that does not have the sanction of the president (see also 3.2 (a));
- The appointment of commissioners should be by a more representative body and not the president. This should be subject to greater scrutiny by parliament and/or public inquiry systems. There should be predetermined reserved representation from independent institutions, where the members themselves elect a chair;
- Commissioners are not involved in the day to day management of the elections management;
- There is a constitutional provision for the date of presidential and parliamentary elections. This is informed by Civil Society concerns that the date of elections should not be an electoral act provision;
- The electoral code of conduct should have enforcement mechanisms that are clearly spelt out, provides for harmonisation between institutions that need to enforce the code of conduct, and monitoring of campaign funds and need to limit such funds;
- There are legal provisions for the implementation of continuous registration of voters;
- The Law should have provisions that compel the ECZ to publish polling station results within 21 days after declaration of all election results. This is informed by the present situation where the Commission asserts that there is no legal provision to release polling station level results, except where such results are requested by a court of law.
- Rights and responsibilities of monitors should be spelt out in the Act, and;
- Government does **not donate** to government institutions when an election is imminent. The law should provide for the criminalisation of such acts, as there are clear cases of abuse of the exercise of public authority. This is simply because in well-administered execution of public authority, government **does not donate** to government institutions. There are line ministries or institutions tasked with such actions. A perpetuation of such political behaviours is reflective of the inability of the State to serve its population equitably and without always seeking political competition advantage.

(b) Corruption

Corruption is not only a testimony of failure of governance, but also a critical indicator of the abuse and or misuse of the exercise of public authority. In spite of the political statements made so far, the failure of government in combating corruption is still evident.

First, some individuals cited for corruption aspired to and now hold public office.

Second, government still has to show practical undertakings to redress abuse of the exercise of public authority that drained the country of millions of US dollars, and has to **act** on the financial irregularities cited in the Auditor General's reports.

Citable cases include:

- The divestiture of ZCCM assets is still shrouded in mystery. To which end a Parliamentary Committee recommended a public inquiry be held as provided for in the Inquiries Act, Cap 41 of the Laws of Zambia, to examine issues of public interest in the management of ZCCM. And that should the inquiry show criminal intent and or abuse of public office, the Director of Public Prosecutions should initiate legal redress.
- The Presidential Housing Initiative (PHI). The Auditor General's report on the PHI for period November 1998 to August 2001, shows glaring abuse of the exercise of public office.¹¹ There is evidence to show that individuals in public office used public resources for their own gains.
- Meridien BIAO (US \$ 90 million of public funds were used and to date there is no indication of its recovery or prosecution of persons involved when they are known).
- The Carlington maize saga.

The foregoing may seem historical, however, recent actions with respect to hunting concessions by the minister of Tourism show clear abuse of the exercise of public authority. The minister is alleged to have allocated all the hunting concessions to one individual¹². It is such actions that likely sustain corrupt practices in public office.

The institution tasked with control of corruption in Zambia is the Anti-Corruption Commission. The ACC Act fairly is adequate, but as a way of strengthening the fight against corruption there is need to amend the Act to provide for:

¹⁰ Appendix IV provides FODEP's recommendations on Electoral reform.

¹¹ Report of the Auditor General on the Operations of the Presidential Housing Initiative for the period November 1998 to August 2001.

- De-linkage of ACC from DPP in terms of prosecution, and asserted allowance for independent prosecutors;
- Corruption penalties that reflect the gravity of the case, and forfeiture of assets likely acquired through corruption or abuse of the exercise of public authority;
- Appointment of commissioners by a more representative body and not the president. With such appointments being subject to greater scrutiny by parliament and public inquiry systems. Representation should be from predetermined constituencies;
- Protection of "whistle-blowers";
- Abuse of public resources and office during an election period being an offence under the Corruption Act and not Electoral Act.

The foregoing is informed by Civil Society position that corruption is a criminal activity that has grave consequences on a people and the socio-political-economic life of a country. Corruption erodes public confidence in the socio-economic and political system and perpetuates organised crime.

Further, corruption corrodes a government's ability to provide for its people and as a consequence, corruption perpetuates poverty and human rights deprivation.

Although, Civil Society asserts the need to control corruption, it is cautious about the resolve of the present government in combating corruption, especially that it is this very vice that seriously undermined the electoral process, and hence bringing into question the government's legitimacy.

(c) Human Rights Protection

Government's anaemic resolve to uphold human rights was more evident in its inability to allow people exercise their political freedoms freely. (c.f. 4.1(a)).

In addition, extrajudicial killings, impunity, selective application of the law¹³, and total disregard for human dignity and redress of violations still persist. For instance, government has not yet provided its position on the Japhet Banda Commission of Inquiry on Torture.¹⁴

¹² The Monitor Issue No. 221, April 12 – 15, 2002

¹³ E.g., Michael Sata's arrest and charge on theft of public property. Michael Sata has since been acquitted.

¹⁴ A Report of the Commission of Inquiry into the Allegations of Torture, Abuse or Violation of Human Rights on the Persons Suspected of Involvement in the Attempted Coup of 28th October 1997 (GRZ March 2000)

Prison conditions are still unresolved, to the extent that prison deaths are on the increase due to congestion¹⁵ and the consequent inhuman conditions that exist.

"There is TB in the prison, malaria, and no doctor. We have rashes, coughs, stomach trouble. My cell is meant for one person. It is 3 metres by 4. I share it with five others.., If we have diarrhoea, which is often, we do it in a plastic bag to cut down the smell and get rid of it in the morning."

These words from a convict at Mukobeko Maximum Prison (Kabwe), effectively captures the plight of thousands of prisoners in Zambia. The government has an international obligation to redress inhuman and degrading treatment of its citizens.

Civil Society position on human rights protection is that:

- Human rights violations must **not** be tolerated; perpetrators must be held accountable and impunity¹⁶ must have punitive and preventive measures, and; there should be redress for victims of human rights violations.
- International conventions ratified by Zambia should be domesticated, as a means of strengthening Human Rights protection.
- There should be practical enforcement and implementation of human rights recommendations.
- The Bill of Rights must be reviewed to provide for only minimal derogations, and its scope broadened premised on the provisions of the recommendations of the Mwanakatwe Constitution Review Commission (c.f. Appendix V).

The institution mandated with human rights adherence and protection, thereof, is the Permanent Human Rights Commission. Civil Society argues that:

- reports and recommendations of the Commission should be binding on government;
- the Commission must have powers to prescribe redress;
- Commissioners should be people who understand Human Rights issues and must be appointed by a representative body and not the president. This should be subject to greater scrutiny by parliament and/or public inquiry systems.
- The Commission must be de-linked from the judicature. Serving judges **should not be** Commissioners, as this likely leads to conflict of interest, and they should serve for a maximum of five (5) years.

¹⁵ E.g., concern expressed by Lusaka High Court Judge Thomas Ndhlovu on the number of deaths of suspects remanded in custody – Monday June 3, 2002.

(c) Human Rights Protection and the Media

The media is one institution in Zambia that continually is constrained in its pursuit of information communication. Archaic criminal libel and defamation laws still exist.

Despite the ascendancy of President Levy Patrick Mwanawasa's government to leadership, no marked change has taken place as far as media reforms are concerned.

On February 11, 2002, Fred M'membe, managing director and editor in chief of the privately owned "Post" newspaper became the first journalist to be arrested and charged under the Mwanawasa administration for allegedly defaming President Mwanawasa by calling him "a cabbage".

The recent case is that of the "People" newspaper editor Emmanuel Chilekwa, assistant editor Shadreck Banda, reporter Kings Lweendo and student Journalist Jane Chirwa, who were on June 5 arrested and charged for defaming President Mwanawasa. The four are alleged to have published an article in the May 25-31 edition of "The People" newspaper which alleged that President Mwanawasa was suffering from Parkinson's disease, an incurable brain disorder. It appears that lack of respect for the media has been inherited from the previous administration of Mr. Frederick Chiluba.

We **affirm** the need:

- For comprehensive reform of media laws in Zambia to make them relevant to democratic governance. There is need for instance to enact a Freedom of Information (F.O.I) law to provide easy access to public information held in public offices.
- To ensure the independence of the public media (state owned), that is, Zambia National Broadcasting Corporation (ZNBC), the Times of Zambia and the Zambia Daily Mail.
- To realise that praise singing for the ruling party and government and demonisation of the Opposition political party views in the public media is not in the public interest and merely serves to contribute to creating tension rather than creating an atmosphere of reconciliation.
- To remove existing media laws that criminalise journalism. Laws relating to Defamation of the President, Publishing False News, Sedition, Espionage are deterrents to investigative journalism. For instance, Section 69 of the penal code, relating to Defamation of the President, has been used to silence dissenting views and criticism of government or key office bearers such as the president. This archaic piece of legislation makes it an offence to defame the

¹⁶ Merely removing human violators from office does not help combat impunity.

President. It remains an offence under this provision for anyone, with intent to bring the reputation of the President into hatred, ridicule or contempt, to publish any defamatory matter, whether in writing, print, word of mouth, or any other form or manner.

- To repeal the current Zambia National Broadcasting Corporation (ZNBC) Act, which provides the Minister of Information immense powers to control the corporation is urgent. The contents of this act, especially the section dealing with licenses should be incorporated in the proposed Independent Broadcasting Authority (IBA).
- For a Broadcasting Act. Such a law would ensure equitable treatment of ZNBC and other competing broadcasters such as private and community radio and television stations. Under a truly democratic dispensation ZNBC must be re-established as a truly public broadcaster that will operate in the public interest and free from political interference. The current situation is that of lack of editorial independence at the nation's biggest broadcaster.
- For introduction of an Independent Broadcasting Authority (IBA) to be vigorously pursued, as it can lead to reduced political interference in issuing broadcasting licenses and also create an atmosphere of transparency and fairness in the allocation of broadcasting licenses.
- For needed a timetable for law reform in Zambia.

(d) Accountability and Transparency

Another critical tenet of good governance is the ability of the State and individuals exercising public authority to be openly responsive to its citizens and be willing to be held accountable. Accountability and transparency does not only concern administration of a country's financial resources, as it seems is the interpretation of government today. Accountability and transparency is a broader construct that should extend to human resource appointments to public institutions, information and communication.

For example, a committee, consultancy or advisory unit for electoral reform has been constituted, and no information to date has been released by government even given that electoral issues of public concern.

Current behaviours in human resource appointments, where siblings are appointed to offices that border on the security of the state are unacceptable. Civil Society demands clarification of the status of one Harry Mwanawasa, and if it is that the said has been appointed to a senior position in the country's intelligence service, then we demand that the government provides irrefutable evidence that the person is so qualified. Nepotism

and favouritism are vices that negate good governance strides, and work to perpetuate bias in political competition.

Civil Society asserts that there is need for a move away from exclusivity attitudes in government appointments, hate or sectarian attitudes from persons holding public office.

And on fiscal accountability, in particular, we assert that:

- The Auditor General's Office should have the autonomy to provide responsive mechanisms to its reports;
- The Office should submit its report to Parliament with specific pointers as to which cases should be attended to by relevant investigative wings of government, and with such provision being a Constitutional provision;

4.2 The General Observations

(a) Constitutional and Institutional Reforms

This subsection is informed by the fact that for government to undertake most of the foregoing adequately and within the context of the existing law there is need for constitutional and institutional reforms.

Civil Society, henceforth, calls for:

- Government's categorical position on Constitutional review;
- A constitutional review, that will take into consideration all recommendations from previous Inquiries into constitutional review;
- The simplification and wide dissemination of the constitution of Zambia, especially the Bill of Rights;
- A change in the process of adopting constitutional review recommendations. A Constituent Assembly and not the Executive, should be responsible;
- The shift from a first past the post/simple majority system to a two thirds majority system in the presidential electoral system
- The removal of the parentage clause in the constitution and the apparent discrimination related to chiefs;
- The entrenchment of the provision on tenure of office of the President so that it can not be changed at an individual's will and whims;

- The review of the dominance of the executive in the separation of powers paradigm, with a view of reducing the powers and assigning them to more representative bodies in particular parliament.
- A constitutional provision for the date of presidential and parliamentary elections, and with such date being declared a public holiday;
- The shift to a Cabinet drawn from outside the legislature or parliament as a means of reinforcing the doctrine of Separation of Powers;
- A review of the Inquiries Act so that reporting upon the result of any inquiry should be to Parliament and not the President, and;
- The inclusion of Private members bills/motion in Constitutional reforms.

Further, Civil Society asserts the following on related institutional reforms:

- **Parliament**
 - The need to provide support to Members of Parliament, in form of data search, research and presentation. That is there should be provision of adequate parliament research and support staff, with defined qualifications;
 - Dissemination of Bills and Acts should be available on public medium, e.g., Internet, and;
 - Parliament as a public institution should be guided by democratic tenets such as equity in access to information and to persons elected to the National Assembly. Parliament should not be an insular institution protected from the citizenry.
- **Police Service**
 - There is need to revisit the recruitment policy, as a means of guarding against political and or sectarian recruitments;
 - There is need to curb impunity of police;
 - The process of appointing the Inspector General (IG) and tenure should be protected by law. The appointment should be ratified by Parliament, as a way of insulating the Office from political pressure;
 - The Police Public Complaints Authority should be constituted as a matter of urgency, as it will serve as a police watchdog and monitor police abuse of powers.
- **Director of Public Prosecution**

- The DPP should be strengthened and its legal status upscaled, which such upscaling being a constitutional provision. That is, in structure, the DPP should be at the same level as Attorney General;
- Need to have prosecution policy. That is, how prosecutions are launched and how to proceed, and;
- Use of *nolle prosequi* should not supersede public interests.

- **District Administrators**

- The DA office is a redundant office. The Office should be discontinued immediately, and the funds budgeted should be channelled to relevant Local Authority institutions or councils. In any case, this is a position reflected in the Poverty Reduction.. which government endorsed.

4.3 Good Governance Policy Implementation

That the good governance policy document asserts the government of Zambia's position on upholding the people's choice of congruence between governance and democracy is inarguable. However, even if one is mindful of the fact that it is predominantly a fiscal based assertion¹⁷, the actions undertaken so far do not adequately reflect a concerted political will.

Further, noteworthy is the fact that dissemination of information on the activities implemented is scanty, a behaviour that brings into question government's understanding of accountability and transparency. The succeeding paragraphs highlight sample cases where information has been available.

What is known so far is that, for the Human Rights Commission, the training workshops planned for 2001 have been undertaken, and the human rights database scheduled for December 2000 is still being developed.

Whilst, the Ministry of Legal Affairs' critical undertaking of translating the Constitution of Zambia into the major languages planned to have been realised by December 2001, is yet to be carried out.

The Judiciary planned for the establishment of a Constitutional division of the High Court by December 2001, but the existence of such a court is not known to date. The planned Commercial Court has however been established!

4.4 Civil Society Concerns vis-à-vis Donors

The dialectics of foreign policy diplomacy as manifest in the reaction to the 2001 elections in Zambia are a threat to democracy and human rights protection, in particular the rights to exercise one's political choice freely.

To argue further, we quote The Carter Centre Democracy Program Associate Director David Carroll.

"Although the Center has serious concerns about reports of irregularities in the vote tabulation, we have not seen clear evidence of vote rigging. The strengthening of democratic institutions and electoral processes in southern Africa is critical for stability and progress across the continent. The flawed Zambian elections demonstrated important progress as well as the serious challenges that remain."¹⁸

This is a viewpoint that is contrary to the same institutions conclusions on the Zambia 2001 elections, that is:

"..As a result, the Centre concludes that the election results are not credible and can not be verified as accurately reflecting the will of Zambian voters. Unless and until the ECZ provides clear evidence to dispel doubts about the accuracy of official results, the Centre believes the legitimacy of the entire electoral process will remain open to question." (c.f Appendix III)

Our concern here is, it is the first statement that the US State Department not only reiterated, but which could have influenced the US and other US aligned Donor institution's reaction to governance in Zambia.

A violation of human rights, political or civic is a violation! It should **not** need government-abated negation of the exercise of the right to political choice of a nature witnessed in Zimbabwe for Donors to be concerned.

If flaws or irregularities are a democracy requisite, why then did the West demonise Mugabe?

¹⁷ Note: The programme of action has defined implementation periods, categorised as short medium and long term.

¹⁸ c.f <http://www.cartercenter.org> – Activities by Country: Zambia

It must be irrevocably accepted that minimal concerns for violations merely serve to provide a continuum of a culture of impunity¹⁹, and the consequent general breakdown of democratic governance.

The Donor behaviour in Zambia with respect to good governance is regrettable. Donor assertion of the universality and inviolability of human rights has been inadequate, if not lukewarm.

In this respect, Civil Society in Zambia affirms that Donors should be decisive and exhibit response behaviours that respect the universality and inviolability of human rights.

5.0 Retrospect and Conclusion

To conclude this paper, we revisit dictates of the Zambian peoples' chosen polity, and categorically state the implications for governance in Zambia. And that is the government:

- Recognises that institutions of government should service the aspirations of the people in such a manner that they are held accountable to, and draw their legitimacy from the people;
- Recognises that the exercise of public authority derived from the people's unimpeded choice is of a non-sectarian nature;
- Shall provide an environment that allows for the assertion of the right to make political choices and implement such choices without interference (direct or perceived) from individuals tasked with the management of government, or from a collective of individuals either in government or of a particular political interest group;
- Shall provide for mechanisms that allow people to influence government decision -making, by implementing desirable measures that inform the people on the actions of government, and which allow the people to challenge such actions, and;
- Must embody the respect for human dignity and life, as enshrined in the basic rights and freedoms acquiesced to in their chosen civic order.

The challenge for the Zambia government and the Donors is that we seek to exist as part of a world order where there is due recognition of our chosen polity. For us to exist in such a world, **we affirm:**

- The critical need for Constitutional review, as the Zambian constitution is still not an acceptable instrument of good governance and political conflict

¹⁹ Rethinking the Missing, An Afronet Presentation to the ICRC workshop on "The Missing", June 200 - Geneva

resolution. A constitution **must** allow the people ownership of the fundamental law of the land.

- The administration of common affairs and the related fiscal issues should be exercised in a responsive and transparent manner.
- Exclusivity attitudes in government appointments, hate or sectarian attitudes from persons holding public office should be urgently redressed.
- Human rights violators regardless of the office they currently hold, and individuals that abuse the exercise of public office should not be allowed to continue holding public office.
- And lastly, a policy document is not simply a question of intent, it is a statement of action.

Appendix I

Extracts from the Government of Zambia's Good Governance Policy Document

▪ **Constitutionalism and Human Rights**

The core undertakings being:

- a) Repealing all discriminatory provisions in the Laws of Zambia so as to ensure laws of general application that are acceptable in a democratic state; and revisiting the Constitution, especially Part III, so as to remove certain derogations and restrictions that impede the full enjoyment of human rights and freedoms while ensuring that the rights of others are not impeded having regard to the current provisions of Article 79 of the Constitution (c.f. page 76 - 77 of Good Governance Document);
- b) ratification and accession of international human rights instruments (c.f. Appendix II), and incorporation of these instruments into the laws of Zambia;
- c) expression of intent to review "existing legal provisions that appear unjustifiable or compromise freedom of expression and those that derogate freedom of the press in Zambia";
- d) institutionalisation of human rights in all law enforcement agencies through capacity building;
- e) "revisiting all laws relating to security in order to introduce laws that are just and reasonable in a democratic society";
- f) improvement of prison conditions through infrastructural development and capacity building, and adhering to the provisions the relevant legal instruments – local and international²⁰;
- g) expression of intent to work towards eradication of torture through provision of "human rights friendly investigative technologies", introduction of strict and enforced disciplinary and supervisory procedures and, human rights training for the law enforcement personnel;
- h) Expression of concern to ensure that law enforcement officers abide by the provisions of the Public Order Act, and provision of training/retraining on implementation of the Public Order Act and "the rights of the individual under the Constitution to assemble and associate."

▪ **Democracy, decentralisation and strengthening of local government**

The core undertaking being:

²⁰ i.e., the Constitution, Prisons Act and the UN Minimum Standards of Treatment of Persons Deprived of Liberty and the Rules of Conduct Stipulated

- a) Acknowledgement of strengthened civil society and opposition political parties as a way of providing effective and efficient checks and balances to government, and consideration of mechanisms for assisting political parties through constant dialogue and provision of a for a at which their concerns can be addressed and considered for input into the governance process;
- b) Consideration of issues aimed at ensuring that public media institutions abide by the provisions of the Electoral (Conduct) Regulations 1996, as a means of promoting free and fair elections, and providing equal and fair access to the public media for all political parties;
- c) "Ensure that the Electoral Commission and other agencies of the Executive enforce the provisions of the Electoral (Conduct) Regulations 1996, and reviewing the Electoral (Conduct) Regulations to provide for deterrent penalties for any breach of such regulations";
- d) expression of studying concerns and commitment to action with respect to the independence of the Electoral Commission with the view of reviewing the relevant legislation;
- e) Expression of intent to make voter registration a continuous process, and assessment of adequacy of alternative identification documents (e.g., NRC, Passport) as prerequisites to voting.
- f) Expression of urgency institute decentralisation by devolving the management and delivery of services to local governments, local communities, NGOs and the private sector, and; intensification of civic education "in order to create greater awareness of civil society's responsibilities".

▪ **Accountability and transparency**

The undertakings aimed at ensuring accountability and transparency (in addition to derivatives from the foregoing (cite?) as a means of ensuring that people (shall) have controlling influence on the decisions and affairs of government, and in recognition of the fact that the exercise of public authority is derived from the people include:

- a) Recognition of the role of civil society/NGOs; the formulation of a policy document and legislation on NGOs that seeks to increase Government – NGO collaboration, information sharing and, increase public participation in formulation and implementation of programmes and projects
- b) Determination to strengthen "institutional framework and human capacity of government investigatory agencies;

- c) Harmonisation of the Anti Corruption operations "with other institutions dealing with law enforcement so as to strengthen the execution of criminal justice", and training especially investigative and prosecution training;
- d) Consideration of measures and penalties for effective drug control;
- e) Expression of intent to enhance accountability and transparency in the public procurement system by decentralising the functions of the National tender Board, and enhancing the capacity of the Tender Board;
- f) Recognition of need for urgent redress of the Auditor General's funding and human resource constraints;
- g) Commitment that government will ensure that persons in public office shall exercise their authority within the confines of the law;
- h) Institute strategies aimed at increasing awareness of the significance of the Office of the Investigator general, with such strategies including civic education campaigns and streamlining the operations of the Office of the Investigator General;
- i) Consideration of moving the corruption-related functions of the Parliamentary and Ministerial Code of Conduct Tribunal to the Anti Corruption Commission "in order to achieve greater justice".

Appendix II

List of International Instruments ratified or acceded to by the Zambian Government

- The International Convention on the Elimination of All forms of Racial Discrimination – 1972
- The International Covenant on Economic, Social and Cultural Rights – 1984
- The International Covenant on Civil and Political Rights – 1984, and the First Optional Protocol
- The African Charter on Human and People's Rights – 1984
- The International Convention on the Elimination of All forms of Discrimination Against Women – 1985
- The International Convention on the Rights of the Child – 1991
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 1998

Appendix III

Extracts of Conclusions by Monitors and Observers of the 2001 Elections in Zambia

Preliminary Report of the Ecumenical Observer Team for the December 27 2001 Tripartite Elections January 18th 2002.

"Use of Government Resources for Party Election Campaign

Our observation was, as in the conduct of the public media, that the ruling party continued to utilise government resources for its election campaigns. This gave the ruling party's candidates unfair advantage over the other political parties.

In essence there was a lack of adherence to the electoral regulations concerning the use of government resources during election campaigns.

After considering all the above components, our conclusion is that although the elections were peaceful and incident free, they cannot be certified as free and fair and therefore the government cannot be recognised as one that has been legitimately elected."

Coalition 2001 The December 27 2001 Tripartite Elections in Zambia – Executive Summary of the Preliminary Report (February 2002)

"Following on to these summary observations, Coalition 2001 finds the December 27, 2001 elections in Zambia severely lacking in integrity, and that the public agency tasked with the administrative and management of the elections "exempted" itself of the responsibility to guarantee that the right to make political choices is respected.

The issues provided herein lead the Coalition 2001 to: Not only question the legitimacy of the continuity of governance legally assented to by the Chief justice as Returning Officer at the Supreme Court grounds; But also whether the individual right to make political choices was protected.

Therefore, it is very difficult for any serious and reasonable individual or group of individuals to affirm that the December 2001 elections in Zambia were free and fair."

The Position of NGOCC on the Just Ended Elections and Results Press Release - 13th January 2002

"The serious anomaly that relates to this point is the fact that people were voting while announcements of election results were going on through the ECZ and the Media. This could have influenced the voters' choice in favour of a particular political party. Incidentally, the first announcements were for the places where MMD had scored victory."

Final Statement on the Zambian Elections 2001 – European Union Election Observation Mission - 5th February 2002

"Taking its performance into account in relation to the low - 55% - rate of voter registration, its failure to enforce its Code of Conduct, its maladministration of polling day, and its failure to address serious concerns relating to the accuracy of the announced results, we conclude that the Electoral Commission of Zambia has failed to fulfil its mandate on behalf of the electors of Zambia.

In view of the administrative failures on polling day, the serious flaws in the counting and tabulation procedures, together with the close outcome of the elections, we are not confident that the declared results represent the wishes of the Zambian electors on polling day.

We strongly recommend that the Electoral Commission publishes the voting figures from each polling station as an important contribution to transparency."

Interim statement by the SADC Parliamentary Forum Election Observation Mission on the Zambia Presidential, Parliamentary and Local Government Elections – Press Release Sunday 30 December 2001

"Without prejudice to the good work of the Electoral Commission of Zambia particularly in the pre-election period; the Mission strongly recommends that the Commission overhauls its election management system in order to ensure that the integrity of the process is not compromised. For instance, we understand that in some polling stations, voting could not commence on time or only commenced the following day due to logistical and administrative problems. Some polling stations did not receive election material in time leading to delays in the voting process.

In conclusion, we are confident that in spite of the problems experienced particularly on voting day, the just-ended tripartite elections afforded the people of Zambia an opportunity to exercise their constitutional right. The Mission wishes to put on record its gratitude appreciation to the government and people of Zambia for their hospitality and unqualified cooperation throughout our mission to Zambia."

Interim Statement by Foundation for Democratic Process (FODEP) President Dr. Alfred Chanda on the December 27, 2001 Tripartite Elections at a Press Briefing held at Holiday Inn on January 3, 2002

"After analysing almost 90% of election observation forms from the 6,247 FODEP monitors, and also considering the pre-election monitoring reports, it is FODEP's well considered, factual and honest view that the 2001 elections were not efficiently and successfully conducted. As a result, this has raised serious questions regarding the

legitimacy and credibility of the election results. This is very unfortunate, as it has created public contempt of the outcome of the election as evidenced by public demonstrations at a time the President-elect was being sworn in. That indicates the measure of legitimacy, or lack of it, of the just ended elections.

FODEP also wishes to strongly recommend that the original requirement of a Presidential candidate winning by 51% which the country had been using from 1964 until 1996 be restored. The Presidency is a very serious position and anyone elected to it must enjoy a mandate from a reasonably high number of voters.

A situation where a President is elected by about 30% of the voters as the case was during the last elections does not give credibility to the office of the Republican Presidency."

The Carter Centre Lusaka Field Office, Final Statement of the Zambia 2001 Elections, March 7, 2002

"...the government and the ECZ lacked the political will to take necessary steps to ensure that the elections were administered effectively and transparently."

"... Given these concerns, the Centre concludes that the ECZ and government have failed to meet the state burden of responsibility to administer a fair and transparent election and to resolve electoral irregularities that clearly could have affected the outcome of a close race. As a result, the Centre concludes that the election results are not credible and can not be verified as accurately reflecting the will of Zambian voters. Unless and until the ECZ provides clear evidence to dispel doubts about the accuracy of official results, the Centre believes the legitimacy of the entire electoral process will remain open to question."

Appendix IV FODEP Recommendations on the Electoral Process in Zambia

(ref: <http://www.fodep.org.zm/report61.htm>)

Considering the experience during the 2001 tripartite and other previous elections in Zambia, FODEP wishes to make the following recommendations:

1. The Republican Constitution must be reviewed to:-
 - (a) provide for a specific week of a month within which Presidential and parliamentary elections shall be held every five years, preferably during the month of September. This is aimed at ensuring that elections, other than unforeseeable by-elections, are never held during the rain season which has proved to be an unfavourable period for conducting free, fair and successful elections;
 - (b) Repeal Article 34(8) and restore the clause requiring a winning Presidential candidate to receive 51% of the votes cast;
2. There should be transparent and adequate arrangements for a continuous voter registration exercise since the law had been amended in 2001 to facilitate this exercise with effect from the year 2002. This is to ensure that a credible voters' roll that reflects the true, correct and majority number of eligible and registered voters is produced and ready time for 2004 Local government elections and 2006 Parliamentary and Presidential elections:
3. The Public Order Act must be reviewed so that its effect does not erode the fundamental and Constitutionally guaranteed freedoms of association, assembly and expression. The Act must be reviewed in order to address the Supreme Court observation during the 1996 Presidential election petition that "the requirement of prior permission to gather and speak which could sometimes be denied, directly affects the guaranteed freedom of speech and assembly".
4. There should be clear and effective mechanism of enforcing the Electoral Code of Conduct, stating clearly responsible institutions and/or agents. This is aimed at ensuring that the political playing field is level as much as possible in terms of media cover, campaign rallies, meetings and /or processions, etc;
5. Government must consider funding of political parties represented in parliament in accordance with their percentage of seats, as is the practice in most SADC countries in order to enhance multiparty and representative democracy.

Appendix V

Recommendations of the Mwanakatwe Constitutional Review Commission by Statutory Instrument number 151 of November 22, 1993 (under the Inquiries Act cap 181).

On PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

The commission recommended extension of Human Rights, both in scope and form, e.g:

- Women and children's rights;
- the right to peaceful assembly without prior authority;
- the right to petition government and get a response thereto;
- the right to freedom of information;
- right of journalist not to be compelled to disclose their sources;
- the right to clean environment; suspects must be brought before a court of law within 48 hours of arrest;
- all media financed by or under the control of government would be organised and regulated in a manner which would ensure impartiality and the expression of diversity of opinions, and;
- every person should have the right to access all information held by the State or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her constitutional rights.

Note: Government rejected the entire Bill of Rights, by invoking Article 79 of the Constitution of Zambia Act 1991, which provides for Parliament to amend the constitution without alteration of the Bill of Rights. Alteration of the Bill of Rights requires a national referendum. Lawyers and Human Rights groups argued that the 1996 amendment bill had technically altered and affected the bill of rights²¹.

²¹ <http://afronet.org.za/reports/rephome.htm>