

Jesuit Centre for Theological Reflection

JCTR

Promoting Faith and Justice

BULLETIN



QUOTE

“The Church sees media as ‘gifts of God’ which unite men in brotherhood and help them cooperate with His plan for salvation.” - Communio et Progressio

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LETTER

From the Editor

Dear Readers,

On July 27th of this year, the Cabinet gave approval in principle for the introduction of a bill to Parliament that would provide access to information to the public. Ever since this legislation was recommended by the Media Reform Committee under the MMD government in 1991, Zambia has been debating the possibility of a law guaranteeing access to information. The year 2023 might see a First Reading of this law in Parliament at the next session in September, which would bring Zambia one step closer to being more open and transparent to the public.

With discussions of the ATI Bill raging in civil society circles, the reader will find engaging articles discussing the need for this law, what the law is and why it is important. In addition, when the ATI Bill is discussed, people often have misconceptions about what the Bill will mean for Zambia. Therefore, this bulletin contains an article which seeks to combat three common myths about the law – emphasising that the Bill will respect our privacy, is more than a mere ‘media bill’, and reassuring us that state secrets will remain safe.

The ATI Bill will be a crucial component to Zambia’s legal framework which supports a transparent and accountable government. The area where this transparency is urgently needed in Zambia is financial transparency. The constitution of Zambia mandates that a person holding a public office has to disclose their assets and liabilities when assuming and leaving office (article 263). Furthermore, the Ministerial and Parliamentary Code of Conduct Act stipulates that ministers have to annually disclose their assets, liabilities and income to the Chief Justice. But there is no provision for such an annual

declaration by the President. Should he have to provide one? One article in this bulletin suggests that the President has to provide such financial transparency, since Zambia cannot have two grades of public servant. Another article argues for the same conclusion for all public officials, saying that they are in a position of trust with public finances and financial transparency is needed to hold all officials accountable.

Financial transparency could also be discussed with regards the sources of funds for political parties and how these funds are spent. The Zambia constitution requires that legislation should be enacted which directs political parties to be open about the sources of funding (article 60). Should Zambian law go further and make political parties accountable to the public for how this money is spent on an annual basis? The reader will find an article in this bulletin which suggests that financial transparency of political parties would help to nurture a culture of transparency in Zambian politics. This culture may be critical to the success of a political party when it eventually gets the mandate from the public to lead the country.

Access to information and financial transparency will ensure that the government of Zambia is conducted in an open and transparent environment. This is essential if Zambia is to tackle corruption and if the public is to effectively hold the government accountable. As we approach the 28th of September (which the UN General Assembly has declared as the International Day for Universal Access to Information) let us hope that 2023 becomes the year in which Zambia joins the international community in offering legal protection to this important human right.

Grant Tungay, S.J.
Assistant Editor

CORRUPTION & THE NON-CONVICTION BASED FORFEITURE OF ASSETS: POLICY CONSIDERATIONS



Setting the Scene: Confiscating Property without Prosecution

In the fight against corruption, the Director of Public Prosecutions (DPP) has a number of tools in his tool belt. He can charge criminals with crimes if criminal activity has been committed. However, if there is not enough evidence to convict a criminal of such activity, he has another tool in his tool belt. He can apply for a forfeiture order of property, allowing the state to confiscate property believed to have been acquired with finances obtained from criminal activity. But if he does have enough evidence for a criminal conviction, should he still use this tool?

This article will argue that the application for a forfeiture order of property should not be pursued, if there can be a successful prosecution with the evidence at hand. This gives respect to the rule of law and to accountability. If no such evidence exists, a forfeiture order of property can be pursued, of course giving due regard to the fact that this measure can unnecessarily restrict the rights to property and to due process if it is abused.

A Recent Test Case

This question may be explored through a recent case that the DPP dealt with. In June 2023, the general public learnt that the Director of Public Prosecutions (DPP), Gilbert Phiri S.C., applied for non-conviction-based (NCB) forfeiture order of

property believed to have been acquired through criminal activity. Among the properties involved in the above case are 15 flats belonging to the former First Lady of Zambia, Esther Lungu; Crest Lodge in Ibex Hill belonging to Charles Phiri and lawyer Chiyeso Lungu; a house, three flats and a poultry belonging to Chiyeso Lungu; land in Ibex Hill belonging to Charles Phiri and a farm in Sinda, Eastern Province, belonging to Hon. Tasila Lungu, PF member of Parliament for Chawama Constituency.

Regarding the 15 flats belonging to the former First Lady, the Drug Enforcement Commission (DEC) had earlier repossessed these properties on 1 July, 2022. This new development is therefore the conclusion to a year-long investigation. Presumably that investigation led to the investigation of the properties belonging to Charles Phiri, Chiyeso Lungu and Tasila Lungu.

What is Non-Conviction Based Forfeiture?

Though it is commendable that something has been done in the above case, the route taken by the DPP, to pursue the non-conviction-based forfeiture against known owners, brings to the fore various policy considerations for our collective reflection as a society. How can non-conviction-based forfeiture be used as an effective anti-corruption tool while avoiding its chilling effect on property rights of those affected?

First things first, let us begin by defining what exactly is meant by non-conviction-based forfeiture. Simply put, a non-conviction-based forfeiture of an asset occurs when a court confiscates assets of a criminal nature, even where no conviction has been obtained in relation to criminal conduct. This is distinct from a forfeiture order where the court confiscates property after the criminal conviction of the person interested in the property for an offence in relation to that property.

International and Domestic Legal Frameworks

It must be appreciated that international norms and instruments recognize non-conviction-based forfeiture as an important tool in the fight against corruption. The only legally binding universal anti-corruption instrument, the United Nations Convention against Corruption, provides for non-conviction-based forfeiture.

Domestically, non-conviction-based forfeiture is regulated by a complete Act of Parliament, the Forfeiture of Proceeds of Crime Act of 2010, which provides for the confiscation of the proceeds of crime, the deprivation of any person of any proceed, benefit or property derived from the commission of any serious offence and facilitates the tracing of any proceed, benefit and property derived from the commission of any serious offence. The Forfeiture of Proceeds of Crime Act of 2010 actually domesticates the provisions of the United Nations Convention against Corruption.

However, there are a number of criticisms and concerns which have been raised with regards to potential authoritarian misuses of non-conviction-based confiscation. These include the tensions between the anti-corruption and human rights agendas, the risk of political interference in judicial and court systems, and encroachments on both the right to a fair trial and to due process.

There have also been concerns about self-incrimination and distribution of the burden of proof, the proportionality of asset forfeiture measures, compensation for third parties, and infringements of property rights. These issues are particularly prominent in the developing world, like ours, where weak institutions and rule of law deficits allow abuses to happen.

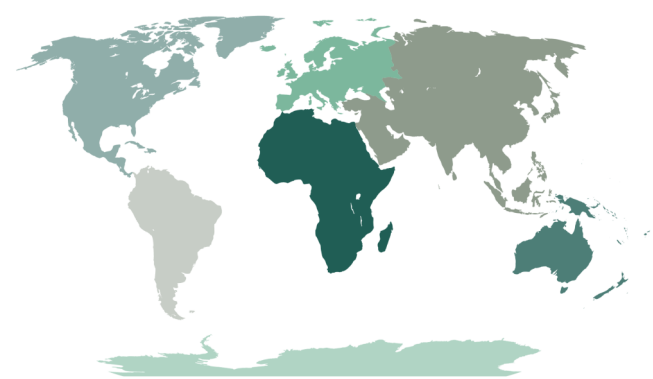


The Need for Safeguards

To avoid the dangers, a number of safeguards must be in place to ensure that non-conviction-based asset forfeiture is used in accordance with human rights standards. Independent institutions are key to avoiding political interference in investigations and judicial proceedings. Non-conviction-based forfeiture should be lawful and proportionate, and its proceedings should ensure the rights of due process and to a fair trial.

Article 54 of the United Nations Convention against Corruption (UNCAC) also cautions countries to “consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases” (art. 54, 1 (c)).

Where criminal prosecution can be pursued and against known property owners, it seems odd to pursue non-conviction-based forfeiture and may heighten concerns this type of forfeiture attracts worldwide.



Policy Considerations

Non-conviction-based asset forfeiture provides an effective avenue for confiscation in situations where it is not possible to obtain a criminal conviction – whether the defendant is dead, unknown, missing, or immune from prosecution, or in cases where the statute of limitations prevents prosecution. It benefits from the lower evidentiary threshold required to obtain a confiscation order, when compared to proceedings designed to determine criminal liability.

Questions for the Test Case

Some questions can be raised by the latest development by the DPP.

The application for non-conviction-based forfeiture has been made following investigations by law enforcement agencies including the Drug Enforcement Commission against known property owners. Having done their investigations, the law enforcement agencies must have passed on the results of their investigation to the Director of Public Prosecutions and the result is an application for a non-conviction-based forfeiture of the properties.

The crucial question this raises is why the DPP preferred to apply for the non-conviction-based forfeiture order of tainted property, rather than choosing the route of arraignment.

As Article 54 of the United Nations Convention against Corruption guides, the default position is to resort to criminal prosecution route of any suspects identified in the commission of an offence in relation to the property. If criminal guilt is proved, two proverbial birds, if not three, are killed with one stone. Criminal conviction results in:

1. the confiscation of the proceeds of crime;
2. the punishment of the perpetrators; and
3. a clear demonstration that no one is above the full force of the law.

Where Evidence Exists, We Should Prosecute Crime

Whatever the reasons behind the position taken by the Head of Criminal Prosecutions to choose not to prosecute any criminal breaches but go through a civil forfeiture, it is inadvisable to proceed with civil forfeiture where evidence is available against a known suspect. Forfeiture is always available to the DPP at the successful conclusion of a criminal matter. One of the most prominent drawbacks of civil forfeiture is its chilling effect on the right to property of citizens.

It was not the intention of the framers of the forfeiture law to clothe investigative agencies with wide discretionary powers to attach citizen's property without finding of guilt by a court of law, but is justified where the accused cannot be brought to account for one reason or another. Tampering with the right to property strikes at the heart of constitutionalism whose muddy waters have long roots in the well established position of great philosophers like Montesquieu, John Locke and Jean Jacques Rousseau that human rights and freedoms are intrinsically and ontologically connected to free ownership of property and free enterprise.

A perfect picture of lady justice shows her blind, so that no matter who is subject of her court is treated just the same as the next one. This always a good reminder for society to reflect on its actions for collective improvement.

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“Where evidence exists, we should prosecute crime.”

– Alex Muyebe

GETTING CLARITY ON THE ACCESS TO INFORMATION BILL



Introduction

“Knowledge is power. Information is powerful and liberating”. These are the remarks of Kofi Annan, a former UN Secretary-General.

To this, we might add that information is only potent and liberating if people have access to it and can act on it in a way that encourages accountability from both the knowledge provider and the knowledge receiver. This makes information access a crucial weapon for the advancement, expansion, and development of a state or democracy.

The Need for Legislation

Intentional and domestic legislation (law) that supports public access to information must exist in order to accomplish this purpose. The concept of "access to information" states that information held by the government, public institutions, or private organizations and has public implications should be made available to the public.

This implies that not only can Mr. A walk into a government office and ask for information, but that government and public institutions ought to be allowed to provide this information voluntarily without being asked to.

Additionally, it is important to keep in mind that various international and regional organizations and instruments, including Article 19 of the Universal Declaration of Human Rights (UDHR), Article 9 of the African Charter on Human and Peoples Rights (ACHPR), and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), recognize access to information as a fundamental human right. As a member state that has ratified all three of these international agreements, Zambia is obligated to ensure that it passes legislation that makes it easier for this right to be exercised. Below I discuss and share a brief history of access to information in Zambia, where we are at present on ATI, why ATI is Important, and the benefits of ATI to both the state, politicians, and citizens.

A Brief History of ATI in Zambia

The dispute about information access has existed for over thirty years. The Movement for Multi-Party Democracy (MMD) campaigned on the promise to pass legislation promoting access to information in the 1991 elections. Journalists who supported this legislation during the MMD's election campaign argued that it would increase transparency and promote good governance. However, despite the fact that two bills on access to information were successively introduced in parliament, neither one has become law.

Where Are We at Present On ATI?

As of March 2022, the UPND government stated that the ATI bill would have to be taken to all ten provinces for consultations with various stakeholders. This was not received very well by the general public and stakeholders who felt that such a move would further delay the bill. The Civil Society Coalition on ATI, which is currently led by the Jesuit Centre for Theological Reflection (JCTR), has been engaging the government on the ATI bill.



President Hakainde Hichilema pictured during a presidential campaign trail, 2021.

On the 19th of July 2023, JCTR was joined by key stakeholders (including the Ministry of Justice, pol-

iticians, and other civil society groups) at a public discussion on ATI organized by Transparency International Zambia. The Ministry of Justice reaffirmed its commitment to having the ATI bill enacted, but advised that there have to be cautious steps taken in the process. The Ministry of Justice shared that the bill has to get cabinet approval before it can be drafted and presented to Parliament.

Stakeholders from Civil Society urged the UPND government to ensure that it gives the people of Zambia this gift of access to information. The government was warned not to fall into the trap of failing to give the Zambian citizens this priceless gift of ATI as posterity would judge them. Additionally, stakeholders exhorted the UPND government to emulate the example of countries such as Angola, Zimbabwe, South Africa, and Malawi among many nations in Africa and beyond who have gifted their citizens with the Access to Information Law.

Why ATI is Important to Zambia

ATI is advantageous to Zambians in a number of different ways. Besides the objective of gaining access to information, persons in public office and the general public must comprehend that, first, public authority is delegated authority, and that those in office must consent to being held accountable by those to whom this authority has been granted.

Secondly, if and when individuals have access to information, only then can public participation be improved. People are then able to make wise selections.

Thirdly, public employees spend taxpayer money; taxpayers have a right to know how their money is being used as it is their money. The trick is to attain this ATI. These three ideas, along with a number of others, would guarantee that Zambia is informed, transparent, and progressive.

(a. Benefits of ATI to Politicians

When it comes to passing the ATI bill, there is a perceived worry that the politicians won't follow promises of commitment to enacting the ATI Bill. Since 1991, politicians have proclaimed their commitment to passing this legislation. Politicians, who for purposes of this article comprise both the ruling party and the opposition, also stand to gain from the ATI bill. The ATI legislation will see to it that the misconception that politicians are crooks is dispelled. The lack of transparency about the use of some of the money given to government ministries, parastatals, and constituency development funds has led to this view among the populace. Lack of knowledge breeds mistrust; trust must be gained. Being open is one approach to winning the public's trust. Information access greatly promotes transparency that leads to trust. Politicians could thus demonstrate their loyalty to the people who have granted them control over public monies by enacting laws that promote access to information.

(b. Benefits of ATI to Citizens

Access to Information will benefit the populace since they will be better able to participate in governance and understand what is happening in their own nation. Citizens can feel confident that their political and civic societies are committed to advancing human rights by having access to information, which is a fundamental human right. The right to freedom of expression guaranteed by Article 20 of the Zambian constitution would be strengthened through access to information because the populace would express themselves from an informed position. The ATI will also increase citizen participation. Because the public is unaware of most public activities and the public institutions that participate in them, most public activities typically encounter apathy from the general public. Important events like referendums in the past have not seen full citizen involvement due to a lack of information. Thus, gifting the populace with the ATI Law would enhance citizen participation.

(c. Benefits of ATI to Zambia

Zambia as a whole would profit from ATI legislation

since it would inspire investor confidence. Both foreign direct investment and investments from other countries would rise. The subject of unemployment would be resolved as a result of this confidence and rise in investment which would create employment. Foreign investment would also mean that more foreign nations would conduct business with Zambia, increasing the nation's foreign exchange reserves and addressing the issue of unstable foreign exchange rates. Zambia would, through the enactment of the ATI bill, gain the goodwill of other nations and key international and regional bodies.

Conclusion

This conversation has made it quite evident that the Access to Information Bill is a necessity. For a very long time, the people of Zambia have been waiting for this piece of law. Therefore, the populace requests that the UPND administration change history and gift the Access to Information Law to the Zambian people. We know that everybody, from politicians to citizens, and the entire nation, stands to gain from this legislation. Politicians are urged to get over their apprehension about passing the Access to Information Bill and enact it, because the ATI bill applies to all Zambians, including politicians. Also, importantly, civil society groups and the general public are to be encouraged to continue advocating for the Access to Information Bill until it is finally enacted.

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“For a very long time, the people of Zambia have been waiting for this piece of law.... We know that everybody, from politicians to citizens, and the entire nation, stands to gain from this legislation.”

FINANCIAL TRANSPARENCY IN THE PUBLIC

SERVICE: THE CASE OF THE PRESIDENT



Introduction

“Transparency is a fundamental principle of a strong democracy”. These are the famous remarks of Peter Fenn, a communications and political strategist from the United States. In fact, for a democracy to flourish, both the general populace and those in public office must be forthright. Transparency in a democracy encourages accountability and informs the populace about how public officials manage the country’s affairs and how resources are used and guarded against misuse and theft.

Tensions between citizens and those in public service on the African continent and elsewhere have been brought on by some public officials' lack of transparency. Public service transparency is the act of openness by public service employees that citizens use to fight corruption and hold public servants accountable for their actions. This article argues for the provision of legislation that will require the president of the Republic of Zambia to disclose his or her assets at least annually.

Public Service and Transparency in Zambia

The Patriotic Front government announced the establishment of the "Technical Committee on Drafting the Zambian Constitution" (TCDZC) in 2011. Following much research, this committee gave the then-Minister of

Justice and Defense Edgar Lungu a draft constitution to distribute to the broader population. The draft constitution was presented to the then-Republican president Edgar Lungu in 2015, following consideration by parliament. Lungu later accented to the draft constitution in 2016.

Several Articles in the modified constitution deal specifically with public servant conduct, conflicts of interest, and asset declaration. Any individual holding public office must make certain preparations before taking office and after leaving office. According to Article 263 of the Constitution of the Republic of Zambia, “Any person holding public office shall before assuming office and leaving office make a declaration of his or her assets”. By this article, the President, the ministers, and the MPs must declare all of their assets before and after taking office for transparency and accountability for the public resources placed under their care.

Transparency for some, But Not for the President

According to the Parliamentary and Ministerial Code of Conduct Act, ministers and lawmakers must disclose their assets before taking office and must do so again every 30 days after that. Ministers and members of parliament are required to submit declarations to the

Chief Justice at the start of their terms in office and every 30 days thereafter, as per section 10 of the Parliamentary and Ministerial Code of Conduct. This raises issues of equality, accountability, and openness because while there is a document requiring ministries and lawmakers to disclose their assets monthly, there is no similar requirement for the president.

In this instance, when it comes to financial transparency, one may compare this situation to George Orwell's classic "The Animal Farm" and ask whether all public employees are equal or if some are more equal than others in the area of financial transparency. Below I discuss, some of the risks that could result from requiring the president—the country's top public servant to only declare his assets twice during his term in office.

Risks of Non-Disclosure of Financial Information by the President

1. Potential for Abuse of Power and Funds

Allowing the president, who is public servant number one, to only declare his or her assets before assuming office and before leaving office has a number of risks. Firstly, it creates the opportunity and temptation to abuse public funds. The person in the office of president would in theory, as per the term of presidential office in Zambia, have five years in which to abuse public funds and cover up the abuse of the funds.

History has taught Zambia great lessons regarding the abuse of public funds. In 2001 when Levy Patrick Mwanawasa took over as president of Zambia, he soon created a Task Force on Corruption. This task force mainly focused on the abuse of office and power by public servants. Fredrick Chiluba as the former president and former public servant number one was one of the people who were investigated. The task force uncovered properties and money, which were unaccounted for, registered under the former president's name. Many of these properties were spread across Zambia and some in the United Kingdom. When asked to account for these monies and properties, the former president claimed the money and the properties were gifts from his friends from abroad, a claim he was unable to substantiate.

Although the Ministry of Justice did not get a conviction in the Chiluba case in a Zambian court, the government was able to secure a conviction in a court in London concerning the properties the former president had in the United Kingdom, as he failed to account for the properties. This is just one example which shows how allowing a public servant to declare assets only at the beginning and at the end of his or her term could lead to serious abuse of power and public funds.

2. Introducing Different Grades of Public Servant

Secondly, there must be equality in the public service and the president as the chief public servant number one must lead by example. Thus, if other public servants are required to account for their assets to the Chief Justice monthly and annually, then the president as the chief public servant should also be required to lead by example. This will inspire trust, and confidence in him or her from his or her subordinates who would be moved to emulate his or her example in being financially transparent. Zambia can't have one group of public servants who are transparent on the one hand, and the president on the other who represents a superior grade of public servant who does not have to be as transparent as his subordinates.

Conclusion

From this conversation, it can be appreciated that legislation that requires the president as the chief public servant to declare his or her assets at least annually is necessary. This will promote among other things financial transparency, and equality in public service. Such legislation would also nurture confidence of the populace in public servants, as the populace who are represented by the Chief Justice would have records of the president's honesty in financial transparency. Therefore the president, as the chief public servant, must be at the forefront in pushing for such legislation. Zambian citizens, as well as Civil Society movements, are also called upon to advocate for such legislation for a more financially transparent Zambia.

Masuzyo Jumbe, S.J.

Volunteer, Faith and Justice Programme

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PEOPLE, NOT MONEY, SHOULD BE AT THE CENTRE OF POLITICS



Introduction

In 1956, Dr Martin Luther King Jr. was quoted in a speech as saying, “We need leaders not in love with money but in love with justice. Not in love with publicity but in love with humanity.” These words are as powerful today as they were almost 70 years ago. Zambia needs political leaders who place the person at the centre of their public service, rather than financial reward. This is not to say that money can’t be useful for politicians, who can use their kwacha’s to raise up the livelihoods of their constituents. But the problem arises for politicians when work for people becomes secondary to personal enrichment.

Financial Transparency of Political Parties

How could Zambia ensure that politicians keep people at the centre of their focus, instead of having wealth as their primary goal? One could not find a better place to start than by nurturing a culture of financial transparency in all political parties.

If all duly registered political parties were publically transparent about how they spent their money, voters could clearly see which politicians were receiving what financial rewards as members of these parties. It would also allow voters to see if political parties were spending money on corrupt activities, if they were engaging in these. How a political party spends its resources

could function as a measure of how focussed they are on serving the voter. One could plainly see, with transparency, how invested the political party is in responding to the needs of the people – how invested the party is in public service.

Moreover, if all political parties were publically transparent about the sources of their financial support, then voters could see which persons or entities were trying to influence political movements for personal gain. If political parties, out of greed or a need to compete politically, become agents implementing the self-serving agenda of certain wealthy individuals or entities, then it is clear that service to the people is not their aim. Voters would be able to know this by scrutinising the sources of funding of political parties and could avoid voting for representatives of these parties at the national elections.

The Emergence of the Debate on Financial Transparency

The issue of financial transparency of political parties is a contentious issue. It has been hotly debated in Zambia at least since the early 2000s, when political party and campaign finance legislation were mooted. But no regulating legislation was forthcoming.

Then in 2016, Zambia enacted a new Constitution. Article 60 of the Constitution deals with political parties. Specifically, article 60 (4) states that various important

issues regarding political parties shall be regulated by legislation. Among these issues to be regulated are the following key issues: the establishment of a Political Party Fund, the submission of audited accounts by political parties, the sources of funding of political parties, as well as the maximum amount of money to be spent by political parties during campaigns. From this list, the regulation of the sources of political parties and the submission of audited accounts by political parties stand out in terms of financial transparency for Zambian politics.

The Political Parties Bill

But importantly, the stipulations of Article 60 of the Constitution are without value until the National Assembly has adopted legislation which gives effects to them. An attempt was made in 2017 to do just this: the Political Parties Bill was debated. The enactment of this Bill would have instituted the existence of a Political Parties' Fund, which would have funded all political parties with seats in the National Assembly. It would have also have greatly contributed to the financial transparency of political parties in Zambia. But how?

The Political Parties Bill of 2017 mandated a declaration of assets of all political parties to a Registrar of Political Parties (a position to be established by the Bill) when they are registering for the first time. This declaration would have included information about the assets of each political party, the amount of donations received by it, and the sources of those donations. It would also have to be published in the Government Gazette, as well as in at least one daily newspaper in general circulation in Zambia.

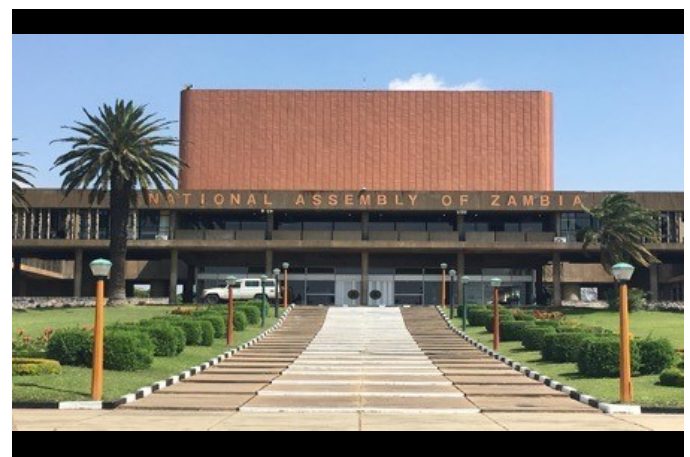
The Political Parties Bill would also have instituted annual financial declarations which would have been extensive: an annual declaration of the amount of moneys received from the Political Parties' Fund; the amount of money received from its members; the sources and amount of external donations to the party; as well as the assets and liabilities of the party.

Importantly, this annual declaration would not simply be to the Registrar of Political Parties. It would have to be published in at least two daily newspapers in general circulation in Zambia. Therefore, this annual financial information would have to be made available to the public, greatly enhancing financial transparency of political parties.

The Situation as it Stands

As can be imagined, political parties would have been greatly challenged by this legislation. It would have allowed a window to be opened to the public, permitting people to see the amount of money received from the public and how it was spent during the year. Importantly, this unprecedented access to financial records of political parties would have given people the power to judge for themselves whether the parties were serving themselves, or the people they claim to serve.

But this legislation was never enacted. Not surprisingly, it was dead in the water. Are political parties in Zambia ready for a spotlight to be shone onto their finances; onto both the sources of funding and how such funding is utilised by the party?



At the moment in Zambia, there is no legal requirement for political parties to submit their financial information to the public for scrutiny. They may have to submit this information to the Registrar of Societies (since political parties are registered under the Societies Act), and to the Zambia Revenue Authority for a disclosure of

of donations and payments. Furthermore, constitutions of some political parties may require disclosure of the party's financial situation to the National Executive, or to the members at the Annual General Meeting. But these requirements do not amount to public financial transparency, since the information does not have to be published publically.

Is Financial Transparency a Minor Issue?

Some people may argue that the problem of financial transparency of political parties is really a storm in a tea-cup. If the majority of funding for political parties comes from member subscriptions, and that funds from 'well-wishers' or private donations are not that influential in the grand scheme of things, why would political parties need to be financially transparent? Wouldn't this just amount to being transparent about how many members a political party has and how much money they have paid?

Even if donations from 'well-wishes' or private donors did not amount to much in the overall budgets of political parties, to argue that financial transparency is not important for political parties is to miss the point. The problem is how to nurture a culture of transparency in Zambia politics. If political parties don't create an environment of openness and accountability at home, in their own organisations before they get elected into power in Parliament, what will happen when they do get elected?

The Hope: An Open Government Focussed on Service

The hope is that if openness and transparency to the public is cultivated in political parties before they get voted into power, then when they do climb the political ladder up to the top, they will offer an open and transparent government to the people. Furthermore, when a political party assumes the role of government of a country, they will have access to more than just members' subscriptions: they will have access to a national budget of billions of kwacha. Financial transparency to the public then becomes not a 'nice-to-have', but an essential safeguard against corruption.

What about building a culture not just of financial transparency, but of service to the people? We don't want political parties who are open to voters about their money, and yet do nothing for Zambia. We want political parties who love service more than money; who love people more than kwachas. From this perspective, financial transparency is more than a safeguard against corruption. It is a tool to ensure that political parties are kept honest about their true calling: to serve the people rather than serving themselves.

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PEOPLE, NOT MONEY, SHOULD BE AT

THE CENTRE OF POLITICS

Grant Tungay, S.J

Faith & Justice Programme Manager



THE IMPORTANCE OF TRANSPARENCY TO THE EXERCISE OF PUBLIC OFFICE



Introduction

Transparency is one vital principle essential to democracy and governance. This is because it places a responsibility on those holding public office to be accountable. It also invites the general public to ensure that those in public office are held accountable. Popular adages express this vital principle of transparency, like: sunlight is the best disinfectant; honesty is the best policy; keep your cards on the table; as clear as day; and pulling back the curtain. According to the online dictionary, transparency entails the quality of allowing light to pass through so that objects behind can be distinctly seen. It is also defined as the quality of being easy to perceive or detect. Katie Terrell Hanna and Ivy Wigmore state that transparency is the “quality of being easily seen through,” and what this means in a business context is that one is to be open and honest.

Transparency and Public Office

When making explicit connections between the operations of a public office and transparency, one could simply say that transparency invites the public office to make all decisions and transactions visible, and information about these decisions accessible and available. This would help the public to understand the day-to-day operations of any public office. Obviously, what would be vital to transparency is if the communication from the public office was clear, using language that everyone can understand and also explanations that are con-

cise. This becomes even more important when the public office has to be transparent about issues that have some complexity.

Transparency and Documentation

In a transparent atmosphere, information is readily available, and there are mechanisms in place to ensure that it can be accessed by those who have a legitimate interest. This includes making public documents, reports, financial records, and policies easily accessible and understandable. When transparency is present in any public office, it becomes easier to hold individuals accountable for their actions. It enables the public to monitor and scrutinize the activities and decisions of public officials, elected representatives, and institutions, ensuring that they act in the best interests of the public.

Corruption and Zambia’s Financial Intelligence Centre

As an example of public officials being held accountable, one could mention a report on dubious financial transactions and possible corruption cases, published in 2017 by Zambia’s Financial Intelligence Centre (FIC). High-ranking government officials, legislators, and private citizens were accused in the study of engaging in fraud and money laundering. The case resulted in public indignation and demands for responsibility. Law enforcement organizations and anti-corruption organizations, such as the Anti-Corruption Commission (ACC), launched investigations into the claims.

Finding the truth, locating those responsible, and ensuring justice were their goals. Several individuals and groups were made to answer for their activities as a result of these investigations. Prominent individuals were detained, accused of crimes like corruption, money laundering, and abuse of office, and then prosecuted.

Transparency and the Open Budget Initiative

Additionally, transparency increases public engagement in decision-making processes and develops trust and confidence in institutions. The Open Budget Initiative in Zambia illustrates this point. The Open Budget Initiative (OBI) aims to increase accountability and transparency in the budgeting process. By making budget information widely accessible to the public through online platforms, open forums, and citizen engagement programs, Zambia's government has embraced the principles of transparency.

Transparency as a Deterrent to Corruption

In addition to promoting accountability and participation, transparency serves as a deterrent to corruption and unethical behaviour. The Auditor General's Report is a key example of this. The Auditor General's office has the responsibility of examining and reporting on the financial affairs of the government, including those of public organizations and agencies. The office regularly audits public expenditures to determine their efficacy, efficiency, and compliance. The conclusions of these audits are detailed in the Auditor General's Report, including any instances of poor management, financial irregularities, or corruption. The report is made available to the public and is accessible by individuals, civil society organisations, and the media. The Zambian government shows its dedication to openness and accountability by publishing the Auditor General's Report. The report serves as a deterrent to corruption by drawing attention to any misconduct, financial mismanagement, or unethical behavior inside public institutions.

Transparency as a Fundamental Principle of Good Governance

Overall, transparency is a fundamental principle for good governance, ethical conduct, and the effective

functioning of societies. Transparency can encourage moral behavior, effective society functioning, and effective governance. If Zambia were to enact legislation that would guarantee access to information, it would nurture openness, responsibility, and citizen involvement. This legislation would allow citizens to examine government operations, spot misconduct, and demand an explanation, encouraging moral behavior and discouraging corruption. This legislation also would have the potential to improve societal functioning and result in more inclusive decision-making processes by enabling individuals and civil society organizations to actively participate in public affairs. The law would create a foundation for openness and transparency, fostering public confidence in governmental institutions. Overall, access to information legislation would help Zambia to become a more accountable, democratic, and transparent society.

Transparency in Case Law

1. British Jurisprudence

Looking at case law, the case of *Attorney General v. R (on the application of Evans)* [2015] UKSC 21 was decided in the courts of the United Kingdom. The case involved letters the Prince of Wales had written to government ministers, and whether these letters could be made public. The importance of transparency in democratic government and decision-making processes was emphasized by the Supreme Court in its ruling that the principle of transparency compelled the disclosure of the letters.

2. Zambian Jurisprudence

In the courts of Zambia, one could mention the case of *Hichilema and Another v Lungu and Another* (2016/CC/0031) [2016] ZMCC 4 (5 September 2016). The case involved the 2016 presidential elections. Following the presidential election, Hakainde Hichilema, the unsuccessful candidate, filed a petition contesting the results and alleging electoral fraud.

The court hearings that followed and the openness shown during the hearing served as a reminder of how crucial openness and transparency are to defending the rule of law and maintaining public confidence in the

the electoral process. The case generated a lot of media attention, and the judiciary's dedication to openness was essential in preserving the public's confidence in the electoral process.

Various characteristics of transparency were observed throughout the legal process, including the public availability of court records, the live broadcast of hearings, and the thorough judgements issued by the Constitutional Court. This high-profile case was transparent, which not only ensured accountability but also emphasized the concepts of justice and fairness. It constitutes a significant incident in Zambia's recent history that highlights the value of transparency.

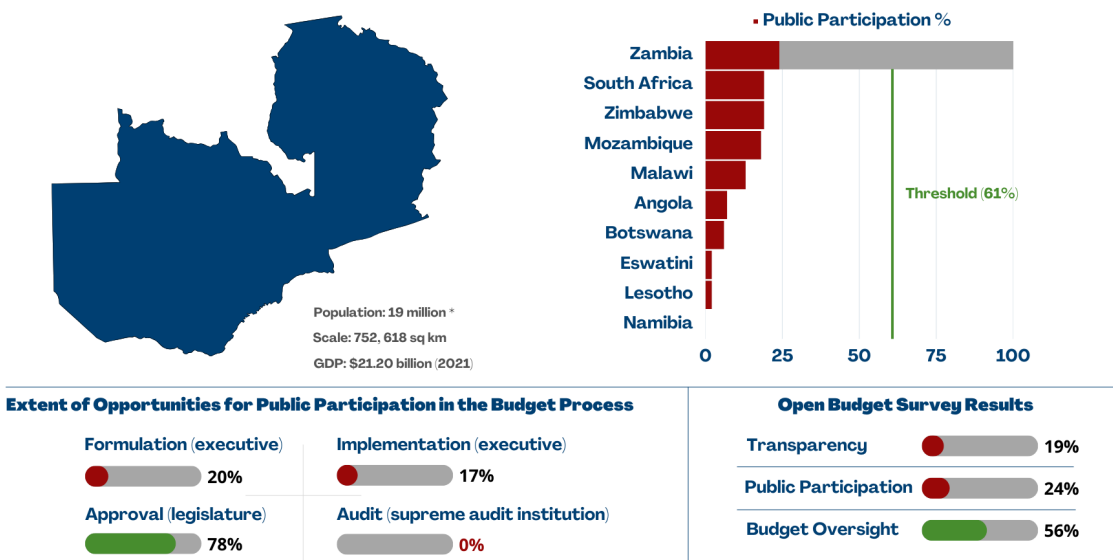
Conclusion

A lack of transparency in government may result in a lack of accountability, a decline in public confidence, a restriction on public engagement, a rise in corruption, inefficiency, inefficient policies, slowed economic progress, and a weakening of the rule of law. Good government, sustaining democratic ideals, and promoting a wholesome and inclusive society all depend on transparency.

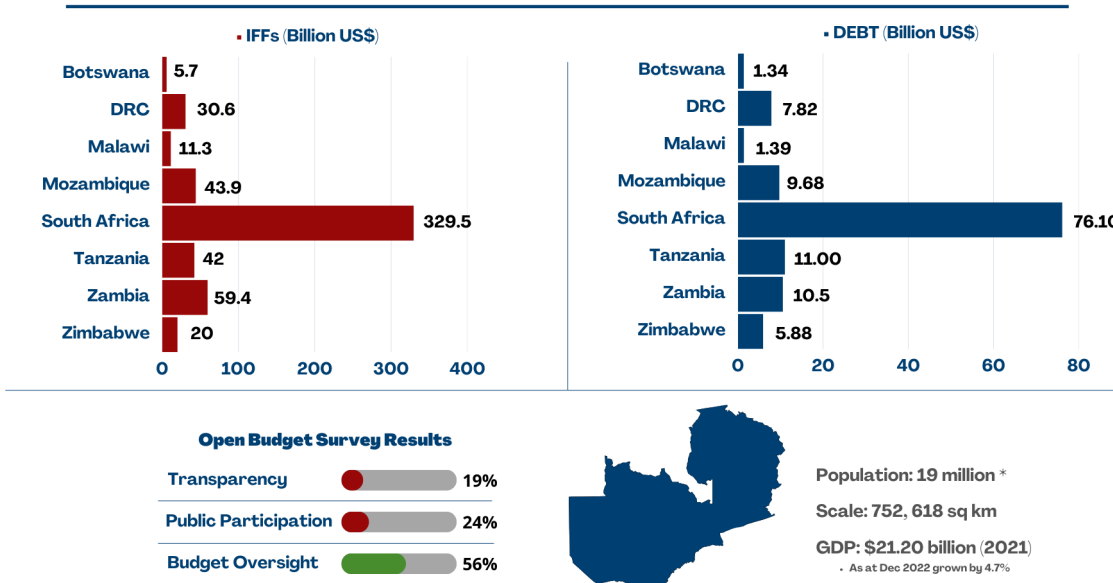
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BUDGET TRANSPARENCY in ZAMBIA

Open Budget Survey (OBS) Report



ILLICIT FINANCIAL FLOWS (IFFs) vs DEBT



PUBLIC OFFICIALS AS FIDUCIARIES: THE NEED TO HOLD PUBLIC OFFICIALS ACCOUNT- ABLE FOR THEIR FINANCIAL TRANSACTIONS



Introduction

The English case of *Keech v Sandford*, reported in 1726, provides a good context for the discussion of public officials as fiduciaries. If public officials are fiduciaries, there would be a need to hold them accountable in general and in financial transactions in particular. In the *Keech* case, a child (with the family name Keech) had inherited a lease on a certain property near London. A certain individual, Mr Sandford, was holding this lease on trust for the child. However, before the child could attain maturity, the lease for the property was going to expire. The landlord clearly expressed that he did not want the child to renew the lease. However, the landlord was happy to give Mr Sandford the opportunity to take the lease for himself, which Mr Sandford did.

The court decided that Mr Sandford had breached his duty of loyalty to the child. Even though the landlord was refusing to renew the lease for the benefit of the child, Mr Sandford was not entitled to take the lease for himself instead because of his special relationship of trust which existed between him and the child. This relationship of trust gave Mr Sandford a fiduciary duty to put the child's interests above his own.

Public Officials and the Fiduciary Duty

Do public officials stand in a similar position in relation to the people they serve? In other words, are public officials fiduciaries? If so, how does the public come to be

aware of instances where the duty of public officials to the people they serve and their personal interests are in conflict? This article will argue that public functionaries are indeed fiduciaries and hence they hold a strict duty of loyalty to the people they serve. This means that they should not allow a conflict to occur between their duty to the people and their personal interests.

The article considers the key elements of fiduciaries and some core provisions of the relevant Zambian legal provisions. The discretionary powers associated with the functions of public functionaries put them in a fiduciary position. Since public officials are fiduciaries, this relationship of trust with the people becomes the basis for the need for the public officials to give account to the public; to make the public aware of circumstances in which duty and interest may come into conflict in the exercise of discretionary powers by public officials.

Public Officials as Fiduciaries

Should public functionaries be considered as fiduciaries? To answer this question, one has to briefly examine some principle traits for a relationship to be considered fiduciary in nature. For these traits, one could consider international case law, for instance the Canadian case of *Frame v Smith* (1987) 42 D.L.R. (4th) 81. This case laid out the following key traits of a fiduciary relationship: (a) an exercise of discretion or power in discharge of one's duties; b) the ability to unilaterally exercise power or discretion so as to affect the beneficiary's legal or

practical interests and (c) the vulnerability of the beneficiaries, that is, the beneficiary being at the mercy of the fiduciary wielding discretion or power (Nkhata 2005:23). Having identified some possible characteristics of a fiduciary relationship, one can ask whether these characteristics could be found in the relationship between the public and government officials.

According to Professor Nkhata, the performance of public office by public functionaries entails the exercise of discretion. This is one of the characteristics identified as key in fiduciary relationships in the *Frame v Smith* case described above. The other is power.

Accordingly, it can be argued that public functionaries are fiduciaries by the exercise of power and/or discretion which "... entails that the party deprived of the discretion will necessarily be subject to the discretion of the other" (Nkhata 2005:24). The exercise of discretion and or power over others makes the case stronger for public functionaries to be held as fiduciaries in relation to the public.

Public Officials as Fiduciaries in the Zambian Context

The awarding of discretion to public functionaries creates a presupposition that the terms for the exercise of that discretion are spelt (Nkhata 2005:23). In the case of public functionaries, such basic terms are often outlined in a country's constitution and/or specific statute (ibid., 23-24). Article 5(1) of the Zambian Constitution creates discretionary powers in the following words: "*Sovereign power vests in the people of Zambia, which may be exercised directly or through elected or appointed representatives or institutions.*" Thus, public functionaries within the Zambian context exercise their power on behalf of the people of Zambia. The discretionary powers in this Article of the Constitution put these public functionaries in a position of trust.

The terms upon which such powers are to be exercised are spelt out in Article 263 of the Zambian Constitution as follows: "*A person holding public office shall not act*

in a manner where personal interest is likely to conflict with the performance of the office to which they have been elected."

To facilitate this duty, Section 10 of the Parliamentary and Ministerial Code of Conduct, Chapter 10 of the Laws of Zambia provides that any person who holds a ministerial office (or office of the Speaker or Deputy Speaker) shall submit an annual declaration of assets, liabilities and income. Thus, the Zambian constitution creates discretionary powers for the public functionaries as well as provides the terms for that discretion.

The Need to Hold Public Officials Accountable for Financial Transactions

Since public officials are fiduciaries, their fiduciary status becomes the basis for their need to be accountable for financial transactions. The powers conferred on public officials either by the Constitution or a Statute are given on trust. Such powers involve a great deal of discretionary authority in the management of public resources generally, and there is no such a thing as absolute discretion (Amuli 12).

In particular, the basis for financial accountability of public officials is found in the fiduciary's duty not to place themselves in a position where their duty to the people and their personal interest conflict. To assess whether or not this is the case, one could ask whether a fiduciary has entered into engagements in which their personal interests conflict with the interests of the beneficiaries (ibid.16).

But how does one know whether this has happened or not? The law requires public officials to declare their assets, liabilities and income. If public officials do make this declaration, the public will be able to see their financial situation and to be aware of instances when the interests of the public and the interests of public officials are in conflict. This financial transparency means that public officials cannot abuse their position for personal financial gain. Mwiza Nkhata sums up this basis as follows:

“Without doubt, the relationship created between the ‘governors’ (public functionaries) and the ‘governed’ (the citizenry) are inherently unequal thereby making a case for fiduciary regulation even stronger. The relationships are thus subject to fiduciary regulation and a strict enforcement of the fiduciary principles will be in the interests of the citizenry; who are vulnerable and dependent party in this relationship.” (Nkhata 2005:25).

Conclusion

Looking back at the case of *Keech v Sandford*, there was clearly no evidence of fraud. The lease expired, the landlord refused to renew the lease with Mr Sandford, acting on behalf of the child. But the landlord managed to renew the lease with Mr Sandford himself in his personal capacity. Why did the court emphasise the fiduciary duty of Mr Sandford so strongly, seemingly ignoring the personal interests of Mr Sandford in the case?

Lord Herschell in *Bray v Ford* (1896) A.C. 44 at 51 provides the basis for such strict enforcement of the duty not to allow conflict to arise within a fiduciary relationship:

“It is an inflexible rule of a court of equity that a person in a fiduciary position ... is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put him-

self in a position where his interest and duty conflict.” (*Bray v Ford*).

It is the same for public functionaries as fiduciaries. The law requiring them to declare their assets, liabilities and income is meant to enforce this requirement that people in public office are not entitled to make profit. Furthermore, this law enables the public to monitor that the interests of public officials are not in conflict with the public interest. It is meant to protect the citizenry, the weaker parties in this relationship, from the abuse of office by public functionaries.

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“A person holding public office shall not act in a manner where personal interest is likely to conflict with the performance of the office to which they have been elected.”

Article 263 of the Constitution of Zambia

WILL ZAMBIA'S RESCHEDULED DEBT REDUCE

THE COST OF LIVING?



Introduction

In recent years, Zambia's debt crisis threatened to destabilise the country's economy with a gnarling effect, leading to an unprecedented rise in the cost of livelihood for its citizens as the value of the Kwacha depreciated. Much to the need for the country's coffers to catch a breath, the ruling UPND government reached a debt restructuring agreement with its official creditors in June of this year, which may help alleviate dire economic constraints.

The debt restructuring agreement does help Zambia's economy in significant ways, but we should be cautious to treat it as a comprehensive solution to the problems that Zambia faces. This article will look at the deal, the implications, as well as identify areas of concern which Zambia is still required to work on for economic prosperity.

The Debt Restructuring Deal

Under this agreement (reached after years of negotiations that led to the country defaulting on debt obligations), Zambia has rescheduled the repayment of \$6.3 billion, including \$1.3 billion in arrears, of the total of its \$18.6 billion external debt. The repayment schedule is for a 20-year period (the first three years will be a grace period in which only payments on interests are due). The

rescheduling of repayments means that Zambia can focus on its economic recovery and growth through its development agenda, as set out in the 8th National Development Plan.

The Debt Restructuring Deal and the Economy

The major implication of the debt rescheduling agreement is that it may help reduce the cost of living for the ordinary Zambian. JCTR's average Basic Needs and Nutrition Basket (BNNB) for a family of five (5) across the 16 towns monitored in June 2023 stood at K6, 783.26; that is K2, 568.26 above the national average income of K4, 215. Lusaka, the Capital City, remained the most expensive place to live in, amassing a basket worth K9, 239.45 (K5, 024.45 above national average) whilst Kasama (the least expensive town) clinched K4, 546.87.

This cost of living might be reduced by the restructuring deal. The fact is that the country's debt burden crippled the government's budget, making it difficult for the government to invest in infrastructure and social spending for the larger population living below the poverty line. With the rescheduled debt, government is now graced with the elasticity in its budget to allocate resources towards these key areas which will lead to improved livelihoods for the interim.

In terms of the currency, the Zambian kwacha, which has been under immense pressure due to the debt distress and fiscal uncertainties may stabilise, leading to lower inflation and affordable prices for goods and services, thus creating a symphony further reducing the cost of living for the average household.

The Deal Does Not Solve All Problems

It is important to note that the debt rescheduling agreement does not solve Zambia's economic challenges for her 19.6 million population all at once. Zambia quite sadly still faces significant structural and administrative issues that will need to be addressed in order to achieve sustainable economic and development goals in the given grace period.

Zambia needs to improve first and foremost the trade environment, proactively promoting Public-Private Partnership investment, and most importantly, addressing two of the greatest enemies to development: namely, corruption in its broader sense coupled with poor governance.

The Risk of Relapse

Debt rescheduling is not risk-free. In fact, should the UPND government show complacency and fail to follow through on its commitments to reduce debt levels, while at the same time implementing economic reforms and fighting corruption with draconian measures, the country may relapse to similar or even graver debt situations in the future. If this happens, the younger generation may not inherit the bright future they deserve to have, but instead they will bear the brunt of the current generation's failures.

Conclusion

If Zambia is to reap the full benefits of the debt restructuring agreement, it must face a number of different challenges head-on. First of all, the government needs to address corruption in its multifaceted levels unapologetically, by strengthening anti-corruption laws and institutions, increasing transparency, and promoting accountability. In particular, the government needs to enact legis-

lation ensuring access to information. Currently, the Access to Information Bill is being prepared for its First Reading in Parliament, and this is critical to Zambia's fight against corruption.

Secondly, the government needs to promote economic fluidity. Industry development in the key sectors of trade must not only be encouraged, but supported through Public-Private Partnerships in manufacturing, agriculture and tourism (crosscutting all provinces). Furthermore, in a bid to reduce trade barriers, government must create an enabling environment for regional trade through Public-Private Partnerships. This will allow for regional growth in the scope of trade.

Thirdly, the top agenda for the government needs to be infrastructural development for road and rail, as well as investment in renewable energy sources. This will not only create jobs, but boost economic growth and open doors for both local and foreign investment.

Finally, to enhance economic sustainability and create future jobs, the government must invest meaningfully in education, from early childhood development through to tertiary level of education, thus ensuring that the amenities and infrastructure which are vital for academic and psychological simulation are made available to the people of Zambia.

Bernard Mwaba
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... we must fight corruption with draconian measures, lest the younger generation inherits a future in which they bear the brunt of our failures.

Bernard Mwaba,
Communications & Digital Engagement Officer

CONTROLLING THE NATIONAL PURSE - “CONTROL 99”



Introduction

When it comes to issues of transparency and accountability, despite the Zambian government using the British model of financial governance, worrying divergences still occur. Numerous discrepancies can be noted in the annual Auditor General’s (AG) report, and this points to a defective financial governance system within government.

This article will analyse the role of the Auditor General, as well as the National Assembly, in keeping the government open and transparent. It will note the failures of both to keep the public informed as to the financial missteps of the government, which is ultimately a failure of these democratic institutions to hold the government accountable. The only way forward is to support these structures, thus boosting transparency and accountability in Zambia.

The AG and the National Budget

The Zambia’s financial foot print starts with the national budget. In their book *Who Runs the Economy? Control*

and Influence in the British Economy, William Keegan and Pennant-Rea note that, “Parliament is regarded by the economics ministers as the obvious constitutional forum where they must announce decisions. Parliament can be used by ministers for announcing certain economic decisions by means of the arranged or planted ‘parliamentary question.’”

The end result of the budget’s execution is the presentation of the AG’s annual report on some of the “financial coups d’états” and abuses that occurred over the year. The picture for Zambia has not changed since independence and the AG’s reports of yesteryear reads the same as today. Richard Hall, in his book *High Price of Principle: Kaunda and the White South*, states that:

“with every year that passed the annual report of the Auditor-General, Robert Boyd, became more a swan song. Boyd announced his resignation as his report in 1967 was tabled in the National Assembly in October 1967. The Times of Zambia described it as ‘amazing’, saying that it painted a picture of confusion, lack of planning, and unconstitutional spending. Millions were

unaccounted for and many departments had exceeded budgets without authority. Prestige projects had often been far more expensive than original estimates-the National Assembly itself had been expected to cost £330,000, but the final bill was £560,000. The Auditor-General's swansong was forty-two pages long and every page was an indictment of the civil service."

Improving Zambia's Public Finance Management

Even the European Union (EU) country desk officer for Zambia, Francisco Javier Ortiz de Zuniga, noted the weakness of Zambia's public finance management system and that it needed drastic improvement (as discussed in the defunct newspaper *The Post* of March 14th 2005). He drew attention to the budget process and its weakness, right from preparation, to management, and ending in the actual disbursement of the funds in the budget.

Government finance lacks serious accountability and efficiency that is not defined by a 'balancing of the books', but genuinely having funds to meet shifting national priorities and target groups in the right way, in the right amount, at the right time and place. For example a President can take a trip to Japan, while hospitals are facing an under-five drug shortage. No Finance Ministry civil servant, or Finance Minister can override the President and tell him it is a waste of funds at this point in time, despite it being approved by Parliament as part of his expenditure, as conditions and circumstances have changed. Executive authority always overrides national priorities.

Lessons from the United States

One can learn lessons from the United States in terms of public finance management, financial accountability and transparency. Former United States of America (USA) President Bill Clinton had his budgetary funds withheld by a Committee until he sorted out the trade imbalance with Japan.

The result was that the US government was shut down for about three days, and even President Clinton did not

have the money to go and attend some important talks outside America. This happened to the most powerful President in the world, which shows how accountability should manifest.

The AG Report is a Postmortem Account

The problem in Zambia is not the political system, but the government financial system that is open to abuse. As Keegan and Pennant-Rea note "Parliament's role in economic policy is a piecemeal one. It approves public expenditure proposals through the rather antiquated method of voting on the 'supply' estimates; it audits, often well after the event, through the Public Accounts Committee."

The result is that Zambians get the AG's report a year later after the financial coup d'états have taken place and evidence is destroyed or misplaced with participants and witnesses having disappeared, or can't accurately recall event or have just died.

To this, Keegan and Pennant-Rea record that the AG's report performs "the useful function of bringing anonymous officials into the public gaze. For the most part the Expenditure Committee in practice performs post-mortems. Its general influence on economic policy is acknowledged even by the most ardent members to be limited; and there is even a suspicion that it is subtly manipulated by the Treasury. To find where power over economic policy lies in Britain we have to look beyond Parliament."

Putting a Spot Light on Cabinet

Beyond Parliament is what Zambians should be looking at and that is cabinet. While Parliament is on recess, Keegan and Pennant-Rea note "ministers are on call most of the time; so are their civil servants. The process of economic decision-making is a response to continuous streams of official papers and series of events (often unexpected). Parliament of its nature, is often left out in the cold."

What gets presented to Parliament is a *fait accompli* like the Yellow Book to get a "blank cheque," or when

things fail, Zambians just wake up one morning to find that they have been conscripted into a Supplementary Budget, or to IMF programs, or to the current 2023 debt restructuring arrangement to cover up the government's failure in financial accountability.

Controlling Presidential and Executive Expenditure

This outlook on the AG's report clearly indicates that cabinet operates sometimes outside areas which are unbudgeted for and not sanctioned by Parliament. Such an example is the budget overrun, with the government still being able to spend and divert funds using "Control 99" that allows it spend outside the Yellow Book.

The national purse is consequently at the mercy of the President and his cabinet, Whether the President or their cabinet are "good" or "bad", the national coffers suffer. Zambia does not have to swing between "bad" and "good" people to run the national purse, but the country needs financial governance systems that can deal with the "good" and "bad" Presidents effectively.

Controlling expenditure in an effective time period, dealing with both the "good" and "bad" expenditures of the executive, is a major key to dealing with government extravagance, abuse of financial authority and corruption. It should not take a year to come to grips with government expenditure, as seen with the experience of the AG's report; a report that does not cover every single instance of abuse due to its limited budget allocation. In other words, a lot of abuse occurs that is not even found in the AG's report.

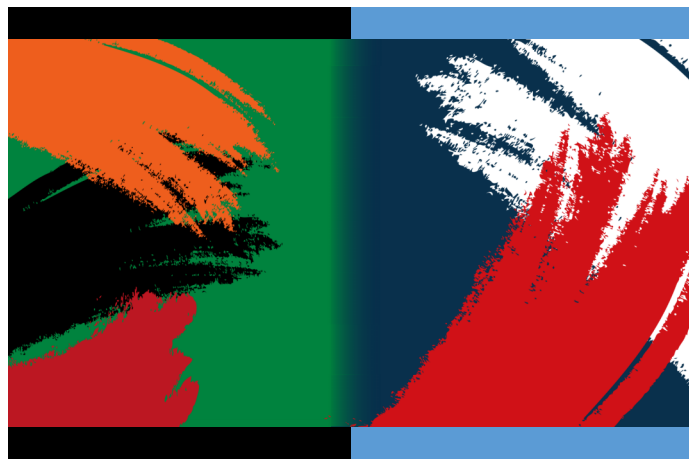
essential plant nutrients from the soil.

Applying the Lessons from the US to Zambia

When looking at the US government financial system, Keegan and Pennant-Rea note the importance of parliament in putting limits to executive spending. They say that, "in the US the administration often has to fight every inch of the way with Congressional committees, which can subject economic policy to the most detailed scrutiny. This very contrast has provoked many an attempt in Britain to strengthen the hand of Parliament in economic policy."

The American budget is broken down into 13 mini-budgets. Every month departments have to justify their expenditure before committees. For Zambia, if the executive is genuinely serious about financial transparency and accountability, the Zambia Revenue Authority (ZRA) and the Treasury must come under Parliamentary Committee control and supervision.

They should not be answerable to the Finance Minister or the President, as a measure to avoid abuse. Instead, they should be answerable to some sort of Representative Expenditure Committee (REC). The REC could comprise of members of Parliament, but also non-Members of Parliament from Zambia's provinces, for instance tax payers, church organisations, unions, and NGOs. This would avoid the Treasury and the ZRA being under the control of a civil servant, who themselves is under the control of a Minister.



Accounting to the REC

As Treasury would fall directly under the REC, the final approval to withdrawal warrants should be in the hands of the REC. Consequently, each government department would have to go before the REC to justify the following month's expenditure, while retiring the previous month's expenditure with receipts. These receipts could again be audited by the ZRA to enhance accountability. Also, to deepen transparency, the Zambian Police, the Director of Public Prosecutions, the Anti-Corruption Commission, the Drug Enforcement Commission, and the Auditor General Office would be permanent members of REC. Therefore, any discrepancies in reports could be quickly dealt with.

In terms of authority, the REC (like the International Monetary Fund) should be allowed to impose conditions or put sanctions on any expenditure not approved in the Yellow Book.

Conclusion

Zambia's public finance management system is in need of an overhaul. The AG's report, as seen from the above discussion, does not give timely and comprehensive information about government expenditure. Furthermore, the system does not put adequate control onto presidential or executive expenditure. The result is that abuse of public funds can too easily take place.

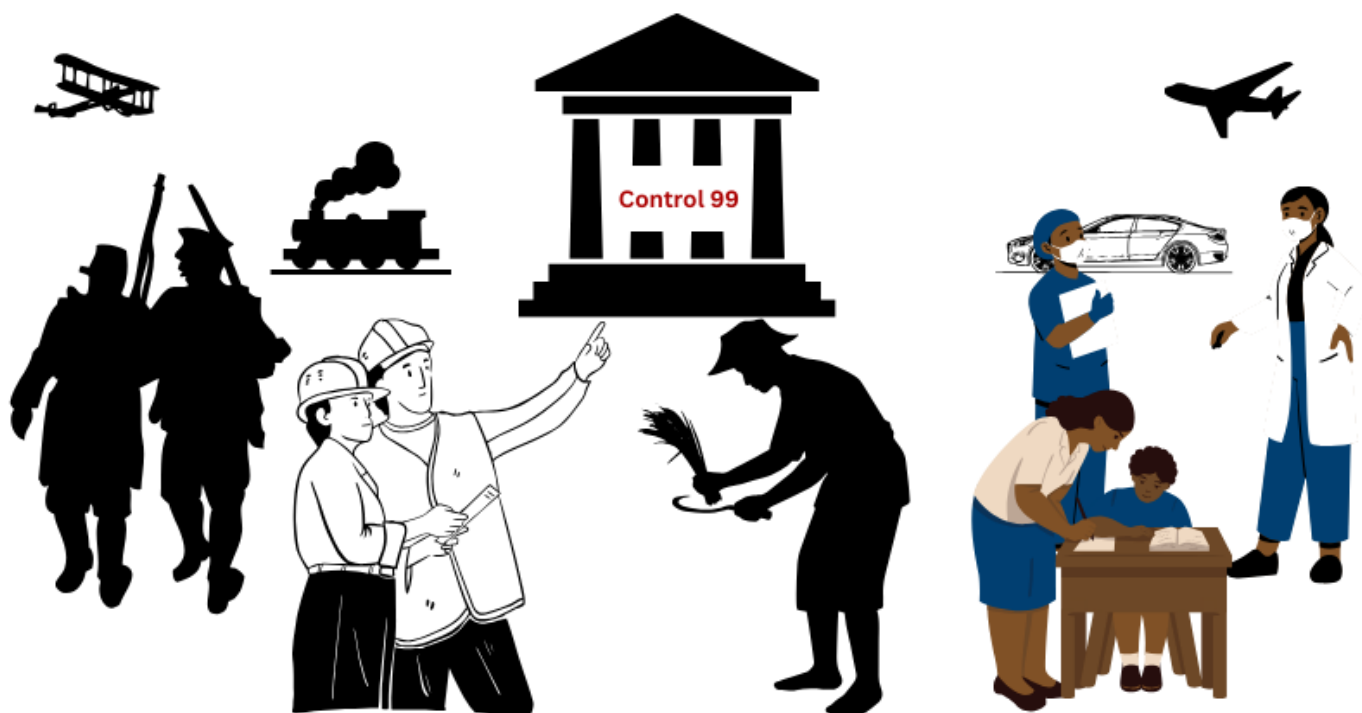
To improve our public finance management system, a representative committee like the REC could be set up to put in place safeguards. This would increase financial transparency, since ordinary citizens and civil servants could issue a report to the REC regarding any misuse or abuse of office. The REC could then take measures to rectify this abuse, within a reasonable time frame.

Importantly, the REC meetings should be open to the

public to enhance transparency. For example, if a minister misuses government fuel, they would have to publicly explain this misuse. If the REC decides to discipline the minister, it could have the amount deducted from their salary or allowances immediately, while law enforcement agencies investigate.

Regarding the control of presidential expenditure, the REC would decide whether to allow a President to go to Japan, or give the same funds to the Health Ministry to buy drugs for under-five clinics across the country. Removing such decisions away from civil servants in the Finance Ministry removes the last vestures of the "one party state" that created a "party centered government" operating under a "State of Emergency" mentality. Such "REC" mechanisms do exist within government, but government monitoring itself has proved futile as seen in the financial abuse covered in the AG's reports. Parliamentary control and oversight is needed.

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BUSTING THE MYTHS OF THE ATI BILL



Introduction

The Access to Information Bill was given cabinet approval in principle to be introduced into the National Assembly in July 2023. This means that the Ministry of Justice can begin to draft a text of the bill that would be introduced by the government into the National Assembly for its First Reading. But should Zambia be excited or cautious at this news?

There is a reason for excitement, since Zambia has been waiting for this legislation, from as far back as 1991. Therefore, to see a positive step being taken by the Cabinet of the New Dawn government towards enactment of this legislation is hopeful. Zambia is ready to take this step into deepening its democracy, by making information available to all of its people. This could represent the beginning of a new era of openness and transparency in this country. This could be a watershed moment in our political and legal history.

However, there are also reasons for caution in any plans for early celebration. For more than 30 years, Zambia has waited for this legislation and has never got it. There have been ‘concerns’, and ‘worries’ expressed by previous governments over what this legislation would mean for them.

Would having legislation entitling *everyone* to access to information be political suicide? Would this law allow the media to look into the ‘bedrooms’ of politicians, shining a light on events and transactions that they would rather people did not know? These and other myths may have stopped previous governments from enacting this legislation in the past, and could present real obstacles in the minds of contemporary legislators in Zambia to enacting this law.

This article hopes to bust certain myths of the ATI Bill, so that the government can be put at ease about the ATI Bill. Zambia needs this legislation, and clarity about what this Bill can and cannot do is needed to persuade legislators that they need not be weary of this legislation. In fact, the political capital gained from enactment could actually result in re-election in 2026.

The Closest Zambia Ever Got to an ATI Bill

In 1991, the Media Reform Committee of the MMD government recommended that a ‘freedom of information’ law be enacted. The MMD government, though, only followed this recommendation in 2002, introducing a ‘freedom of information’ law to the National Assembly in November for its First Reading.

However, after the Minister of Information and Broadcasting Services (as it was known then) had introduced the ‘freedom of information’ bill for its Second Reading in December 2002, the government mysteriously postponed the debate on the bill to the next parliamentary sitting in January 2003. But it was never to be debated again under the watch of the MMD. This is the closest that Zambia has ever got to enacting an ATI Bill.

Myth No 1: The ATI Bill is a Bedroom Bill

This is the most common myth about the ATI Bill, namely it will enable everyone to look into the ‘bedrooms’ of politicians, to publish personal information that may be damaging to them. This misconception of the ATI legislation assumes that the ATI Bill will effectively demolish a politician’s right to privacy.

This is not the case. The Zambian constitution, in article 17, lays out the right to privacy of any individual in Zambia. Furthermore, the Data Protection Act No 3 of 2021 gives effect to this constitutional right to privacy when it comes to personal information. What the constitution, read with the Data Protection Act, stipulates is that any personal information (even from a politician) must be collected lawfully, fairly and transparently (article 12). Also, if data has been collected lawfully, it must also be disclosed lawfully and for legitimate reasons. Not to do so constitutes an offense under the Data Protection Act.

This means that an ATI law will not allow everyone access to all personal information from a politician, or indeed any person in Zambia. Access to information has to respect a person’s right to privacy.

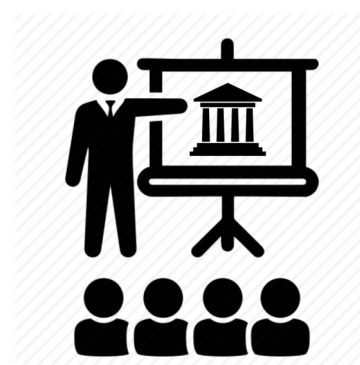
Myth No 2: The ATI Bill is a Media Bill

If the ATI law does not allow people access to another person’s private information, except for legitimate and pre-determined reasons, then what information does the ATI Bill allow a person to have access to? Some people believe that the ATI Bill is specifically designed to allow the media to have access to all the information that

they require to write damaging and incriminating stories about politicians.



This is not the case. The ATI Bill is not just a media bill, but is there to serve the interests of all people in Zambia. But how? The people of Zambia elect representatives to govern on their behalf. The foundation for the ATI Bill is that the government cannot govern in secret, in the dark, because then corruption could thrive. A democratic government has to govern in the open. For this reason, people need to have access to information to check that the government is not doing anything illegal, or is not governing in a way that is not in the best interests of the people. If the government is doing this, the people have a right to know, and they can then vote for a different government who will govern the country in a better way.



Seen from this perspective, the right of people to know in Zambia is not just the right of the media to find out information about the government that could be damaging to politicians. It is the right of every person who has a vested interest in the way the government is fulfilling its core mandate. Thus the ATI Bill is much more than just a media bill. It is the bill of the people of Zambia.

Myth No 3: State secrets will be released under the ATI Bill.

In all access to information legislation across the world, there are exceptions to access to information. For example, it is understandable that if information is released to the public that would seriously damage the country's economy, this cannot be a good thing. Furthermore, it is common sense that information that could damage diplomatic relations with other countries, or information that could be damaging to law enforcement, should enjoy a certain amount of protection. This also applies to information that should be kept secret due to concerns of national security. These are all common exceptions in legislation dealing with access to information.

Conclusion

The Cabinet approval in principle for the introduction of the ATI Bill into the National Assembly for the First Reading is a big step. The New Dawn government is making positive movements towards the enactment of this important legislation.

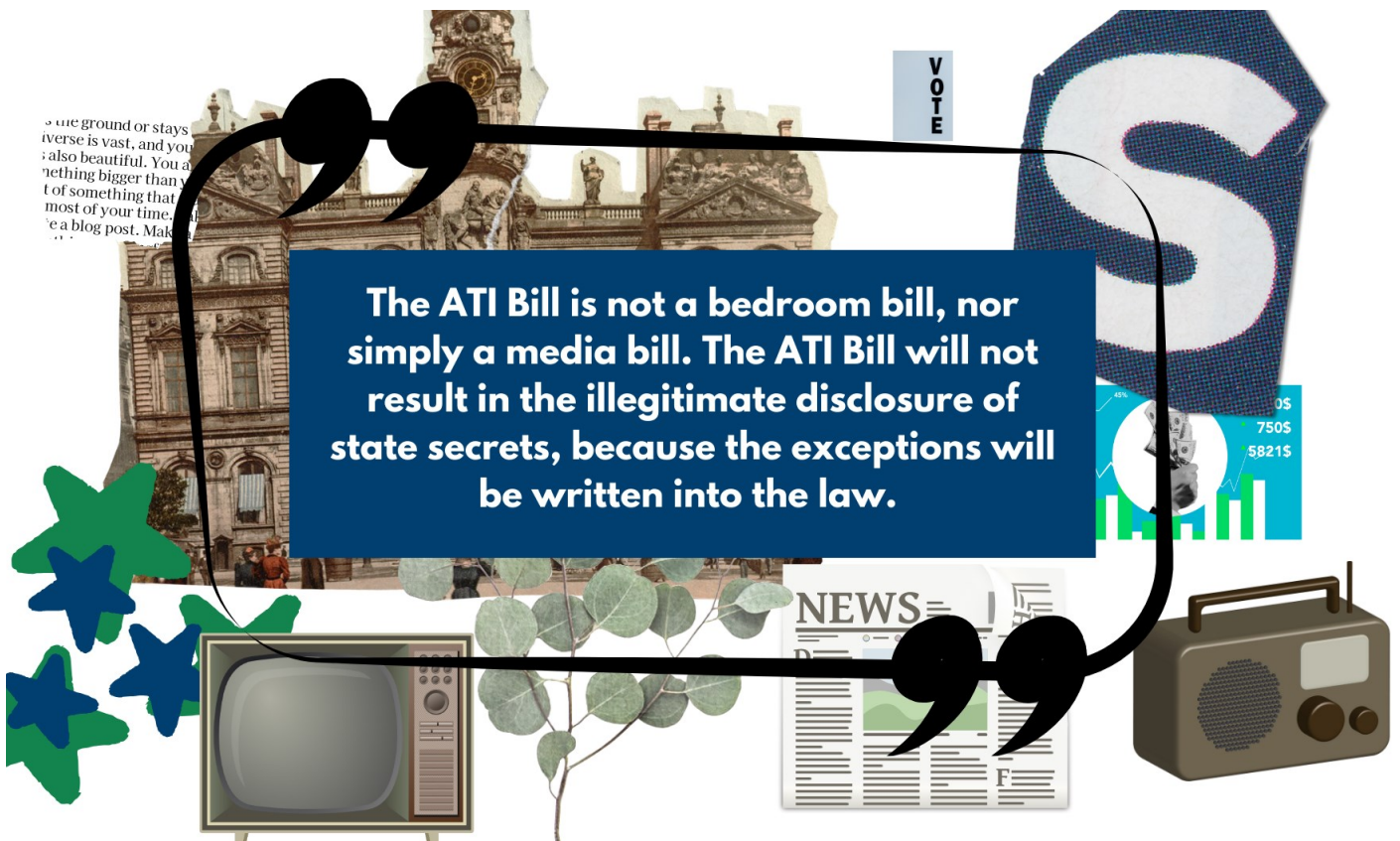
Zambia has been here before, in 2002. The 'Freedom of

Information' law even went to a Second Reading, before it was mysteriously withdrawn. This article has tried to identify some myths about the ATI law and to discredit them; myths that may still constitute obstacles in the minds of legislators to the enactment of this vital legislation.

The ATI Bill is not a *bedroom bill*, nor simply a *media bill*. The ATI Bill will not result in the illegitimate disclosure of state secrets, because the exceptions will be written into the law. Therefore, the UPND should not hesitate to enact this law.

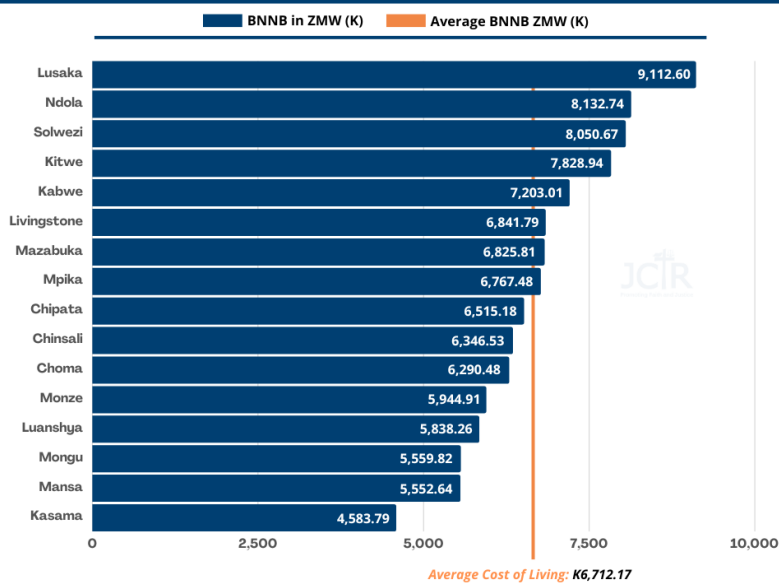
In fact, the New Dawn government should do the opposite of hesitate: it should hurry to enact this law. Not only is this law good for the country, but it could be the biggest political win for the incumbent government in the run up to the 2026 elections. It could make political history and leave a lasting legacy. What is the government waiting for?

*Fr Grant Tungay, S.J.
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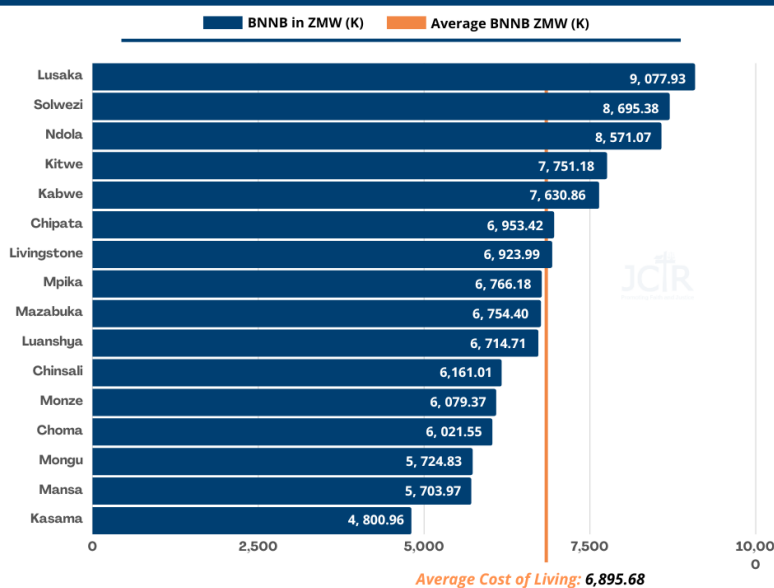


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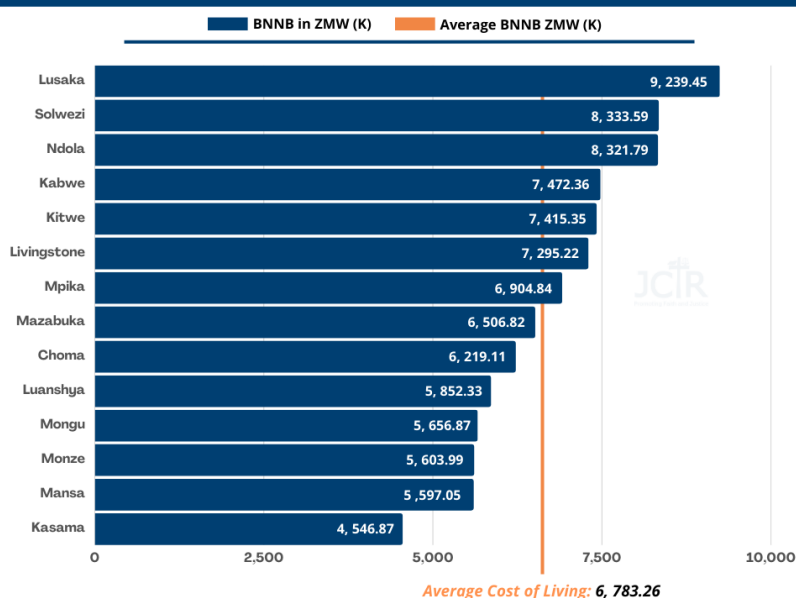


PHOTO FOCUS



April

Civil Society Organisations (CSOs) working on public finance management convene under GIZ's 'EnACT' programme discussing the IMF deal.



Masaiti



Chisamba

Selected monitors for the project 'Enhancing Transparency, Accountability and Participation in the Implementation of the Constituency Development Fund' pose for group photos.



Livingstone



Kasama

JCTR is represented by Ms. Muchimba Siamachoka at the 2023 United Nations Economic and Social Council (ECOSOC) Financing for Development (FfD) Forum in New York, USA.



PHOTO FOCUS



May



Community members from Lufwanyama and Kalulushi participate in a training facilitated by JCTR on social accountability anchored on a human-rights-based approach.

JCTR participates in a one-day workshop on Disability Inclusion hosted by the Joint Country Programme (JCP) of Dan-Church Aid and Norwegian-Church Aid alliance.



Community members from Solwezi district discussing during a workshop on social accountability.

PHOTO FOCUS



June

JCTR in collaboration with ZCAS University presents key findings of the study, 'Youth Unemployment in Zambia: The Case for Lusaka Province.'



The CSO Debt Alliance convenes for a press briefing at the news of the \$6bn debt restructuring deal clinched by the Zambian government with official creditors.

JCTR administers community score cards in Lufwanyama and Kalulushi districts to community members and government officials.



ARTICLES AND LETTERS

We would like to encourage you to contribute articles to the JCTR bulletin. These articles can be on any social, economic, political or educational, cultural, pastoral, theological and spiritual theme. **A good issue of the bulletin depends on your lively and analytical exchange of views.** Should you choose to write to us, **the length of your article should be between 1,000 and 1,500 words.**

We also encourage comments on the articles in this or any previous bulletin issues and views for the improvement of the bulletin are also welcome.

To contribute, please write articles or letters to the Editor-JCTR Bulletin, by email, to:
jctrbulletin@gmail.com and
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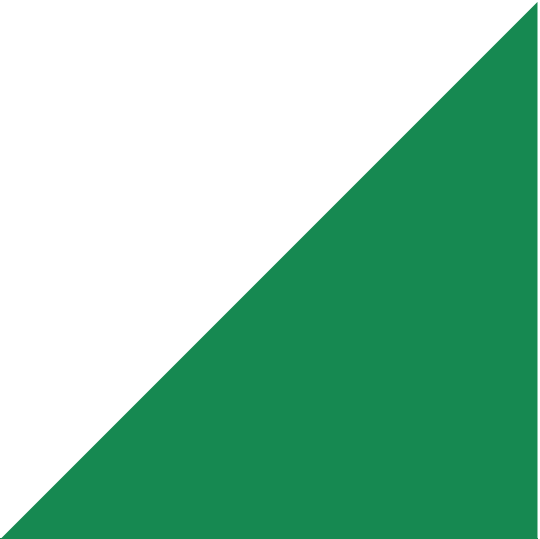


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“A leading, prophetic, well-resourced think tank that speaks and works for the poor and marginalised.”



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