



Factsheet

Civil Society Empowerment in Anti-corruption

Political Vuvuzelas or Development Partners?

Civil Society: Watchdog or Accomplice?

"Whoever fights a monster should see to it that in the process he does not become a monster¹." From this, the central question and related to the issue of corruption in state institutions we could ask whether the Zambian state is a "monster"? In turn, do advocacy based civil society organisations have a moral ground to act as watchdogs to the state without risking becoming monsters themselves? Are they genuine partners in national reform and development processes or are they what are known as **political vuvuzelas**?

The GIZ Programme Democratisation, State and Civil Society (Good Governance) in conjunction with Transparency International Zambia (TIZ) reflected on some of these questions in the Zambian context, during the inaugural **Citizens Empowerment Sessions** at the 14th International Anti-Corruption Conference in Thailand Bangkok. This reflection took advantage of the approach taken by workshop 3.6 **Creating Synergies for Technical Assistance** of the 13 IACC in Athens, 31 October 2008 by making use of its conclusions and recommendations for the case of Zambia.²

Is the Work and Approach of Civil Society relevant?

The term **civil society** for the purposes of this paper refers to all established citizen groupings whether formal or informal but outside the state and market based enterprises.⁴ This definition recognises advocacy based and service delivery organisations, professional associations, research and university institutions, the media and cultural associations and to some extent also faith based organisations.

The case made for civil society's role in development is based on the argument that the state on its own cannot set development priorities efficiently and effectively if it cannot be held accountable for its actions.⁵ The independent and diverse capacity of institutionalised civil society is a balancing factor vis-à-vis government planning, decision-making and implementation. Civil society in this understanding promotes and establishes checks and balances by demanding from the state transparency, accountability, impartiality and inclusiveness in its actions according to the constitutional and legal frame conditions and in response to the aspirations of society.

The International Anti-Corruption Conference (IACC) Series³

The IACC is the world premier that brings together heads of state, civil society, the private sector and others to tackle the increasingly sophisticated challenges posed by corruption. The IACC takes place every two years in a different region of the world, and attracts up to 1500 participants across the globe for the networking and cross-fertilisation that are indispensable for effective advocacy and action, on a global and national level.

The IACC draws attention to corruption by raising awareness and stimulating debate. It fosters the global exchange of experience and methodologies in controlling corruption. The conferences promote international cooperation among agencies and citizens from all parts of the world, helping to develop personal relationships by providing the opportunity for face-to-face dialogue and direct liaison between representatives from the agencies and organisations taking part.

Facilitating Exchange

As recognition of the need to combat corruption grows, so does the need for information exchange. An increasing number of institutions are involved in addressing corruption and have developed a range of strategies for counteracting the problem in varying contexts. With this in mind, the International Anti-Corruption Conference serves as a platform to bring together practitioners and academics working on the topic to exchange information and ideas.

The conferences attract politicians, national and local government officials, representatives of world of business, judiciary, law enforcement and accounting professionals, researchers, international development organisations, the media, and non-governmental organisations (NGOs). In short, all those concerned with the prevention or prosecution of corrupt practices.

Over four days of plenary discussions and eclectic mix of over 40 workshops and special sessions, the IACC aims to forge solutions to key challenges that affect our common future.

Is civil society therefore a stage or an actor? We see the civil society movement as having a dual role in anti-corruption and beyond, in their advocacy initiatives. As a stage, civil society creates platforms for voicing the views of citizens through mass mobilisation. Civil society as an actor represents socially institutionalised participation: voice of the voiceless. This role contributes to shaping e.g. the anti-corruption agenda of a country. Both these roles demand civil society being professional and learning organisations to remain relevant.

What do we Observe on the Ground?

Does civil society have moral standing to be watchdogs?

The legitimacy and credibility of civil society in the anti-corruption crusade is derived from their particular function in society: Spokes organ of the poor and vulnerable, providers of services that either complement state functions and even substitutes where the state is not present and also demand transparency and accountability from state institutions. Legitimacy stems also from the internal governance systems of civil society organisations which is based on values and principles which are rooted in universal rights, the constitution, principles of transparency and accountability.

A recent NGO accountability baseline study⁶ and our mapping of CSOs in anti-corruption⁷ in Zambia confirmed that most organisations with the exception of TI-Zambia could not explicitly demonstrate institutionalised internal **good governance**.⁸ Examples are the absence of code of conduct as well as anti-corruption clauses in staff and consultancy contracts, shallow operational and procurement procedures and lack of transparency in terms of sources and use of funds. Altogether, the question of values emerges. What are the values and standards of political moral CSOs have and practice as e.g. laid down in their constitution, operational procedures, professional and managerial conduct and as probably most important rendering services for their constituencies, which in many and even most cases are the poor and vulnerable strata of society. The either absence of solid governance structures of CSOs and even doubt about this as well as their critical position towards the state provoke state regulation through, as experienced in Zambia and elsewhere, restrictive CSO regulation.⁹

Networking capacity in anti-corruption: Cooperation vs competition – is there genuine will to network?

The Zambian experience confirms that state action can be influenced when CSOs take advantage of their inherent comparative advantage which is collective action and networking. The OASIS forum¹⁰ and media revelations in 2002, led to the removal of the second republican president Chiluba's immunity to pave way for investigations into alleged corruption during his presidency.

In March 2009 a consortium of ten CSOs¹¹ led by TI Zambia petitioned the Zambian high court to set up a tribunal to investigate impropriety allegations against the then Minister of Communications and Transport in her involvement over the sale of the Zambian state owned telecommunication company Zamtel and procurement of radar system for the National Airports Corporation. The minister was forced to resign after she was found liable for breaching the constitution and the ministerial code of conduct. Yet, she was appointed minister of education by the Zambian president few months later.

Despite these examples which confirm that civil society have the capacity to influence state governance, one

observes persistent fragmentation fuelled largely by suspicion of each other's political agenda and the inherent desire to gain prominence and funding over other "rival" CSOs. We further observe that prominent action does hardly lead to continuous engagement – straw fire effect?

Can civil society show the impact of their work?

The examples given underscore the far-reaching results that can be achieved when CSOs network. At organisational levels, with the exception of TI Zambia, most CSOs in Zambia lack professionalism and skills for mainstreaming anti-corruption. Most of those that claim to be at the forefront do not back their advocacy with knowledge and capacity for engagement. We refer to these as **political vuvuzelas**.

On the other hand we recognise civil society organisations that promote accountability through e.g. public expenditure and budget tracking. These organisations have established capacity that allows them to monitor the performance of the public sector. They are highlighting financial irregularities in the public service. Though, the disclosure of mishandling of public funds initially captures media sensation it rapidly fades away from public attention with very little action.

This observation is not only peculiar to CSOs, but also to other institutions such as the Office of the Auditor General whose reports over the years have highlighted astronomical amounts of public funds that were misapplied or out rightly stolen without significant action. This is because the constitution under section 121 restricts the mandate of the Office of the Auditor General to exclusively audit government funded institutions and does not give it powers to initiate prosecution on erring officers.¹² Even though the report of the Auditor General is submitted to the **Parliamentary Accounts Committee (PAC)** it is only the Executive that can act on the findings, usually administratively, through "treasury minutes" without entering criminal proceedings.

TI Zambia's anti-corruption mandate is obvious, amongst other, through continuous screening of public and private integrity and programmes such as the promotion of development or integrity pacts, advocacy and legal advice centres (ALAC). The initiatives are backed by research such as the Bribe Payers Index and analyses of cases, state action and policies at national level and the Corruption Perception Index, Global Corruption Barometer and other at international level. Contrary, CSOs in Zambia tend to address numerous thematic areas which they relate to transparency and accountability which, however, are either too ambitious and in most cases are driven by the desire for "quick funding".¹³

Anti-corruption advocacy: political or partisan?

Anti-corruption advocacy is political in nature just as other governance thematic programmes such as promotion of democracy, election cycle, conflict resolution etc. However, in addressing these topics CSOs should not drive a partisan agenda - endorse or de-campaign a particular political party or candidate for another. The role of CSOs is to provide critical but balanced views as expressed in some submissions and petitions made to parliament on various laws that have been politically controversial such as the draft Anti-Corruption Bill (NAB 41/2010), the constitution review process among others.

It is observed that there some "governance" CSOs whose mandate is unclear and have become de facto political party mouthpieces at the expense of being the

voice of the voiceless as mentioned earlier. Again, we refer to them as **political vuvuzelas**.

Institutional Environment and the State's Reception of CSOs

The Zambian case gives a mixed picture on the ability of civil society to relate, to exist and develop and to perform. On the one hand, CSOs have been heavily engaged and even encouraged by the state to contribute to the formulation of poverty reduction strategies and na-

tional development planning.¹⁴ The other side of the coin is the state's hostility towards advocacy based CSOs when the latter demand accountability and transparency and at the same time and as complementary effort promote economic, social, cultural and political rights. The recent NGO Act and the non-enactment of the freedom of information bill underline this. Further, the vote by parliament to remove the abuse of office clause¹⁵ from the anti-corruption act will weaken the ability of CSOs and oversight institutions capacity in combating corruption.

Anti-Corruption Bill

Extract from TI Zambia's submission to parliament on the Anti-Corruption Bill 2010

Our comments on the Anti-Corruption Bill, are prefaced by context setting and in this, we emphasise key principles that should be reflected in national anti-corruption legislation especially for a country like Zambia which is a State Party to a number of international and regional convention. We then, highlight some of the progressive changes to the legal framework that this Bill proposes and we end with a specific reference to sections which, in our opinion, are either weak or inadequate.

1. Context Setting

1.1. It is a well-known fact that Zambia is a state party to the United Nations Convention Against Corruption (UNCAC), the Southern African Development Community (SADC) Protocol Against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption. For the avoidance of doubt, Zambia signed the AU Convention on 3 August 2005, ratified it on 30 March 2007 and deposited the signature of ratification on 26 April 2007. With regard to the SADC Protocol, Zambia signed it on 14 August 2001 and ratified it on 08 July 2003. For UNCAC, Zambia ratified it in December 2007.

1.2. Anti-corruption conventions are written international agreements signed by state parties which establish international frameworks of agreed rules and standards for countering corruption, in addition to serving as an expression of high level political commitment. These conventions are intended to produce better policies and practices in and among member states in the prevention, detection, investigation, and sanctioning of acts of corruption. Most of the anti-corruption conventions are premised on 5 main pillars a) Prevention, b) Criminalization, c) International cooperation, d) Asset Recovery, e) monitoring procedures.

1.3. UNCAC, as a universal legal instrument, is more detailed and comprehensive than the regional instruments. UNCAC deals with essentially most aspects of corruption from both the supply and demand sides. Some of the important measures of combating corruption in the UNCAC is the criminalization of certain practices, including bribery, embezzlement, trading in influence, abuse of functions, and illicit enrichment. UNCAC also criminalizes indirect but related offences such as concealment of illegal proceeds and obstruction of justice. Criminalization provisions cover both the offering and accepting of bribes, favours, misappropriations and diversions.

1.4. UNCAC contains both mandatory provisions, which are binding on the states that ratify, and non-mandatory or optional provisions which the states may implement. Generally, however, it is good practice for state party to align their national laws with the agreed upon international benchmarks. Two of the three purposes of the UNCAC are to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; and to promote integrity, accountability and proper management of public affairs and public property.

1.5. The proposed Anti-Corruption Bill, 2010 before Parliament, does reflect some of provisions of UNCAC and some of the regional conventions. It however, omits for reasons which we cannot understand, some important provisions especially on Abuse of Office and Illicit enrichment as we later demonstrate. The Bill, borrows heavily from the South African Prevention and Combating of Corrupt Activities Act No 12 of 2004, which is considered as a best practice model as it fully reflects the principles of UNCAC and the regional conventions. The Anti-Corruption Bill, is probably seventy-five per cent reflective of the South African law, and in some instances, contains the exact wording of sections and deals with almost the same list of behaviour and practices which are considered as offenses.

2. Progressive Elements of the Bill

As earlier alluded to, some attempt has been made to strengthen the Anti-Corruption legal framework and in fairness we acknowledge the following points:

2.1. The Bill addresses both active and passive forms of corruption. Active corruption refers to the promising, offering or giving of bribes and passive corruption is the receiving or taking of bribes or other forms of corruption. We are pleased that the Bill reflects a position we subscribe to that the crime of corruption should cover both the payment as well as receipt of bribes.

2.2. Another point, which is related to the one above is that the Bill promotes **symmetric** punishment and both the bribe-givers/payers and the bribe-takers, are mentioned and sanctions and penalties prescribed.

2.3. Encouragement of whistle blowing is a good point and an important element in the fight against corruption.

2.4. The declaration of assets and liabilities by Board and staff of the Anti-Corruption Commission is a welcome development though it is not clearly stated whether these will be annual declarations or not.

2.5. The inclusion in the interpretation section of 'public funds' is welcome although we would like to see this to be consistent with the definition in the Public Finance Act.

2.6. The mandate for investigating and prosecuting electoral corrupt practices has now be clearly given to the ACC.

Empowerment: How can the Deficiencies of CSOs be bridged?

Our conviction is that there are three things that would need to be addressed:

- The first and overarching responsibility is that of restoring public trust in civil society. CSOs would legitimise and improve their credibility in society if they were to commit to integrity pacts or code of conduct that emphasise on accountability and transparency in their internal governance with respect to their constituents, state and funders.
- The second is to professionalise their work which requires acquiring knowledge and skills in understanding what corruption is, why it is harmful to development and what could be done in anti-corruption. Basic and enhanced knowledge and the ability to engage in collective action have a direct bearing on the empowerment of citizens. They need to be included in the application of tools such as social audits or citizen's leaders development pacts or social contracts. Result based application of knowledge strengthens CSOs as legitimate anti-corruption partners of the people in their dual role of stage and actor. Professionalism makes them remain focussed and strengthens their comparative advantage.
- The third point is that of CSOs positioning themselves as learning institutions. Again, we observe that knowledge management is a rhetoric item and hardly internalised in the programmatic of CSOs in Zambia. Notwithstanding TIZ's lead role, we have suggested the establishment of a CSO clearing house that would gather, process and share knowledge and information on best practices on initiatives in anti-corruption. Such institution is an opportunity for peer learning among CSOs in Zambia and further draws experience from successful initiatives across regions. A CSO clearing house would further assist civil society in their own formation efforts, meaning to establish thematic and also decentralised sub-national networks.

Finally, we are convinced that cooperating partners, who promote capacity development in the area of good governance and anti-corruption in particular, are ready to complement CSOs in their own efforts. Experience confirms that cooperating partners make their knowledge, networks and facilities available. Examples are the interactive U4 in-country and online training initiatives which combine broad and highly specialised training in anti-corruption. Transparency International's specific focus including the work of their national chapters of which TIZ is a prominent one leads the movement of citizens against corruption. Initiatives of the United Nation Office on Drugs and Crime (UNODC) or those of bilateral part-

ners which are engaged within the OECD DAC Anti-Corruption Task Team or the U4 Anti-Corruption Resource Centre facilitate capacity of civil society actors.

¹ Quote from Friedrich Nietzsche, 19th century German philosopher.

² Geinitz, D (2008). *Should international technical cooperation providers be hesitant to work with civil society organisations and private sector? What is there to gain?* Paper presented at 13th International Anti-Corruption Conference: Workshop 3.6 Creating synergies for technical assistance 30 October to 2 November 2008, Athens.

³ Source: www.14iacc.org/about/history/ accessed 6 December 2010.

⁴ Mumba, M (2010). Civil society activism in Zambia: A historical perspective. In F Mutesa (ed), *State-civil society and donor relations in Zambia* Lusaka, UNZA Press 2005.

⁵ Elemu, D. (2010). The emergence and development of governance and human rights civil society in Zambia: a critical analysis. In F. Mutesa (ed), *State-civil society and donor relations in Zambia* Lusaka, UNZA Press, 2010.

⁶ Lifuka, R (2009). *Baseline survey report on non-governmental organisations and civil society organisations accountability*, Lusaka. Study commissioned by GTZ, Good Governance Programme through the Zambian Council for Social Development, February 2010.

⁷ Mapping of CSOs in anti-corruption was conducted by the GTZ, Good Governance Programme in 2010.

⁸ The term good governance refers to the attributes of transparency, accountability, participation of constituents, observation of the rule of law and adherence to integrity standards.

⁹ Non Governmental Organisations' Act, 2009, No. 16 of 2009 183.

¹⁰ The Oasis forum is a loose alliance comprising of civil society organisations, church bodies, and lawyers.

¹¹ Caritas Zambia, Citizens Forum, Civil Society for Poverty Reduction, Civil Society for Trade Network, Foundation for Democratic Process, Jesuit Centre for Theological Reflection, Southern Centre for Constructive Resolution of Disputes, Transparency International Zambia, Women for Change, Zambian Youths Association in the Fight Against Corruption.

¹² The Constitution of Zambia, available: www.parliament.gov.zm/downloads/VOLUME%201.pdf.

¹³ Our position is that the risk of becoming dependent and vulnerable is only averted if the CSOs develop their own governance to highest standards which includes a code of conduct that will define their work and relations between state and cooperating partners and puts their constituents (voiceless) at the centre of their work.

¹⁴ Whether this participation is as a result of the conditions set by cooperating partners (donors) for support to Zambian government or a genuine move by the state remains unclear.

¹⁵ This is because corruption is universally defined as abuse of office or entrusted power for personal gain.

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Registered offices in Germany:

Friedrich-Ebert-Allee 40
53113 Bonn, Germany
T +49 228 4460-0
F +49 228 4460-1766

Dag-Hammarskjöld-Weg 1-5
65760 Eschborn, Germany
T +49 6196 79-0
F +49 6196 79-1115

Contact:

GIZ Office Lusaka
Plot No. 6469 Kariba Road, Kalundu
Private Bag RW 37X
Lusaka, Zambia

T +260 211 291918-20
E dedo.geinitz@giz.de
I www.giz.de

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Author:
Makani Mzyece

Responsibility:
Dedo Geinitz

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