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Development

Democracy and Governance
Assessment of Zambia
Transition Resumed?

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The views expressed in the following assessment are those of the authors and do not necessarily reflect the opinions or policies of the US government.

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Acronyms

AAC	Anglo-American Corporation
ACC	Anti-Corruption Commission
AFR/SD	Africa Bureau's Office of Sustainable Development
AFRONET	Inter-African Network for Human Rights and Development
AIDS	Acquired Immune Deficiency Syndrome
AZ	Agents for Zambia
BBC	British Broadcasting Corporation
CBO	Community-Based Organization
CDC	Constituency Development Committee
CDF	Constituency Development Fund
CCJDP	Catholic Commission for Justice, Development and Peace
CSO	Civil Society Organization
DA	District Administrator
DCHA	Bureau of Democracy, Conflict and Humanitarian Assistance
DDCC	District Development Coordinating Committee
DEC	Drug Enforcement Commission
DG	Democracy and Governance
DOS	Department of State
DPP	Director of Public Prosecutions
ECZ	Electoral Commission of Zambia
EU	European Union
FDD	Forum for Democracy and Development
FODEP	Foundation for Democratic Process
FPTP	First-Past-The-Post
GDP	Gross Domestic Product
GNP	Gross National Product
GOZ	Government of Zambia
HIV	Human Immunodeficiency Virus
HP	Heritage Party
HRC	Human Rights Commission
IBRD	International Bank for Reconstruction and Development
IFI	International Financial Institutions
IR	Intermediate Result
KCM	Kkonkola Copper Mines
LAZ	Law Association of Zambia
LGAZ	Local Government Association of Zambia
MLGH	Ministry of Local Government and Housing
MMD	Movement for Multiparty Democracy
MOLA	Ministry of Legal Affairs
NAMAC	National Movement Against Corruption
NCC	National Citizens Coalition
NGO	Nongovernmental Organization
NGO-CC	NGO Coordinating Committee
NLD	National Leadership for Development
PAZA	Press Association of Zambia
PDCC	Provincial Development Coordinating Committee
PF	Patriotic Front
PHI	Presidential Housing Initiative

RDCC	Residents Development Coordinating Committee
SDP	Social Democratic Party
SWAP	Sector Wide Assistance Program
TI	Transparency International
TIZ	Transparency International/Zambia
USAID	United States Agency for International Development
UNIP	United National Independence Party
UPND	United Party for National Development
VPC	Village Productivity Committee
WDC	Ward Development Committee
ZADECO	Zambia Democratic Congress
ZAMCOM	Zambia Institute of Mass Communication Education Trust
ZCTU	Zambia Congress of Trade Unions
ZIMA	Zambia Independent Media Association
ZLDC	Zambian Law Development Commission
ZNWLG	Zambia National Women's Lobby Group
ZRA	Zambia Revenue Authority
ZRP	Zambia Republican Party
ZSIS	Zambia Security Intelligence Service

Executive Summary

The stalling of political liberalization after the 1991 transition resulted in large part from the failure to alter institutional arrangements designed to entrench executive dominance of both state and ruling party structures during the period of one-party rule.

The most significant finding of the present assessment is that the issues of political accountability and executive dominance, and the concomitant issue of systemic corruption, condition developments in all significant institutional arenas. The prevailing absence of political accountability has deep historical roots in Zambian political history and is embedded both in the structure of institutions and in the informal norms that govern the behavior of political actors and citizens throughout the political system. It has contributed to the development of a culture of impunity among the powerful, and a culture of avoidance that governs the behavior of those who are not. The stalling of political liberalization after the 1991 transition resulted in large part from the failure to alter institutional arrangements designed to entrench executive (in practice, presidential) domination of both state and ruling party structures during the period of one-party rule. The dilemma of Zambian politics is how to break the Gordian knot that confronts efforts to reduce, channel and redistribute the power of the executive, since such efforts are ultimately subject to executive approval. In the present political context, the prospects for such reform appear closely linked to what is perhaps the second most pressing issue for the Zambian polity—reducing the prevalence of official corruption, which drains scarce developmental resources and seriously undercuts state legitimacy.

The reader should bear in mind that the present assessment covers the period 1997-2002. Much of this period was characterized by the further consolidation of an essentially patrimonial political regime in the context of a dominant party system. Only in the wake of the Third Term Debate and the 1991 elections have there been significant political developments. Consequently, the discussion below proceeds simultaneously along two tracks. One characterizes the Zambian political system as it exists in structure and substance—in essence, it describes the hurdles that must be overcome if Zambia is to become increasingly democratic. The second seeks to understand the potential for a transformation of this system embedded in the developments of the last year, as a basis for identifying areas in which donors, and USAID in particular, can support positive developments.

In the wake of the 2001 tripartite elections there have been significant political developments which suggest that some possibility exists to move forward with reform. Despite the fact that the electoral process in 2001 was deeply flawed in the eyes of most observers, the emergent political landscape appears to provide opportunities for forward movement on a number of governance issues. Civil society, although in many ways weak, is increasingly confident and capable of articulating a common vision of a reform process. Where political discourse in 1991 was largely limited to demands for multiparty competition, in 2002 civil society expectations encompass the exercise of a wide range of fundamental rights.

The argument here is essentially that although there have been important changes in recent months, the extent to which these are precursors of significant change in the structure and logic of the political system remains uncertain. Much like the 1991 transition, the 2001 transition provides a window of opportunity. What appears significant in the present political moment is a realignment of power relations between elements of the system—the MMD, the executive, the political opposition and civil society—that limits the capacity of any single political grouping to dominate the system fully, and makes bargaining essential. While by no means ensuring that significant structural reforms will be achieved, this nonetheless provides increased scope for key reform constituencies to coalesce, mobilize and press for change. Whether this will occur or not remains uncertain. In this context, donor assistance should be used strategically to assist

reformers and encourage structural change, but should be keyed to respond to the achievement of tangible benchmarks.

Although there have been significant changes in the wake of the 2001 elections, it remains premature to predict the ultimate impact of these changes on democratic consolidation. Movement in the direction of structural and systemic reforms will be the ultimate test of the durability of change. Constitutional reform appears key to many observers, as does the reform of key pieces of subsidiary legislation. Of particular importance in this context are laws relating to media, decentralization, elections, and public order. Parliamentary reform will likely be key, as will the mounting of a serious anti-corruption reform strategy that transcends the prosecution of key members of the previous regime. Once the direction of structural and policy changes is clear, there are a myriad of areas in which assistance from USAID and other donors can assist in improving implementation capacity. For such interventions to have a meaningful impact however, serious steps must be taken to limit executive discretion and improve accountability. Positive rhetorical commitments to change have been followed to an extent by concrete actions, however there has as yet been no significant effort to undertake the serious institutional reforms that will be essential if systemic abuses of authority are to be prevented in future.

The period of the Mwanawasa presidency will be critical to the path of future reforms. It appears likely that the president will face difficult trade-offs between consolidating his political position, either as the basis for sustaining a reform effort, or should he chose to do so, as a base from which to contest future elections. He is in a challenging position, since if he wishes to gain popular appeal he must deliver on reform promises, but even if he does deliver, he remains associated with the party most obviously and directly associated with the failures of the previous regime. In order to deliver on reform, he will need to attack elements of his own political base and, more importantly, *informal systems* that brought him to power. One critical test of government resolve to move forward seriously will come when anti-corruption investigators are allowed to seriously focus on the MMD.

Thus far, serious efforts at institutional reform have not been initiated, although reformers within the government used donor pressure for reform in 1999 to legitimate the development of a government white paper on governance that contains a remarkably frank analysis of problems during the Chiluba era. No regime, however good its intentions, would be capable of immediately resolving these, particularly during a period of continuing macro-economic crisis. The question is to what extent tangible incremental steps will be taken to address the structural problems. Zambia is presently at a crossroad. The problems it faces in resuming and consolidating the transition to multiparty democracy begun in 1991 are significant, and will require both sustained commitment on the part of government and sustained pressure on the part of civil society, working in conjunction with representative institutions. Real opportunities for progress appear to exist in the present political context, but sustained support from the donor community must complement pressure from civil society for serious reforms. *The challenge facing donors is to craft interventions that encourage and support effective responses to these opportunities—in particular, interventions that encourage strategic partnerships between reform constituencies in civil society, government and among partisan political actors.*

The current environment suggests a need to rethink the USAID strategy for the Democracy and Governance strategic objective. In the wake of problematic elections in 1996, USAID/Zambia adopted a “demand-side” strategic approach to the DG sector, focusing on developing the capacity of civil society to press for reform, and increasing opportunities for citizen participation in governance. This approach made sense in the absence of either serious government commitment to reform or meaningful opposition representation in parliament. Both of these conditions now warrant a second look, although it remains too early to recommend a significant realignment of assistance resources in the direction of public sector institutions. What is abundantly clear from the present assessment is that robust but focused assistance in support of democratic consolidation is essential and should be a high priority for USAID and other

donors. Progress on issues related to democratic consolidation and the strengthening of systems of governance is intimately related to Zambia's capacity to deal with the broad range of developmental and humanitarian crises with which it is beset. Although the motive force for reform and development must be rooted in and emanate from the Zambian body politic, external assistance has a critical role to play in supporting reform constituencies and encouraging forward momentum.

The present assessment suggests that USAID/Zambia's emphasis on "demand-side" efforts to support democratic consolidation remains highly relevant. Such support should continue, though assistance could be productively broadened beyond the present focus on promoting public debate to include targeted CSO capacity building activities. *At the same time, this approach should be complemented by a progressive engagement with key public sector institutions as commitment to meaningful structural reform is demonstrated.* Because overall government commitment to reform remains uncertain (or uneven), it may be useful to adopt a phased and selective approach to engagement with government entities, while actively maintaining and broadening programs designed to support "demand-driven" reform through work with Zambian civil society organizations. *It is always possible to identify reformers in host-country governments, but uncritical engagement can send counter-productive signals to government as a whole, undercutting pressure for systemic change.* Consequently, levels of assistance and the choice of public-sector partners should be keyed to progress on the implementation of systemic and structural reforms. Assuming the availability of resources, the level of engagement with key government institutions would increase progressively over time as reform targets are met.

Focused pressure to initiate structural reform, coupled with assistance in crafting and implementing reform measures is needed. Observers of the Zambian political scene appear virtually unanimous in asserting the importance of continued pressure for reform from civil society both to advance the reform agenda and to prevent backsliding. Civil society has matured and deepened during the past decade and, in the course of the Third Term Debate, demonstrated an impressive capacity for cooperative action. For civil society to be most effective, this momentum and focus must be maintained. *The challenge for those interested in reform will be to identify, bring together, and focus the energies of key reform constituencies in government, the political realm and civil society.* Serious attention should be devoted to ensuring that civil society is adequately prepared to take advantage of opportunities when they arise.

A strong emphasis should be placed on the development or strengthening of mechanisms that link civil society organizations to the policy process, probably around specific reform agendas. Demand-driven reform efforts appear likely to succeed more easily where key government stakeholders can be involved or brought along with the identification of needs, the articulation of problems and the identification of solutions. To the extent that these tasks can be addressed in a broadly participatory manner, an added benefit may be to break down bureaucratic cultures rooted in traditions of "government by command," as well as unnecessarily confrontational postures on the part of CSOs.

In order to increase the efficacy of CSO interaction with government institutions, programming should be extended to include support for CSO capacity strengthening in key areas including analytic & policy research capacity, and understanding of the policy and legislative processes. In parallel, donors should support the establishment of neutral venues or fora where sustained interaction between CSO and selected government institutions on key policy issues can take place. The goal would be to create a habit of constructive interchange by actors from both spheres who are committed to reform.

Many observers suggest that the opportunity now exists to work with selected government institutions, and to support forming effective linkages between these structures and CSOs advocating for policy reform. *Parliament is a natural place to focus attention if the overall intent of programming is to focus increased attention on developing the supply side response to more effective citizen advocacy.* We would

not recommend that USAID work unilaterally with parliament, but continue its assistance within the context of the existing multi-donor parliamentary assistance program.

If resources were available for the Mission to consider the development of an additional field of activity, a concerted effort in the domain of anti-corruption should be seriously considered. As an essential first step in developing such an effort, a detailed anti-corruption assessment should be conducted, focusing on both supply and demand sides of the equation. Systematic anti-corruption efforts are critical in a number of regards, not least because a failure to address root causes will leave Zambia vulnerable to a recurrence of the systematic looting of public resources that characterized both previous residential regimes. Issues of corruption will likely be among the most critical factors stimulating sustained citizen pressure for reform. The success of anti-corruption efforts appears to depend to an extent on continued pressure from civil society, the sequencing of efforts, and the development of credibility as reforms gain momentum. Credibility in turn appears to depend both on demonstrating success in prosecuting key individuals from the previous regime and, at the same time, on demonstrating that anti-corruption initiatives are both impartially applied and not merely instrumentally useful in eliminating political opponents. An incremental approach to policy design and institutional capacity building in key areas such as audit capacity, information management, regulatory reform, and a raft of transparency-related initiatives will be needed over the longer term. Whether USAID should become involved in this arena will likely be dictated by availability of resources. We would encourage the adoption of a demand-side approach to this arena, at least until serious commitment to reform has been demonstrated.

1.0 Introduction and Overview

This assessment of recent political change in Zambia was conducted during a three-week period during June 2002, and covers the period from 1997 to the present. It was timed to coincide with the early stages of a broader reflection process that will culminate in the definition of a new strategic plan to guide USAID/Zambia's programs over the 2003-2008 period and beyond.

In broad terms, the Democracy and Governance Assessment methodology developed by USAID's Center for Democracy and Governance informed the team's approach. The methodology is not intended to produce an exhaustive description of recent political history, but rather to enable small field teams to provide a political-economic "snapshot," intended to surface principal structural dilemmas, political dynamics and, to the extent possible, to identify trends. This analysis is then used to generate strategic recommendations to assist USAID in determining where its interventions may have the greatest impact in supporting democratic transitions or in promoting the consolidation of democracy and good governance where they exist. It highlights five analytic elements (see Figure 1) in examining the interests, objectives and resources of key actors as they interact in at least four institutional arenas—competition, civil society, rule of law and governance. This analysis is then filtered to generate strategic recommendations of utility in conceiving, designing and implementing DG assistance programs.

Figure 1. Key Analytic Elements

- **Consensus:** To what extent is there consensus on the fundamental rules of the game, and to what extent is the political contest played according to those rules?
- **Competition:** To what extent does meaningful competition take place in the political system and in other arenas of society? To what extent are there elections, a competition of ideas, a free media, and a vibrant civil society? Are meaningful checks and balances present in government?
- **Inclusion:** Are there problems of inclusion and exclusion? Are parts of the population formally excluded and disenfranchised from meaningful political, social, or economic participation?
- **Rule of Law:** Is there ordered liberty? Is politics, indeed are life, liberty, and property, bound by a rule of law?
- **Governance:** To what extent do social institutions (both in the public and private sectors), demonstrate a capacity to make and meet commitments, deliver reliably a minimum of social services and be held accountable for their performance?

With regard to the present assessment, several caveats should be noted at the outset. First, due to time and logistical constraints the team worked primarily in Lusaka, though it conducted a brief visit to Livingstone. Second, early team deliberations led to a decision to concentrate on the competition, civil society and governance arenas. Consequently, several important rule of law issues are dealt with only to the extent that they relate to other issues (including corruption and constitutional reform). This choice reflected a combination of factors, including the accessibility of key informants and mission preferences. Interviews were conducted with a broad cross section of Zambian political actors and observers, civil society organizations, government officials, as well as with the donor community and US country team. The assessment team also reviewed a wide range of documentary resources.

1.1 Overview

Slightly more than a decade has elapsed since the 1991 elections that marked the return to multiparty politics in Zambia. In his inaugural speech to the Zambian nation on November 2, 1991, President Frederick Chiluba stated quite frankly, "the Zambia we inherit is destitute—ravaged by the excesses,

ineptitude and straight corruption of a party and a people who have been in power for too long. When our first president stood up to address you 27 years ago, he was addressing a country full of hope and glory. A country fresh with the power of youth, and a full and rich dowry. Now the coffers are empty. The people are poor. The misery endless. The economic ills we suffer have come upon us over several decades. They will not go away in days, weeks or months. But we are determined they will go away. They will go away because we as Zambians have the will to apply ourselves to do whatever needs to be done to rebuild this glorious country.” A decade later, the situation was, if anything, worse.

Although the transition was accompanied by heightened expectations for both democratic and economic reform, initial progress on both fronts failed to yield anticipated results. Indeed, the decade has not been kind to Zambia. Standards of living reflected in per capita gross national product (GNP) have continued to decline,¹ as have foreign exchange-generating exports. Debt has increased, as have unemployment, poverty and food insecurity, and life expectancy has declined as the HIV/AIDs pandemic has spread. By no means all of these developments are attributable to the difficulties of the Zambian political transition, but it is against this somber backdrop that the game of politics will be played as efforts are made to restart the stalled democratic transition.

Table 1.1. Selected Economic & Financial Indicators, 1998-2004^s

	1998	1999	2000	2001*	2002**	2003**	2004**
Real GDP Growth—1994 prices	-1.9	2.2	3.5	5.2	4.0	4.0	4.0
Inflation Rate	30.6	20.6	30.1	18.7	13.0		
Fiscal Surplus as % of GDP	0.1	0.5	-3.4	-2.4	-3.0	-3.0	-3.0
Current Account Balance (less net capital grants) as % of GDP	-17.7	-15.5	-20.0	-20.6	-19.9	-19.2	-18.4
External Public Debt as % of GDP	190.7	224.4	175.3	201.9	201.9		
Debt Service as % of Exports	9.3	8.0	5.7	34.9	34.9		
Sources: IBRD, African Development Indicators 2002; * MFNP 2001 Economic Report ** Zambia Letter of Intent, technical Memorandum of Understanding, Lusaka, May 9,2002.							

^s Draft Inter-Agency Review Paper, Zambia Consultative Group Meeting, July 2002.

At the inception of its tenure, the Movement for Multiparty Democracy (MMD)—as its name implied—committed itself to “ensure basic human rights (the right to life, private property, and freedom under the law; the right of movement into and out of the country; the freedoms of conscience, expression, association and worship; the rights of press and children; and an end to all forms of discrimination against women). It would ‘uphold democracy based on a multiparty system with effective checks and balances, (ensure) universal adult suffrage which guarantees government by popular consent, and revoke the state of emergency.’ To ensure ‘separation of powers,’ it would ‘uphold the principle of legislative sovereignty, the independence of the judiciary and a parliamentary form of government’ at the national level, and it would democratize local government institutions ‘as the only valid way of giving back power to the people.’²

The MMD’s record in living up to these ambitious commitments has been problematic. Although a degree of political liberalization resulted from the elimination of a variety of formal impediments to political activity and individual liberty, the democratic process has remained severely flawed. During the course of the 1990s, corruption—both petty and grand—has flourished; constitutional manipulation by a MMD-

¹ A recent contextual study commissioned by USAID/Zambia notes that despite Zambia’s abundant natural resources, current per capita income (\$640) is approximately 58% of the mid-1960 level, measured in constant 1985 dollars). See “The Development Contest of Zambia: An update and analysis with lessons learned and recommendations for USAID’s next strategy plan – Final Report,” DAI, 2002, hereafter referred to as DAI 2002.

² “The Transition to Democracy in Zambia: A Democracy and Governance Strategy,” MSI, August 5, 1997. Report prepared by Marc Chernick, Gerald Hyman, Sheryl Stumbras and John Wiebler. p.3 (Hereafter cited as “MSI 1997”).

dominated legislature sidelined major elements of the opposition; press freedom has been restricted; civic activists, journalists, and opposition political leaders have faced periodic harassment; and the integrity of electoral process has been challenged. The overall quality of governance has declined as local government, the judiciary, and other state agencies have been progressively starved of operational resources due to deterioration of the economy and siphoning of resources to fuel patronage networks. A *Local Government Elections Act* adopted in 1991 restored multiparty elections for municipal and district councils, but elections have been held infrequently, and a new strata of centrally appointed officials—District Administrators (DAs)—has alienated much of their authority. By the end of the decade, Zambia could aptly be described as a “virtual democracy.”³

On the economic side, the MMD government committed itself to an ambitious program of adjustment aimed at reversing decades of economic decline and disinvestment in productive infrastructure, and at replacing the centralized and statist system that had prevailed for much of the Kaunda era with one based on market principles. In this arena, it initiated a program of macroeconomic stabilization and market liberalization which included exchange rate liberalization, tariff rationalization, liberalization of internal fertilizer and grain markets (goals which had eluded the Kaunda government during liberalization attempts in the 1980s), and eventually the divestment of many of state-owned enterprises.⁴ Unfortunately, however, the effectiveness of these adjustment measures was undercut by economic mismanagement, increasing corruption, as well as a variety of factors beyond Zambian control. Low world market prices and soft demand for Zambia’s primary export—copper—resulted both in reduced government revenue and mine closures. Domestic savings declined, as did external investor confidence. Efforts aimed at economic diversification met with limited success, and more recently, the Zambian tourist industry has experienced the negative impact of the political crisis in Zimbabwe, which has resulted in a net decline in the flow of tourists to the southern African region.

The social impacts of adjustment were largely predictable, and included the retrenchment of substantial numbers of formal sector workers, substantial increases in the price of staples such as maize meal, and the end of universal free services, including education and healthcare.⁵ Yet, as Rakner notes, the MMD made little attempt to build a domestic consensus to support its economic reform agenda, preferring to pursue a “honeymoon implementation strategy,” moving reforms forward as quickly as possible following the 1991 elections.⁶ By 1994, the honeymoon had ended, as the social impacts of adjustment were increasingly evident, the benefits of adjustment failed to materialize, and cracks in the MMD’s political base began to appear, intensifying in the lead up to the 1996 elections. During the 1994-1996 period, disagreements over the extent and pace of economic reform brought the MMD government into direct conflict with a variety of organizations, including the Zambian Congress of Trade Unions (ZCTU), that had been instrumental in its formation. In parallel, widespread perceptions that economic reforms (in particular, the privatization process) served to enrich members of the MMD power elite added fuel to calls for systemic reform from civil society and independent media. Finally, defections from the MMD leadership, driven both by personal ambition and (to a lesser extent) concerns related to scandals and the accelerating pace of corruption, led to the formation of opposition parties around key individuals.

Although the political opposition—including the United National Independence Party (UNIP)—remained relatively weak organizationally, and did not challenge the fundamental direction of government policy (including its commitment to economic adjustment), the MMD leadership appears to have believed that it

³ Richard Joseph (1998:6)

⁴ See *inter alia* Arne Bigden & Steve Kayizzi-Mugerwa, “The political economy of state failure in Zambia.” Working Papers in economics No. 23, May 2000 (Goteborg University: Department of Economics); and Lise Rakner, Lise, Nicolas van de Walle & Dominic Mulaisho “Zambia,” in *Aid and Reform in Africa*, Shantayanan Devarajan, David Dollar and Torghy Holmgren, Editors (World Bank, 2001).

⁵ See USAID, “Zambia – Assessment and Strategy,” MSI June 1997, p.4.

⁶ See Lise Rakner, “The Pluralist Paradox: The decline of economic interest groups in Zambia in the 1990s,” *Development and Change*, vs. 32 (2001). p. 532ff.

faced a serious challenge by 1995-1996. The regime's response was to take refuge in the manipulation of levers of state power inherited from the era of the single party state, rather than their reform. As MMD popularity in the Copper Belt sagged, Chiluba moved to reduce his perceived vulnerability by orchestrating a constitutional amendment to preclude his strongest challenger, Kenneth Kaunda, from competing in the 1996 elections. Traditional chiefs were also barred from standing as candidates. In parallel, administrative measures were taken which had the effect (intentional or not) of disenfranchising large numbers of potential voters. Finally, the MMD employed classic dominant-party tactics, mobilizing state resources at its disposal in a wide variety of ways to increase its general appeal to voters as the guarantor of local or national development, finance or otherwise facilitate the electoral campaign, and to directly buy votes.

The 1996 elections, boycotted by UNIP, resulted in a further consolidation of MMD dominance in the Assembly. Significant irregularities in the voter registration process (developed by an Israeli firm, Nikuv, contracted by the government under suspicious circumstances) resulted in a massive reduction in voters eligible to participate, and widespread popular suspicion that the system was being used to rig the elections. The use of state resources, including the public media, to support MMD candidate's campaigns reinforced this perception. Although there was no evidence of substantial or widespread vote rigging or vote counting fraud, donor reactions to the 1996 elections and the constitutional reforms that preceded them were uniformly negative and resulted in reductions in budgetary and project support.

The period 1996-2000 was characterized by the further personalization and consolidation of presidential rule, continued economic mismanagement and decline, an expansion in extent and scale of corruption, increased civil unrest and abuses of human and civil rights. The periodic arrest of opposition leaders (and MMD members) on charges of plotting to overthrow the government, and allegations that suspects were tortured by police, resulted in a further deterioration of regime legitimacy. The promotion of police officers identified by the Banda Commission as having been involved in torture, did little to inspire popular confidence in government commitment to the rule of law. The widespread perception of the Chiluba regime was that it was a government of men, not of laws.

As the decade waned, Zambian political society became increasingly consumed with a waiting game, its attention focused intently on issues of political succession and positioning for the post-Chiluba era. Barred by the 1991 Constitution from seeking a third term, Chiluba nonetheless refrained from appointing a successor, instead using the succession as an enticement to manipulate ambitious political allies.

In 2000-2001, an initiative by Chiluba to explore a further amendment of the Constitution to permit a third term, was met by intense resistance from civil society but also from within MMD. As Rakner and Svaasand have noted, this resistance was in part a reflection of commitment to the principle of the two-term limit enshrined in the Constitution, but also driven by the desire of several senior MMD officials to inherit the presidency.⁷ Whatever its motivation, opposition to the mooted third term sparked the emergence of a powerful civic movement. Protestant and Catholic churches, prominent nongovernmental organizations (NGOs), the Law Association of Zambia (LAZ), opposition political figures and 22 prominent leaders from within the MMD converged to oppose a third term, known as the "Oasis Forum" after the venue of the first meeting. This loose umbrella alliance organized public debates, mass protests and a variety of campaigns (car honking, green ribbons, etc.) to make clear the public's opposition to Chiluba's bid to remain leader.

Public opposition and internal defections notwithstanding, Chiluba engineered an MMD convention in July 2001 at which the *party* constitution was amended to eliminate term limits for the party presidency, a step essential if he was to pursue a third term. Senior MMD members, including a number of sitting ministers, who had expressed opposition to a third presidential term were physically prevented from attending the convention, which dutifully re-elected Chiluba president of the party. Although useful in meeting Chiluba's immediate goal, the convention began a wave of defections from the MMD, leading to the formation of a

⁷ Rakner & Svaasand, 2002, p.7.

host of new opposition parties. Many of those who boycotted or were prevented from attending the MMD convention subsequently converged to form a new opposition party, the Forum for Democracy and Development (FDD), while others formed parties of their own.

In the face of mounting popular opposition, and the certainty that he would lack the votes in Parliament necessary to amend the Constitution, Chiluba announced in May 2001 that he would not seek a third term, but initially made no move to appoint a successor or announce an election date. In late August 2001, Levy Mwanawasa emerged as a surprise choice for MMD presidential candidate, leading to speculation that Chiluba would seek to maintain control of the presidency through a politically weak proxy. The election date was announced at the end of November, only five weeks in advance of polling, and well after the MMD electoral machine had rolled into action. At dissolution of Parliament, MMD held 89 seats (131 when elected in 1996), United Party for National Development (UPND) six seats, about 15 were held by independents or other parties and 40 were vacant (of which 36 were MMD members who joined the new FDD party).

The elections took place, as scheduled on December 27, 2001, and were widely regarded as deeply flawed by both domestic and international observers.⁸ Substantial concerns remained as to whether the results reflected the will of the people. Suspicion of rigging was widespread. Official results indicated that some 67% of eligible voters cast their vote for president (1,737,948 votes cast). Of these, Mwanawasa was declared to have received 29%, with his nearest challenger, Anderson Mazoka of UPND, receiving 27%, a difference of 30,000 votes.

Table 1.2. Results of the Presidential Elections

Candidate	Party	% of Votes Cast
Mwanawasa, Levy P.	MMD	28.69
Mazoka, Anderson K.	UPND	26.76
Tembo, Christon S. (Lt. General)	FDD	12.96
Kaunda, Tilenji C.	UNIP	9.96
Miyanda, Godfrey (Brig. General)	HP	7.96
Mwila, Benjamin Y.	ZRP	4.84
Sata, Michael C.	PF	3.35
Mumba Nevers S. Dr. (Pastor)	NCC	2.20
Konie, Gwendoline C.	SDP	.58
Mbikusita-Lewanika, Inonge Dr.	AZ	.56
Shamapande Yobert K. Dr.	NLD	.54

In parliament the combined opposition won 81 seats to the MMD's 69, however the President appoints 8 additional seats resulting in a 4-seat opposition majority. The following tables summarize the official results.

⁸ Observation by international and local observation team was very extensive. Observer teams included: European Union (20 long term and 100 short term observers fielded in all provinces); SADC Parliamentary Forum (22 medium term observers arriving 17 days before the election) ; Carter Center (5 long and 20 short term observers); USAID/Zambia about 15 American short-term observers for election day as input to internal Embassy reporting. In addition, several thousand local observers fielded by NGOs provided constant observation in all polling stations, along with party agents trained in part by NDI through a NED grant.

Table 1.3. Results of Parliamentary Elections

Party	Seats Won	% of Votes cast
MMD	69	27.48
UPND	49	23.31
UNIP	13	10.39
FDD	12	15.28
HP	4	7.41
Others	3	16.13

Table 1.4. Parliamentary Seats by Province

Province	MMD	UPND	UNIP	FDD	HP	Other
Central	7	5			2	
Copperbelt	20		1		1	
Eastern	1		12	5	1	
Luapula	13					1
Lusaka	1	4		6		1
Northern	20					1
North-Western	3	9				
Southern	1	18				
Western	3	13		1		
TOTALS	69	49	13	12	4	3

In the wake of the 2001 tripartite elections there have been significant political developments which suggest that some possibility exists to move forward with reform. The ultimate question with which those (Zambians and donors alike) interested in democratic consolidation in Zambia are faced is to what extent the 2001 elections have created opportunities for meaningful structural and institutional change, and how best to encourage movement in this direction.

Despite the fact that the electoral process in 2001 was deeply flawed in the eyes of most observers, the emergent political landscape appears to provide opportunities for forward movement on a number of governance issues. Civil society, although in many ways weak, is increasingly confident and capable of articulating a common vision of a reform process. In successfully opposing former President Chiluba's bid to extend his regime by amending the Constitution to permit a third term, it has proven its capacity to act collectively, and to galvanize public support to uphold the rule of law. In the process, public commitment to constitutional democracy has been reaffirmed. Where political discourse in 1991 was largely limited to demands for multiparty competition, in 2002 civil society expectations encompass the exercise of a wide range of fundamental rights.

Political representation in Parliament is at present almost evenly balanced for the first time in Zambian history, with the opposition holding a slim majority of the 158 seats. If it can be sustained, this development offers the possibility that Parliament can be reformed and strengthened to serve as a meaningful institutional check on executive authority, and as a point-of-entry for citizen participation in the policymaking process. Several hurdles—not the least of which is the fragmentation of the opposition itself—must, however, be overcome if this potential is to be realized, yet the fact of more balanced party representation in Parliament reflects a transition from a dominant party system to one in which more vibrant interparty competition may be possible.

There have also been significant changes in the executive branch, with the election of a president who comes from outside the entrenched MMD mainstream, and who has forcefully articulated a desire to address corruption and provide a “new deal” for Zambians. Elements of the public service are also supportive of reform initiatives. The situation remains fluid as President Mwanawasa attempts simultaneously to move forward with reforms, consolidate his position within his own party, and fend off

challenges to his presidency in the courts. In pursuing an anti-corruption reform agenda, the president appears able to count on the support of the independent media, elements of the opposition in parliament, and elements of the civil service. Moves to reign in corrupt practices also play well in the court of public opinion, though some question the president's motivations. As the BBC succinctly put it, "correspondents say Mr. Mwanawasa, who was initially portrayed as Mr. Chiluba's puppet, is trying to woo international donors and impress voters after his narrow and controversial election victory last year."⁹ At the same time, he faces a possible alliance between elements of opposition and what might be termed the "Chiluba faction" of MMD, both of which believe for different reasons they would benefit from a voiding of the 2001 presidential election results.¹⁰

The broader macroeconomic context in which these political dynamics will play out remains grim. The Zambian economy remains heavily dependent on copper revenues, and efforts to diversify the economy have met with only limited success. Mineral revenues can no longer sustain essential government expenditures, much less continue to nourish the political class in the style to which they have become accustomed. The average realized prices of copper and cobalt fell by 6.1% and 31.3% respectively in 2001. Weak international prices and other considerations (including high production and transport costs, and degraded mining infrastructure) have prompted the largest of the private investors in the industry, the Anglo-American Corporation (AAC) which bought Zambia's Konkola Copper Mines (KCM) when it was privatized, to announce in January 2002 its intention to pull out of Zambia. In parallel, the country faces a serious drought-induced food shortfall in the near term, as well as the near cataclysmic impact of HIV/AIDs on the population.

⁹ 30 August, 2002, "Chiluba can face corruption charges," BBC. (<http://news.bbc.co.uk/1/hi/world/africa/2225419.stm>)

¹⁰ Concrete evidence of such an alliance is difficult to pin down, but media reports that Chiluba is prepared to testify in electoral challenges brought by losing presidential candidates Anderson Mazoka, Godfrey Miyanda and Christon Tembo that are currently before the courts, and alleged meetings between MMD General Secretary and Chiluba allies Vernon Mwaanga and Mazoka add fuel to the rumor mills.

2.0 The DG Problem: Executive Dominance and Absence of Political Accountability

The most significant finding of the present assessment is that the issues of political accountability and executive dominance, and the concomitant issue of systemic corruption, condition developments in all significant institutional arenas. The prevailing absence of political accountability has deep historical roots in Zambian political history and is embedded both in the structure of institutions and in the informal norms that govern the behavior of political actors and citizens throughout the political system. It has contributed to the development of a culture of impunity among the powerful, and a culture of avoidance that governs the behavior of those who are not. The stalling of political liberalization after the 1991 transition resulted in large part from the failure to alter institutional arrangements designed to entrench executive (in practice, presidential) domination of both state and ruling party structures during the period of one-party rule. The dilemma of Zambian politics is how to break the Gordian knot that confronts efforts to reduce, channel and redistribute the power of the executive, since such efforts are ultimately subject to executive approval.

The reader should bear in mind that the present assessment covers the period 1997-2002. Much of this period was characterized by the further consolidation of an essentially patrimonial political regime in the context of a dominant party system. Only in the wake of the Third Term Debate and the 1991 elections have there been significant political developments. Consequently, the discussion below proceeds simultaneously along two tracks. One characterizes the Zambian political system as it exists in structure and substance—in essence, it describes the hurdles that must be overcome if Zambia is to become increasingly democratic. The second seeks to understand the potential for a transformation of this system embedded in the developments of the last year, as a basis for identifying areas in which donors, and USAID in particular, can support positive developments.

The argument is essentially that although there have been important changes in recent months, the extent to which these are precursors of significant change in the structure and logic of the political system remains uncertain. Much like the 1991 transition, the 2001 transition provides a window of opportunity.

What appears significant in the present political moment is a realignment of power relations between elements of the system—the MMD, the executive, the political opposition and civil society—that limits the capacity of any single political grouping to dominate the system fully, and makes bargaining essential.

While by no means ensuring that significant structural reforms will be achieved, this nonetheless provides increased scope for key reform constituencies to coalesce, mobilize and press for change. Whether this will occur or not remains uncertain.

Donor assistance should be used strategically to assist reformers and encourage structural change, but should be keyed to respond to the achievement of tangible benchmarks. The phasing of assistance and indicative benchmarks are discussed below in the final section of the assessment, and summarized in Table 4.1.

The overall macroeconomic situation greatly complicates matters for a variety of reasons. Since the days of the First Republic (if not before), Zambia has experienced the consolidation of an essentially patrimonial political system in which situational political loyalty is granted to political leaders in exchange for patronage, and granted in a variety of forms—cash, employment, access to resources, permits, etc. Economic crisis necessarily limits the resources available to sustain this system, and moves to curb corruption make its operation more difficult. For political leaders serious about reform, a support base must be developed along different lines. This will take time, however, and for Mwanawasa, time is of the essence. Many of those who should be natural allies in advancing reforms question the legitimacy of the 2001 election outcome, and suggest that, for better or worse, Mwanawasa remains an MMD president. At the same time, the president must bargain for support within the MMD, where very strong vested interests in continued dominance of the political scene reside. The road forward can be expected to be bumpy.

What then are the underlying characteristics of the political system?

2.1 Consensus

Widespread concern in civil society and among members of the Zambian political class regarding the breadth of executive power, the scale of corruption, and the conduct of elections reflects an absence of consensus regarding both the rules of the game and their application. The perceived impunity of government officials in relation to allegations of corruption has undercut confidence in the rule of law, while the diversion of resources to political as well as private ends has deprived the state of capacity to discharge critical functions in the legal arena and elsewhere. Over-centralization, coupled with the failure or selective and politicized delivery of services has compounded problems of governance, and contributed to the deepening of poverty more generally.

Consensus exists on the broad outlines of the market-oriented economic policy articulated by MMD in 1991. Although government has been heavily criticized for its economic (mis) management—corruption, perceived biases in the privatization process, failure to provide services or an effective social safety-net, etc.—no major political actor advocates a return to “socialist” principles of economic management. Similarly, on the political side of the equation, neither in Zambian society at large nor among key political forces does there appear to be significant disagreement in principle on issues of national identity, citizenship, borders, or the desirability of democracy as the most appropriate form of government. Although the citizenship criteria for holding executive office were contested and manipulated during the Chiluba regime, this appears almost universally to have been viewed as manipulation. The Oasis Movement of 2001 provides convincing evidence that a broad social consensus exists around principles of multiparty constitutional democracy, and on the preservation of a two-term limit on the presidency.

At the same time, disagreement over rules of the game and their practical application has led to pressure for constitutional debate and reform—particularly from civil society, but also from elements of the political opposition—which has increased in intensity in the wake of the “Third Term Debate” and the 2001 elections. The neutrality and competence of the electoral commission have been questioned, voter registration and nationality criteria for candidacy remain contested issues, as does the use of state financial and material resources for partisan (and personal) ends by the ruling party. Because the conduct of the 2001 elections remains contested, opinion remains divided regarding the legitimacy of Levy Mwanawasa’s claim to the presidency which, at best, is based on a mandate of 29% of voters. The legitimacy of the present government is thus questioned by many.

Although there appears to be broad commitment to the doctrine of separation of powers, whether the desire for a significant redistribution of powers between executive, legislative and judicial branches of government is as firmly rooted in the political class as it is in civil society, remains uncertain. As Peter Burnell has noted, political actors in Zambia have tended to act situationally, and progress towards systemic change has thus far been limited. It is plausible that movement in the direction of fundamental systemic reforms will be complicated both by President Mwanawasa’s desire to retain broad powers (“a good president needs discretion”) in order to address corruption and other second-order reform issues, and by the ambitions of key political leaders to assume the presidency.

2.2 Inclusion

The Constitution prohibits discrimination on the basis of race, tribe, sex, place of origin, marital status, political opinion, color or creed. Inclusion remains an issue in several respects, but appears unlikely to be significant as an independent variable. Attempts to challenge the legality of the 1996 constitutional amendments, which *inter alia*, established restrictive nationality criteria for candidates for the presidency, prohibited chiefs from standing as candidates, and declared Zambia a “Christian Nation,” were

unsuccessful during the Chiluba presidency. With the departure of Chiluba, the increased representation of opposition in the National Assembly and increasing civil society pressure for constitutional reform, there is a possibility that one or more of these measures will be repealed. The declaration that Zambia is a “Christian Nation” does not appear to have had practical significance for the practice of other religions, although it generated concern on the part of some members of the Muslim community when it was adopted.

There is some indication that ethnicity (and/or regionalism) is an increasingly important determinant of party allegiance and voting behavior.¹¹ This is likely a by-product of the dominant party system, since control of state resources has allowed the MMD to largely preempt challenges by parties aiming for a national appeal, and thus create incentives for more narrow, regionally based parties. At the same time, while parties may be increasingly identified with regional/ethno-linguistic blocs, the legitimacy of the system is not in question.

Gender inequalities are structurally embedded and persist throughout the private and public realms. Female representation in Parliament and in senior executive positions at both national and local levels remains extremely limited in relation to the proportion of women in the population. Worthy of note is the participation of two female presidential candidates in the 2001 elections, perhaps indicative (or symbolic) of widening opportunities for women in political leadership roles. Established women’s civil society organizations (CSOs)—including the NGO Coordinating Committee (NGO-CC) and Women’s Lobby Group—have been key to the wider civil society led effort to promote political change, and should be assisted in leveraging this role into a greater attention to gender equity and inclusion issues in broader political discourse.

2.3 Competition

For much of the 1990s, the entrenchment of a dominant party system appeared to preclude opportunities for realistic competition through the electoral system, and the articulation of alternative views through the media and civil society was circumscribed if not prevented by official and semi-official acts of harassment. At the height (or nadir) of the Chiluba era, the MMD’s legislative dominance was employed to manipulate constitutional provisions governing candidacy to preclude a challenge from Kenneth Kaunda in the 1996 elections, and marginalize traditional authorities.

The use of state administrative structures to advance the interests of the ruling party tended to bias the outcome of community-level competition, and suggested negative repercussions for communities that failed to return MMD majorities in local council elections. Local government elections in December 1998 resulted in MMD control of 880 of 1,275 district council seats contested nationwide. MMD faced significant opposition in the east where UNIP took 190 seats, and the south, where the newly formed United Party for National Development (UPND) took 28 seats. The creation of the centrally appointed position of District Administrator (DA) in November 1999 further reinforced both patterns of administrative centralization, and the capacity for central political control. Chiluba’s appointment of MMD party cadres with little or no administrative experience to these key positions tended to undercut the credibility of his assertion that the DAs were intended to respond to the 1996 Mwanakatwe Constitutional Review Commission recommendation that government improve the coordination of development at district level.

The reality and perceptions of competition in the Zambian political system have shifted significantly over the course of the last eighteen months and manifestly so in the wake of the 2001 elections. Chiluba’s bid

¹¹ Several interlocutors suggested that anti-Bemba, pro-Tonga feelings probably contributed significantly to the strength of the UPND vote in southern and western provinces; while suspicion of Tonga political aspirations may have contributed to MMD and FDD results in Copperbelt, and Eastern provinces. Hard data to substantiate these claims could not be found.

for a third term provoked a spate of defections from the ruling MMD, leading to the emergence of new opposition parties—most notably the Forum for Democracy and Development (FDD)—capable of credibly challenging the ruling party. More importantly perhaps, the Third Term Debate provided an effective focus for opposition political organizing and voter mobilization. Although the MMD retained control of the presidency, and remains powerful, it is no longer unassailable. The emergence of open conflict between Chiluba and his successor following the election has produced further divisions within the MMD.

Several developments suggest an increasingly fertile competitive environment in the present context, at least at the national level. Taken together, the loss of the MMD's dominant party status, and the ascendancy of an MMD president whose hold on the party hierarchy remains incomplete, suggest an increased need for bargaining (indeed, politics) both within the MMD and between the MMD and the opposition. This in turn suggests opportunities for the opposition to increase its political influence, although it faces a variety of impediments in doing so. Constitutional provisions that require by-elections in the event that elected officials change party allegiance, coupled with the resource base at the MMD's disposal place in question the durability of the opposition majority.

Also key is the increased confidence and mobilizational capacity of civil society. Emerging from the Third Term Debate with a coherent framework for coordination and collective decision making, Zambian civil society appears increasingly capable of analyzing, commenting on and, where warranted, opposing government decisions. In the more fluid political context which prevails following the 2001 elections, civil society seems poised to maintain pressure for serious attention to the two most critical contemporary issues: constitutional reform and measures to stem corruption. Whether civil society-based advocates for reform will garner sufficient support from the political opposition remains uncertain, since opposition leaders aspiring to the presidency may have mixed incentives when it comes to reducing the power of the office.

2.4 Rule of Law

Where the rule of law exists, fundamental individual rights and security are protected, contractual obligations are enforced, property rights are secure and transferable, and public decision-making authority is exercised in a transparent and predictable manner. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. In many, if not most, of these areas, Zambia has fallen short of the mark.

The Constitution provides for an independent judiciary, and the government generally respects this provision in practice; however, the judicial system was hampered by lack of resources and inefficiency. The president nominates and the National Assembly confirms the Chief Justice and other members of the Supreme Court.” The Supreme Court has appellate jurisdiction for all legal and constitutional disputes. The High Court, which holds regular sessions in all nine provincial capitals, has authority to hear criminal and civil cases and appeals from lower courts. Magistrate courts have original jurisdiction in some criminal and civil cases; local, or customary courts handle most civil and petty criminal cases in rural areas.¹²

In practice, human and material resources constraints have severely hampered the functioning of the judiciary, as well as that of the police and prosecuting authorities. Poor conditions of service—including inadequate salaries, inadequate and degraded infrastructure, understaffing, etc.—contribute to problems of recruitment and retention of qualified judges, particularly at the level of the Magistrate Courts, which handle the vast majority of cases. A Norwegian study conducted in late 1998 found that out of a complement of 72 professional magistrates, only 18 were in place. Although the majority of lay magistrate positions are occupied, the need for further training is viewed as great at this level. A variety of procedural inefficiencies—for instance, nonconsecutive trials—also contribute to the overall problem.

¹² DOS, Human Rights Report for Zambia, 2001, p.5.

As the 1997 Assessment notes, “the legal system in Zambia consists of an intricate mix of laws. The British instituted common law to govern the relationships involving Europeans in Zambia. They left issues such as land tenure, marriage and other laws involving relations between native Zambians in the domain of customary law. Following independence, constitutional laws and statutory laws have also been added to this mix. Complete, current collections of Zambian court decisions, statues, and statutory instruments are difficult to find. Furthermore, the quality and consistency of laws vary greatly according to MOLA.” In addition, successive constitutional amendments have not been followed by a consistent effort to bring subsidiary law into conformity with new constitutional provisions.

The experience of many Zambian citizens with the legal system is generally a negative one. Over the past decades, lengthy court backlogs driven by systemic inefficiencies, human and material resource constraints, and an attendant demoralization within the judicial system, have limited citizen access to justice in both civil and criminal cases. This has resulted in lengthy periods of pre-trial detentions for those accused of offenses, often under exceedingly harsh conditions. It has also meant that the justice system has been perceived as incapable of ensuring adequate recourse for parties to contractual disputes—a strong disincentive to domestic entrepreneurship and foreign investment. Corruption in the Zambian judiciary, viewed as endemic at lower levels (particularly in relation to Magistrates Courts), appears less significant at higher levels.¹³

The revision of legal codes has failed to keep pace with successive constitutional revisions, due in large part to the limited institutional capacity of the institutions charged with this function—the Law Development Commission and the Ministry of Legal Affairs (MOLA). Much of subsidiary law remains consistent with the ethos of the one-party state under which it was adopted. Chiluba-era measures to intimidate or suppress political opponents, civil society and the media were often used to pernicious effect on the legal ambiguities created by the divergence of basic and statutory law. The Law Development Commission, in theory, is responsible for overseeing the ongoing revision of law but has lacked the financial and human capacity to discharge this responsibility. Up to 1996 the LDC was housed in the MOLA. It was given greater autonomy by statute in 1996, and vested with broad powers to make recommendations on (a) the socio-political values of the Zambian people that should be incorporated into legislation; (b) the anomalies that should be eliminated in the statute book; (c) new and more effective methods of administration of the laws and the dispensation of justice; (d) new areas of the law that should be developed in responsive to the changing needs of Zambia society; and (e) the removal of archaic pieces of legislation from the statute book.

It appears at present to define its mandate largely in terms of the first of these areas. The Zambia Law Development Commission (ZLDC) appears largely marginal to the process of updating legal codes to conform either with public aspirations or successive constitutional changes/amendments; most legal reform work appears to fall to the Ministry of Legal Affairs, which would most likely prove a more viable/useful partner for reform efforts, should USAID desire to become involved with legal reform.

Corruption, arbitrary arrests and the frequent use of excessive force have been characteristic of the police and security forces, which have been responsible for numerous human rights abuses, and are widely viewed as having acted in a highly politicized manner on behalf of the ruling party during successive electoral cycles. A lack of professionalism and discipline in the police force are frequently cited as serious problems, and low police salaries and poor conditions of service appear to have fostered a tendency for police to engage in entrepreneurial activities. As the 1998 DOS Human Rights report notes, “police stations frequently become ‘debt collection centers’ where police officers acting on unofficial complaints, detain

¹³ The resignation in July 2002 of the Chief Justice of the Supreme Court following allegations that he had received payments from the “Zamtrop” account controlled by the Zambia Security Intelligence Service (ZSIS), allegedly on behalf of then President Chiluba, suggests, however, that senior levels of the judiciary are not immune to corruption.

debtors, without charge, indefinitely until they pay the complainants. In return the police receive a percentage of the payments.”¹⁴ government initiatives to monitor police behavior and to ensure the protection of civil liberties have often stalled, and underlying patterns have persisted.¹⁵

If it cannot be said that the rule of law has been firmly entrenched in Zambia over the past decade, a strong belief in the desirability of the rule of law nonetheless persists, and the Zambian judiciary has remained largely independent, particularly at higher levels. Survey data suggests that Zambians have greater confidence in the courts (64%) than in any other government institution, including the executive (38%), National Assembly (23%), local government (20%), electoral commission (45%), and police (38%). Underlying this perception appears to be a strong belief in the principle of rule of law—that individuals and institutions should be accountable before impartial rules. To a degree this confidence appears justified, as the judiciary has resisted politicization to a greater degree than other institutions of government. The mobilization of public opinion in opposition to further constitutional manipulation by the Chiluba administration graphically underscored the belief in constitutionalism and the rule of law.

2.5 Governance

Critical governance issues exist at virtually all levels, and are inextricably linked to the problem of executive dominance. Corruption is perhaps the most obvious, followed in short order by the atrophy of government capacity at all levels. Absent the resources to regularly pay public sector salaries, provide for the operation and maintenance of existing state infrastructure or make capital investments, the government has suffered an exodus of trained manpower. Many of those who remain are those with no other option; they are demoralized, unmotivated, and face conditions of service that encourage the alienation of public resources for personal survival. The formative experiences of many civil servants were during the era of the one-party state, which has left a legacy of politicization and corruption in appointment of civil servants. Having been trained to support the functioning of a command economy, many are ill equipped to function under market conditions. The impact of the HIV/AIDS pandemic, most severe in urban areas, further accentuates the problem.

The combined result is a state that is widely perceived to be corrupt and incapable of delivering basic services, providing for basic needs, or guaranteeing fundamental rights. Locally elected institutions and leaders—district and municipal councils, mayors, etc.—are more likely to be viewed in a positive light, particularly in the wake of the 2001 elections which brought an increasing number of opposition party members into such positions. At the same time, given the dual nature of decentralized government in Zambia, the latter lack both the independent authority and the resources to deliver services or respond to community needs. (see Table 3.1 for a discussion of the characteristics of the present system of local governance).

¹⁴ DOS, Zambia Human Rights Report 1998, p.4.

¹⁵ See for example, DOS Zambia HR 2001, discussion of GOZ failure to implement recommendations of the commission established to investigate allegations of torture following the 1997 coup attempt.

3.0 Arenas of Politics: Key Actors, Institutions and Policies

Executive Authority

The executive branch—in the Zambian context largely synonymous with the presidency—has historically been the dominant force in the Zambian political system, dwarfing other branches of government in the scope of its powers, and in the exercise of its powers, conditioning each of the institutional arenas in which other political actors (most notably opposition political parties, civil society, and the media) operate. As such, directly or indirectly, executive authority is the target of most political activity, as a source of resources for public or personal ends, as an institution to be controlled, or (in the case of much of the opposition) as a goal to be attained. *The executive is thus both an end of reform and a critical determinant of the reform process.*

Executive accountability is normally the result of a separation of powers within government—the vesting of autonomous powers in judicial and legislative institutions, and in some instances in other governmental entities to oversee the discharge of executive functions. In the Zambian case, a variety of formal institutional mechanisms of executive oversight exist, but in practice, control of the executive has been more formal than real.

Accountability through electoral processes has been undercut by the overwhelming dominance of the MMD at both national and local levels following the 1991 and 1996 elections, and by apparent electoral system manipulation in 1996 (via constitutional manipulation, the Nikuv voter registry, distribution of state resources as political patronage, etc.) and 2001 (following many of the same patterns, as well as fraud during and after polling). Presidential appointment of the electoral commission and the limited autonomy and mandate granted that institution are also limiting factors in the opinion of many analysts. A legacy of the era of the single party state, the absence of clear demarcations between state and party resources and functions has provided the presidency with powerful tools for influencing both the conduct and outcome of elections at all levels. There remains a widespread belief among the political class that voter loyalty is largely instrumental, and that to secure votes candidates must offer material incentives to voters—beer, clothing, in some cases cash. Linked closely to the ruling party’s ability to rely on state resources, this appears to be both a function of and contributor to weakness of political party organization, although the most significant factors accounting for the weakness of political parties appear to be institutional—the preponderance of the executive, the first-past-the-post electoral system, and provisions mandating by-elections when elected officials change party allegiance.

Accountability through legislative oversight has historically been weak. The National Assembly ratifies major appointments and theoretically has broad powers, but the overwhelming majority held by the MMD until the December 27 election effectively precluded independent action by the legislature and limited its ability to provide a check on executive authority.¹⁶ The potential of the National Assembly to play a more effective oversight role following the 2001 elections will be discussed at greater length below, yet it is worth noting that MMD’s continued control of the powerful position of Assembly Speaker under the present system of divided government may undercut the ability of the opposition to use its enhanced presence in the legislature to block executive actions. Divisions within the opposition, and the ability of the ruling party to offer inducements to individual MPs to defect to the MMD or to abstain on key votes further limit the effectiveness of legislative oversight. Political party consolidation thus emerges as a constraint to executive accountability both in the context of the potential for effective legislative oversight and in the context of electoral accountability.

Executive accountability via the judicial branch has also been historically weak. Although the judiciary appears largely autonomous, and at times courageous, it remains institutionally weak and underfinanced.

¹⁶ See DOS-HR 2001, p.9.

The team also encountered the perception that the judiciary and other autonomous regulatory institutions are generally timid in politically sensitive cases. A variety of specialized commissions are in place to investigate government malfeasance (e.g., the Human Rights Commission, Anti-Corruption Commission, and Drug Enforcement Commission), but are staffed by presidential appointees and lack both secure financial autonomy and autonomous legal authority to initiate prosecutions. Prosecution is subject to the approval of the Director of Public Prosecutions (DPP), a presidential appointee. According to a variety of the individuals interviewed, both the judiciary and specialized commissions appear highly sensitive to signals emanating from the executive. What is worth noting in the present context is that a variety of agencies (including the ACC and DPP) appear to have interpreted presidential interest in curbing corruption as encouragement for greatly increased aggressiveness in initiating prosecutions. The question that remains in play is whether interest in anti-corruption will extend beyond the prosecution of Levy Mwanawasa's current political opponents to encompass broader-based investigations and serious structural reforms.

Finally, affecting the operation and autonomy of all governmental institutions is the utilization of a cash budget system that makes operating units dependent on the release of funds by the Ministry of Finance despite their parliamentary vote. As Barkan and others have noted, the annual budget does not realistically reflect either likely revenue flows or the known costs of various governmental activities or programs.¹⁷

Thus far, serious efforts at institutional reform have not been initiated, although reformers within the government used donor pressure for reform in 1999 to legitimate the development of a government white paper on governance that contains a remarkably frank problem analysis. While acknowledging the desirability of a strengthened "separation of powers," the *GOZ 1999 National Capacity Building Plan for Governance* falls far short of recommending institutional checks on executive authority or any meaningful redistribution of powers. It suggests, for example, that "the Executive will recognize and respect the roles and functions of the other two Organs of the State by ensuring that adequate and equitable resources are allocated to these Organs in order for them to fulfill their mandate." At the same time, the document and the Governance Unit in the MOLA that produced it provide useful entry points for both civil society and donor agencies. It is possible to acknowledge much of the problem identification contained in the document as a basis for discussion, without endorsing the policy recommendations contained in the document.

Positive rhetorical commitments to reform have been followed to a certain extent by concrete action, yet the pattern remains far from uniform. The president has dismissed or demoted a number of senior government officials associated with corruption (or the failure to deal with it) under the previous government, including the Attorney General, Minister of Information, and the Permanent Secretary of the Cabinet Office. Others—including the Foreign Minister and Chief Justice of the Supreme Court—left office when allegations of corruption surfaced in the press. In a significant development, Parliament in recent weeks has, at the president's request, voted to lift Frederick Chiluba's immunity from prosecution. Although the legality of this decision was immediately challenged by Chiluba's lawyers—a challenge somewhat oddly accepted by the court—it has been upheld, and the former president remains under "protective custody."

In parallel, the budget of the ACC has been increased and its facilities upgraded. In a country where subtle signals generally guide political and administrative behavior, the president has been uncharacteristically blunt in stating a policy of "zero-tolerance" for corruption. Although Mwanawasa's public commitment to "zero tolerance" on corruption has increased tensions within the MMD, it is broadly perceived to have increased the profile of governance issues and to have encouraged more aggressive action by the ACC, DPP, courts, and other agencies.

¹⁷ Barkan, 1999, p.4.

At the same time, however, there has been as yet no movement to undertake the serious institutional reforms that will be essential if systemic abuses of authority are to be prevented in future. Focused pressure to initiate such reform, coupled with assistance in crafting and implementing reform measures is needed. The Mwanawasa administration has made several pronouncements acknowledging the need for constitutional reform, but has yet to define the scope of reform efforts, the manner in which the process is to be undertaken, or the manner in which constitutional changes would be adopted. Opinion appears divided regarding the likelihood of presidential support for a fundamental reform of the Constitution. Civil society has identified constitutional reform as essential to democratization, and pressure for such reform as well as a broadly participatory process of amendment will likely be the focus of civic advocacy via the Oasis Forum and other civic fora. Depending on how such pressure is interpreted by a president prone to defensiveness, the potential exists for elements of civil society, the opposition, and reformists in government to collaborate in defining a reform agenda; the potential also exists for a breakdown of communication.

High-level commitment to improved governance and economic performance is both stimulated and threatened by the existence of serious divisions within the MMD which have the potential of blocking forward movement. Progress on reducing presidential powers may be limited in part by desire of the incumbent executive to retain powers (“a good president needs discretion”) while he faces serious challenges from within his own party, and by the ambitions of key opposition political leaders to assume the presidency if he falls. The very real risk that the MMD will engineer a renewed parliamentary majority, as opposition MPs defect in the face of inducements and constraints, further complicates matters. How such a development would affect reform constituencies is difficult to predict, although it would almost certainly reduce pressure on the president. In the short term, a sizeable (if divided) opposition presence in Parliament is irreversible. Even if the MMD regains the majority, it is unlikely to have the capacity to muster the votes necessary to unilaterally amend the Constitution, as was done in 1996. This, together with heightened civil society advocacy for reforms will make it difficult for government to reverse its direction without significant cost.

Because the president is unable to rely fully on his own party hierarchy for support, he has added incentive to build strategic alliances with elements of the opposition on key reform issues. There is a risk that elements of the opposition, driven largely by presidential ambitions of party leaders will find it politically expedient to withhold support. Other elements appear likely to selectively offer support on specific initiatives, while continuing to be critical of a range of government policies. The extent to which the incumbent president will have the capacity to accept criticism remains uncertain, as he has displayed a tendency to react viscerally to negative commentary, seeing critiques of policy as personal affronts. At the same time, there remains a real risk that the MMD will engineer a renewed parliamentary majority, as opposition MPs defect in the face of inducements and constraints.

The period of the Mwanawasa presidency will be critical to the path of future reforms. It appears likely that the president will face difficult trade-offs between consolidating his political position, either as the basis for sustaining a reform effort, or should he choose to do so, as a base from which to contest future elections. He is in a challenging position, since if he wishes to gain popular appeal he must deliver on reform promises, but even if he does deliver, he remains associated with the party most obviously and directly associated with the failures of the previous regime. In order to deliver on reform, he will need to attack elements of his own political base and, more importantly, *informal systems* that brought him to power. One critical test of government resolve to move forward seriously will come when anti-corruption investigators are allowed to seriously focus on the MMD.

At present, the focus of attention remains on members of the former regime—Chiluba, Mwanga, Chungu, etc.—where the logic of reform motives merges with the logic of political consolidation and survival. If the convergence of these two motives has left the anti-corruption campaign open to accusations that it is

largely an attempt to marginalize political opponents, the methods employed by the anti-corruption task force are also subject to question.

3.1 The Competitive Arena

Normally competition takes place primarily in three arenas: elections; national and/or local deliberative bodies (National Assembly, district councils, municipal councils, etc.); and in civil society, via the media, NGOs, universities, think tanks, and other fora for public deliberation. Generally, the dynamics of competition between the executive/ruling party are played out via elections, in legislative bodies at national and local levels and in the selective allocation of resources to local administrations. In a very real sense, in the Zambia of Kenneth Kaunda and Frederick Chiluba, the needs of the executive trumped virtually all else.

During the Chiluba era, significant factors conditioning the competitive arena were executive powers and the dominance of the MMD at both national and local levels, the absence of effective separation of state and party resources, the fragmentation and institutional weakness of the opposition, and the relative underdevelopment of civil society and independent media.

3.1.1 Elections

Following the 1990 constitutional amendment which permitted a return to multiparty electoral competition, the MMD won an overwhelming victory in the 1991 elections, gaining control of 125 of 150 seats in Parliament. Frederick Chiluba succeeded Kenneth Kaunda as president, assuming control of executive structures constructed during the era of the one-party state, and retaining the same extensive constitutional powers exercised by his predecessor. The early 1990s saw the consolidation of what has been aptly describe as a “dominant party system”—one in which the strength of the ruling party’s majority virtually obviates the need for meaningful negotiation with opposition interests in the determination of policy.

As the social impacts of adjustment began to be felt, and with the defection of a number of politically ambitious and/or reform-minded politicians from the MMD, Chiluba moved to reduce his perceived vulnerability by orchestrating a constitutional amendment to preclude his strongest challenger, Kenneth Kaunda, from competing in the 1996 elections. In parallel, administrative measures were taken which had the effect (intentional or not) of disenfranchising large numbers of potential voters. Finally, the line between state and party resources has been blurred, and the MMD has used the state resources at its disposal in a wide variety of ways to both to increase its general appeal to voters as the guarantor of local or national development, finance, or otherwise facilitate the electoral campaign and to directly buy votes.

Peter Burnell notes that during the 1990s, the MMD “used its control over public resources and access to state-owned media to partisan advantage; the police, allegedly acting under political direction, have applied their powers to prohibit political rallies and meetings in a discriminatory fashion. These and other tactics have disadvantaged the opposition in parliamentary by-elections since the controversial general election of 1996.¹⁸” Indeed, the Zambian 1996 elections emerge as emblematic of a number of problems characteristic of African multiparty regimes, including “the lack of ruling democracy in the ruling parties, the abuse of government resources during the campaign, and the growing hostility of governments to democracy-monitoring nongovernmental organizations.¹⁹”

The Mwanawasa Administration assumed office against the background of a controversial election, engendered by the prevailing electoral regime. The EU’s 1999 *Selsey Report* identified a number of shortcomings in the electoral process ranging from voter registration to the composition of the Electoral

¹⁸ Burnell, April 2001, p.3.

¹⁹ Bratton & Posner, 1999, p. 388.

Commission. The electoral process has in the last two general elections disenfranchised increasingly large numbers of eligible voters, and registered voters are a minority of those eligible to vote. The advantage of incumbency, which has translated into the misuse of public resources, has also played a major role in undermining the electoral process and sustaining an uneven political playing field for competition between opposition and ruling party.

The ECZ was analyzed by the EU election consultant in 1999 (see Selsey report). Among the recommendations were the reform of the board and management of the ECZ, and of the voter registration system. A few changes were made prior to the elections, however, many independent observers continued to believe the Electoral Commission was not independent. For example, ECZ appeared to be creating unnecessary hurdles to discourage fielding of observers, including a hefty fee for accreditation and complicated application. The voter registry was not been made easily accessible to NGOs. The Commission has been at loggerheads with the EU experts over suggestions to minimize hurdles, leading these experts to conclude the problem lies within the MMD camp along with some government agencies and resources. Registration continues to at issue. Although the Nikuv voter registration system was reportedly cancelled prior to the 2001 elections, there is widespread belief that the system was changed only in name, the procedures and software remaining the same. Data on the nature of changes to the system, if any, is not available.

The Electoral Act which defines the ECZ's mandate has also been criticized for failing to provide the commission the authority to deal effectively with disputes arising before or during elections.²⁰ It lacks prosecutorial authority, and must rely on the intervention of police or other authorities over which it has little if any control.

Although the ECZ is credited with having discarded the Nikuv system prior to the 2001 elections, there remained a widespread belief that only the name was changed, the procedures and software remaining the same. Whether or not this was the case, voter registration in 2001 was "adversely affected by the late funding of the ECZ by the government, which resulted in rushing through the exercise, leaving thousands of eligible voters from the final roll. The exercise was further affected by lack of logistical support and adequate resources by the National Registration Department to issue National Registration Cards to [prospective voters]."²¹ In the end, roughly 55% of eligible voters were registered.

The Carter Center's final statement on the 2001 elections concluded that, "that: (1) there was an uneven playing field in the pre-election period due to problems in voter registration, misuse of state resources, and unbalanced media reporting, which disadvantaged the opposition and created barriers for full participation of all stakeholders in the process; (2) the government and ECZ lacked the political will to take necessary steps to ensure that the elections were administered effectively and transparently; (3) there were inadequate logistical arrangements for the polls and a lack of procedures to ensure transparent vote counting at the polls; (4) there was a lack of transparency in the process of tabulating results at the constituency level and in relaying results to ECZ; (5) the ECZ has failed to release polling station results in a timely manner thus severely restricting the ability of stakeholders and observers to check results independently; and (6) the ECZ has failed to implement a transparent verification process open to parties and observers."

An interesting and comprehensive discussion of these and other problems with the 2001 electoral process can be found in the reports published by the independent Zambian monitoring group - the Foundation for Democratic Process (FODEP), the Carter Center, EU and a number of bilateral donor agencies. Further detail is emerging from a large-scale study being conducted by the Institute of Economic and Social research in conjunction with the Ch. Michelson Institute (Bergen, Norway).

²⁰ See for instance, *The Corruption Eye*, vs.1, n.2, Afronet, February 2002.

²¹ FODEP, *Zambia's 2001 Tripartite Elections*, 2002, p.vs.

The most critical legacies of the 2001 election process for the present assessment are perhaps the following:

- The process is almost universally viewed as deeply flawed, with the result that many contest the legitimacy of the resultant political order. This has resulted in a series of legal challenges, focusing on a number of parliamentary constituencies as well as the presidency. The outcome of these cases has the potential to alter the balance between the MMD and opposition in Parliament as by-elections are conducted to recontest seats where initial results have been voided. In theory, the outcomes of the presidential cases have the potential to force a new national election as well. Whether the courts are sufficiently independent and courageous to render a judgment that would have this effect is a subject of debate. At a minimum, the fact that judgments remain pending places the current republican president in a tenuous political position, and one which is not without irony, since he is generally viewed as having been uninvolved with the alleged electoral malfeasance attributed to his predecessor and the MMD political machine.
- Serious and comprehensive reform of the electoral process will be required before subsequent electoral cycles. It appears unlikely that such reform is ultimately separable from the larger issue of constitutional reform, but issues including the nature and authority of the ECZ, access to public media, the revision of the public order act, campaign finance, first-past-the-post (FPTP) vs. majoritarian vs. proportional systems, etc. can be productively debated both in civil society and Parliament in an effort to stimulate more far reaching reform. The most appropriate sequencing of reforms is also subject to debate, and several alternative approaches appear to have merit. One extremely knowledgeable observer has argued that parliamentary reform will lead to constitutional reform will lead to electoral reform. What is perhaps most critical is that whatever the sequence, the process be transparent and involve broad public participation at some state.
- Whatever the legitimacy of particular results, the 2001 elections resulted in a leadership transition at the presidential level and—for the first time in Zambian history—a situation in which legislative and executive power are divided. It also has resulted in a leadership transition in the dominant party, and internal divisions which, together with its relatively poor electoral performance, leave it considerably weakened, though still a significant force.
- Even with a slim majority, the opposition is currently in a position to exercise considerably more clout in Parliament than at any point in the past. If opposition politicians—particularly leaders—prove capable of transcending personal ambition to cooperate on substantive reforms—including reform of Parliament as an institution, the opportunity presently exists for a resumption of Zambia’s stalled transition.

3.1.2 Political Party Development and the Political Opposition

There is a considerable body of scholarship on political party development in Zambia during the 1990s, much of it excellent. It is beyond the scope of the present assessment to summarize the findings of this literature. However, several principal points which emerge and which have been underscored by a number of those we consulted are critical to an understanding of the dynamics of the Zambian political system and the prospects for the consolidation of a stable democratic system.

The broad characteristics of the Zambian party system have evolved through several distinct phases, each of which has conditioned the environment for party development, consolidation, and participation in political life. Following independence in 1964, Zambia briefly experienced a period of multiparty democracy. However, after 1969 when the formation of increasingly strong regional/ethnic parties began to challenge the ‘One Zambia One Nation’ policy, President Kaunda moved to initiate the creation of a one-party state. The Constitution was amended in 1973, to implement the findings of the Chona Commission, established to determine the modalities of creating a one-party state. Ruling party (UNIP) and state became virtually indistinguishable as national and party constitutions, structures, and resources were merged. Opposition political parties ceased to exist as legal entities. During the period of the one party state, public resources were used to maintain party structures, largely through the distribution of patronage. This fusion

of party and state has had a lasting legacy, marking both state and party structures. The resultant culture was one in which, *on one hand, public sector employment was seen as a reward for political allegiance, and on the other, political allegiance was viewed in largely instrumental terms.* Neither characteristic appears to contribute to the consolidation of democratic governance over the long term.

During the period of the one-party state, UNIP was *de jure* and *de facto* the only game in town, and thus the party to be joined by anyone with local or national political aspirations. Through its access to state resources and structures, and a variety of semi-mandatory mobilizational structures—national women’s and youth movements, etc.—UNIP had an organizational presence throughout the country. Although it remains strong only in the Eastern Region at present, UNIP and the MMD remain the only parties capable of making this claim.

By 1990, the economic situation had severely deteriorated. The party-state fusion of the Second Republic spawned an economic system characterized by centralized economic management and state control of multiple parastatal enterprises, managed by often incompetent functionaries appointed through party patronage systems. With the fall in copper prices and rapidly increasing costs of energy in the 1980s, the economy entered a period of free-fall. Successive attempts to implement adjustment measures under international financial institutions (IFI) pressure were blocked by a strong labor movement supported by a population already facing severe economic hardship. Food riots in 1986 and 1990, abortive coup attempts, the emergence of an increasingly coherent civic opposition, and democratic transitions in Eastern Europe heightened pressure for political change. Under pressure from organized labor (spearheaded by ZCTU), civil society, and donors, Kaunda acquiesced to the reintroduction of a multiparty system. A limited constitutional reform was enacted in 1990 to permit political party competition and to introduce a two-term limit on the presidency.

What is perhaps most significant for political party development about the 1991 transition and the return to multiparty competition, is that:

- Opposition to UNIP took the form of a broad social movement of those opposed to a continuation of Kaunda’s rule which eventually coalesced under the banner of the MMD rather than that of an organized and established political party; competition was as a consequence bi-polar, rather than multipolar. The MMD filled space that might otherwise have been available for the emergence of additional political contenders.
- The formation of MMD took place rapidly, at a pace which outstripped the formation of solid organizational structures capable of substituting for patronage-based appeals for loyalty in the post-election period.
- The MMD’s victory in the 1991 elections was so overwhelming, that on assuming power, it was in a position of dominance almost as imposing as that of UNIP during the single-party era. Despite its weak structural foundations, the MMD emerged from the 1991 elections with 125 of 150 parliamentary seats and, via the election of Frederick Chiluba as President, control of the powerful executive branch. In effect, as Rakner, Burnell and others have argued, a dominant-party system was substituted for the single-party system. A significant difference between the two systems, however, has been the elimination of many of the legal barriers to party formation and operation.

Without significant opposition representation in Parliament, Chiluba assumed control of executive structures constructed during the era of the one-party state, retaining the same excessive constitutional powers. Although the formal linkage of state and party was severed in 1991, *de facto* linkages continue to the present, allowing the ruling party to manipulate state structures for political ends. *The fundamental, patronage-based logic of political loyalty and party formation remained largely unchanged in many ways.* During the course of the 1990s, civil society and reform-minded members of the MMD progressively deserted the movement as executive powers were used to consolidate an increasingly kleptocratic system.

Prior to the 1996 and 2001 elections, further defections were driven by the ambitions of key MMD players and Chiluba lieutenants to compete for the presidency.

Although the 1990s saw the formation of numerous political parties, as prominent individuals left (or were expelled from) the MMD and constituted their own political vehicles, the MMD remained in a dominant position, using its control of the executive and local government structures, and of Parliament to condition the environment for political competition. This control enabled the MMD to amend the Constitution in 1996 to introduce citizenship criteria for presidential candidates designed to preclude a challenge from Kenneth Kaunda, and to adopt a FPTP system for presidential elections. UNIP's decision to boycott the 1996 presidential and parliamentary elections in protest over these constitutional changes resulted in a further consolidation of MMD dominance.²² Only in the late-1990s, with the mobilization of civil society in opposition to President Chiluba's attempt to further modify the Constitution to eliminate the two-term limit, and the further fragmentation of MMD over this issue, has Zambia moved from an essentially a two-party contest to a more competitive multiparty system. (see Rakner 2002); Whether this transition is durable remains an open question.

Opposition party consolidation has been complicated during the 1996 and 2001 election periods by formal and informal impediments to political activity both at national and regional levels, which have included difficulties in obtaining access to public (state) media, permits for public meetings and demonstrations, etc. Party organizational development and consolidation has also been made more difficult by the fact that relatively little—other than the characteristics of the leadership—differentiates that majority of the parties that have emerged over the last decade. Peter Burnell argues that “in Zambia, political careerism, competition over spoils, and personal traits offer more convincing explanations [of party dynamics] than serious disagreements over ideology or programme.”²³ Indeed, few parties (FDD is an exception) have articulated a coherent programmatic agenda that differs in significant respects from that of the MMD.²⁴ This is perhaps not surprising, since of the parties fielding presidential candidates in 2001, the most significant were headed by former MMD ministers—FDD (Christon Tembo); HP (Godfrey Miyanda); ZRP (Benjamin Mwila); PF (Michael Sata)—many of them bearing reputations seriously tarnished by their close association with Chiluba. The possibility for the formation of durable electoral coalitions appears generally undercut by the competing personal ambitions of party leaders, although more temporary alliances on specific legislative issues appear possible.

Other than UNIP, the only significant opposition party at present which did not emerge in this manner from the fragmentation of the MMD is the UPND, headed by a former Anglo-American Corporation (AAC) chief executive officer, Anderson Mazoka. Yet the UPND bears much in common with other principle political contenders. Many if not most of these have formed around dominant individuals with presidential aspirations and remain largely leader-driven, leader-financed, lacking in well established internal structures or democratic internal decision-making procedures, and have difficulty mobilizing support on a nationwide basis. Zambian political parties remain weak and poorly defined. A recent NDI analysis concluded that Zambian parties provide, “few opportunities for advancement within the party and little outreach to the public (particularly women and minority groups).”²⁵

²² UNIP has not become stronger in the wake of its decision to boycott the 1996 presidential election, although it retains significant support in Eastern Province, and viable party structures in most parts of the country—other than MMD, the only party that can make such a claim. Internal competition for leadership of the party, pitting members of the Kaunda family against the elected party leadership, further weakened the party in the run-up to the 2001 election. See Rakner & Svaasand, “Elections, party system development and democratic consolidation in Zambia,” January 2002, p. 6.

²³ Burnell, April 2001, p.6.

²⁴ A comparison of the electoral programs of the main parties/candidates contesting the 2001 elections (MMD, UPND, FDD, and UNIP), suggests that all articulated economic policies consistent with those adopted (at least rhetorically) by the MMD, with the opposition simply stressing the need for greater disclosure and transparency.

²⁵ NDI 3/2002.

There are parallels between the 1991 and 2001 transitions that are worth noting in the context of a discussion of political party development and consolidation. Most significantly, both were the culmination of essentially oppositional movements—movements organized against the continuation of a dominant regime widely perceived to have outlived its usefulness. As such, a variety of political actors whose long term interests might be expected to diverge could line up behind a common goal. In 1990-91 this was the replacement of Kenneth Kaunda and the one-party state; in 2000-2001, this was to prevent the amendment of the Constitution to permit a third Chiluba term.

What has significantly changed in the wake of the 2001 elections is that the position of the MMD has been relativized vis-à-vis other political parties and it no longer controls both the executive and parliament. As the party/movement associated with the end of the single party era, the MMD continues to command the loyalty of a significant following, and through its control of the presidency, it continues to have the capacity to influence the allocation of state resources to reward loyalty and punish dissent.²⁶ At the same time, it has undergone a leadership transition and remains internally divided, between those who at least tacitly support Mwanawasa's "new deal administration," and those who remain loyal to the MMD system as defined by Chiluba. It is also increasingly clear that civil society has emerged as an autonomous, engaged and—through the Oasis Forum -- increasingly coordinated force separate from the opposition. This fact will make more difficult the perpetuation of patronage-based politics.

Several issues generally emerging in discussions of political party consolidation in Zambia are, a) the absence of legislation providing guidelines for the formation or operation of political parties (now regulated under an omnibus Associations Act); b) the first-past-the-post electoral system, that arguably disadvantages parties that have relatively thin national coverage; and c) the constitutional-legal requirement that by-elections be held when MPs choose (or are forced) to leave the party under whose banner they ran. A fourth, more pernicious, issue is the use of state resources by the ruling party to partisan end, and the difficulties faced by opposition parties in securing adequate financial resources for campaign purposes or longer-term institutional development.²⁷

Structural and regulatory changes that might promote party consolidation include a return to absolute majority in presidential elections, the introduction of a constitutional provision for citizen recall of MPs, and the parallel elimination of political party capacity to force parliamentary by-elections, the introduction of higher thresholds/geographical spread criteria in the party registration process to prevent the creation of "nuisance parties." These should be approached with caution, since they may have unintended consequences. Proportional systems are often advocated as an alternative to single-member districts by those critical of the present system of voting, but in a system that encourages few connections between members of Parliament and grass-roots constituencies, the elimination of single member districts may further attenuate representative functions of parliament. The FPTP issue is complex, and one worthy of further intensive study.

Burnell notes that "25 of the 47 parliamentary by-elections held between 1991 and April 1996 were caused by MPs changing party allegiance, and not by morbidity, although the rate for that too is high." The figures for the 1996-2001 period are roughly equivalent. This pattern continues to prevail, and is widely viewed as inhibiting the development of stable party organizations. The fear of many observers at present is that the MMD's capacity to induce the cross-over of opposition MPs will result in a re-creation of an MMD

²⁶ In establishing the position of District administrator (DA) in 1999, Chiluba assured himself of an efficient vehicle for both.

²⁷ The fact that opposition parties must compete with an incumbent MMD which has the ability to tap state resources has reinforced the tendency of parties to form around prominent individuals with the capacity to self-finance their parties; this in turn tends to undermine internal democracy and reinforces perceptions of parties as vehicles for the personal advancement of leaders.

parliamentary majority, reversing what is seen as a healthy separation of executive and legislative control. The logic for individual politicians is often clear—in the absence of clear programmatic differences between parties, what is important are opportunities for personal advancement, defined in a variety of ways depending on the individual. The effect on the development of a competitive party system is, however, pernicious. What effect the re-consolidation of MMD control of Parliament would have on the impetus for reform is uncertain.

Over the longer-term it would appear that stable solutions can only be rooted in a combination of systemic reforms designed to reduce the importance of patronage in politics, and foster party consolidation. Electoral system reform is likely an element of this package, as are reforms designed to erect effective barriers between state and party finances and resource. This will be a complicated process since it will involve both extensive changes in the existing legal framework—much of which dates to the era of the single party state—as well as a profound shift in the basis of politics away from patronage.

3.1.3 Legislative Power and the National Assembly

As the 1997 Assessment notes, national and local legislative bodies can be viable arenas for competition only if their membership is the result of competitive elections and, even then, only if that membership contains a reasonable number of competitors. For much of the 1990s, neither of these conditions pertained. Although the 1991 transitional elections were widely accepted as competitive, they resulted in an MMD majority of such preponderance as to preclude meaningful debate. The 1996 elections resulted in a further consolidation of this majority through an electoral process widely viewed as neither competitive nor free and fair. Only with the 2001 transition and the election of an opposition majority to Parliament has the potential emerged for the institutions to play a significant role in national governance. If this potential is to be realized however, significant reforms will be required, as will the development of a greater capacity for cooperation among members of the opposition.

For much of the recent past, Zambian deliberative bodies have been either dominated (at national level) by the MMD, or made largely irrelevant (at the sub-national level) by a system of governance which arrogates decisional authority and control of most resources to centrally appointed administrative authorities. Thomas Carothers aptly notes that in almost all countries coming out of authoritarian or totalitarian rule, national legislatures are extremely weak: “they are usually subordinate to the executive branch; poorly funded, equipped and staffed; lacking law-drafting capacity and political experience; and enjoying only minimal public respect. Helping such legislatures to get on their feet, to become more efficient, effective, and representative, is therefore assumed essential to furthering democratization.”²⁸ In describing an assistance landscape replete with failed efforts to promote legislative development, he goes on to suggest that the biggest obstacle to legislative development, “is the paucity of interest in reform among the main power holders in the legislatures of many transitional countries. Even ardently pro-democracy leaders may not consider strengthening the legislature a priority on an agenda loaded with difficult items. They may believe that a dominant executive branch is necessary to get their slate of reforms enacted quickly and that a stronger legislature, even one that their party dominates, will only slow them down. Then, too, they may worry that legislative strengthening will give more of a voice and role to the opposition, further complicating their plans. . . . *The point is not that weak, troubled legislatures can never change. It is, rather, that treating legislatures as self-contained entities that can be fixed by repairing internal mechanisms is unlikely to get very far.*”²⁹

What this suggests is that efforts to build institutional capacity in the National Assembly in isolation from a wider process of constitutional-systemic reform is unlikely to produce results. Whether or not Parliament can be consolidated both as an effective institutional check on executive authority and as an effective

²⁸ Thomas Carothers, *Aiding Democracy Abroad* (1999: p.178).

²⁹ *Ibid.*, pp. 183-6.

representative and deliberative body remains to be seen. Consolidation prospects appear to rest partially on the outcome of the ongoing political ferment associated with the legal challenges to the 2001 election results and the President's efforts to consolidate his position within the MMD, partially on the ability of the opposition to form and sustain tactical alliances, and partially on sustained pressure from civil society.

Even (or especially) if broader constitutional reforms affecting institutional balance are delayed or limited, the National Assembly will be key to addressing a number of the critical subsidiary issues currently at the center of Zambian political debates—electoral law and process reforms, media and broadcasting law, etc. It will also be a key arena in which coalitions between opposition parties can take place, perhaps resulting in increased coalition formation over the longer term.

There are some encouraging signs, not the least of which is that interest in parliamentary reform is widespread within the institution, although reformers are not necessarily well organized to effect change. The prospects for legislative reform are enhanced by several additional factors, including effective donor coordination in this sector, the pre-existence of an assessment of legislative reform needs and detailed recommendations, and the window of opportunity afforded by the narrow opposition majority. At the same time, the potential exists for reform efforts to be blocked or subverted by those with strong vested interests in the current structure.

A combination of inducements and pressure exerted through donor policy dialogue will likely be useful in encouraging the Speaker to support a redefinition of his own powers. A variety of internal rules designed to ensure party discipline during the single party era—including the requirement that individual MPs bear the cost of drafting the draft legislation they introduce—appear inconsistent with the operation of a democratic institution in a multiparty context. As one observer has commented, “the speaker has too much real power. Parliament will likely in future be composed of many political parties if present trends continue, and all parties and MPs need to feel that the Assembly “belongs” to them directly. The power to name all the members of the Committees, the power to dissolve a Committee, etc. should not all reside in a single individual—no matter how well respected that person may be. Such power should be shifted to a Parliamentary Commission, containing representatives of both opposition and majority parties.”³⁰ The creation of such a commission should be taken as an indication of serious commitment to institutional reform.

3.2 The Civic Arena

3.2.1 Civil Society Organizations and Civic Advocacy

Civic associations and interest groups have played an important role in the history of political development in Zambia. During the era of the one-party state and during the Third Republic, Zambian civil society has served often and at critical moments as the voice of public interests, the defender of democratic values and constitutionalism, and the only effective check on the powers of the government of the day. While the fortunes of particular civic groups have waxed and waned over the years since independence, especially those of economic interest groups, in general civil society has broadened and strengthened itself considerably over the last 10 years. Many observers of the recent political developments in Zambia believe that civil society is the strongest and most motivated it has ever been after the heady success of the Oasis Forum in mobilizing public opinion and defending the Constitution. In fact, building on the current momentum and improving the skills of civil society may be the best hope for ensuring that the current government's rhetorical commitment to meaningful reform will be followed by concrete actions. Still, challenges remain. Since, as Joel Barken aptly notes, civil society is largely free of government control the

³⁰ John Bosley, report to Donors, 2002.

problem is “not that of overcoming government opposition, but rather that of organizing itself and reaching outward and down to the grassroots of society—especially in the rural areas.”³¹

Pre-1991: The Labor Movement as a Force of Change

With the introduction of the one party state in 1972, associational life in Zambia changed dramatically from one based on voluntarism to one based on state mandate and control. Opposition political parties were, of course, banned under the new Constitution. While non-political associations were permitted to register, UNIP attempted through the employment of classic patronage politics to co-opt all civic organizations into its corporate structures. This system of state corporatism was most successful with the agricultural co-operative movement of small-scale farmers that became closely affiliated with the UNIP government after the passage of the Cooperative Act of 1970. However, other economic interest groups, most notably the labor movement, were able to avoid this patronage network and maintain their autonomy from party structures.

The state’s attempts to bring the labor movement in line with its corporatist structures and development agenda ironically helped to create what became the most powerful non-state actor and principle opposition force in the Kaunda era. The Industrial Relations Act of 1971 legislated mandatory affiliation of all Zambian unions with one umbrella union, the Zambia Congress of Trade Unions (ZCTU). This move effectively improved the organizational and financial strength of a labor union movement that had been somewhat weak and splintered since independence. Under the fiercely independent leadership of Newstead Zimba and Frederick Chiluba, ZCTU thwarted the aims of UNIP to control union workers and instead became the most outspoken critic of government economic policies and the main proponent of the return to multiparty politics. For many years, ZCTU stood alone in its criticism and active resistance to Kaunda’s policies. By the late 1980’s, however, opposition voices from academia, the churches, and some business leaders began to speak out forcefully about the worsening economic situation and food crisis in the country and joined in the ZCTU chorus calling for an end to the one party state. In July 1990, this disparate group of government critics formed a loose coalition known as the Movement for Multiparty Democracy (MMD) under the leadership of Arthur Wina, a former Minister of Finance, and Frederick Chiluba, the Chairman of ZCTU. The political weight and organizational structures of ZCTU were used to support the new opposition alliance and helped to make the MMD into an effective mobilizer of public support and a credible counterweight to UNIP. MMD became the driving force behind the 1991 transition and Frederick Chiluba, aided by ZCTU’s nationwide network and the union resources at his disposal, became the MMD’s presidential candidate.

1990s: Liberalization and Pluralism

The transition to multiparty rule and the electoral victory of Chiluba and the MMD in 1991 signaled a move toward liberalization of state/society relations and a move toward much greater pluralism in the civic arena during the Third Republic. Constitutionally protected freedoms of speech and association encouraged social groups to form freely based on the interest and mobilization of their members and without undue state interference. The result of this new enabling environment was an explosion of civil society organizations (CSOs) formed around numerous economic, religious, and political interests. According to a study by Pact, more than 1,000 CSOs were formally registered with the GOZ by 1995 while many more community-based groups, such as village self-help committees, operated informally. The impressive growth in the sector was encouraged by the generous availability of donor funding and the continuing existence of a liberalized environment generally throughout the 1990’s. Excepting electoral periods, the government has largely lived up to its promises to respect the freedom of civil society organizations to operate and engage in public dialogue. However, the legal framework governing the registration and financing of NGOs is still widely considered to be unfavorable and in need of revision, especially in regard

³¹ Joel Barkan (2000, p.22).

to tax code provisions that could encourage charitable donations from local communities and decrease CSO reliance on donor funds.

Despite the dramatic increase in the number of civil society organizations in Zambia and the liberalized political environment in which they were functioning, civil society has not been very successful in gaining access to the policy process. Several factors contributed to the underdevelopment and inefficacy of advocacy during this timeframe. Firstly, the nascent CSOs were weak in a number of areas: shallow institutional roots, dependence on donor funds, lack of lobbying skills and experience, small membership bases, and difficulty in keeping their members engaged on issues between elections. Secondly, the influence of the most experienced and well organized CSO, ZCTU, was drastically weakened due to internal disagreements leading to the 1994 split in trade union movement. In addition, the new MMD government's economic liberalization policies had a negative impact on the size of the formal sector workforce furthering weakening the power of the unions vis à vis government. Thus, the civil society group with perhaps the greatest hope of influencing government policy and providing leadership in the civil society community in the immediate transition period was marginalized and ineffective.³² Finally, despite the commitment of the MMD manifesto to engage proactively with civil society, in practice the government limited the points of access that interest groups had to government decision-making. Their landslide electoral victory convinced the MMD that they had a popular mandate to pursue their own development and governance agenda without wide consultation. Unfortunately, although born out of a genuine social movement, MMD as a ruling party and government viewed social organizations, especially economic interest groups, as a threat rather than a partner in meeting their goals. This climate of suspicion and exclusion continues to characterize the current relationship between government and civil society.

Their limited policy influence notwithstanding, civil society groups played an increasingly important role in both service delivery and governance issues during the 1990s. The HIV/AIDS crisis and increasing poverty levels over the course of the decade resulted in a proliferation of health and social welfare organizations to fill the gap in service delivery left by a progressively cash strapped government and to absorb international aid funds, a large percentage of which bypasses government structures because of donor concerns about capacity and corruption. For the most part, service delivery organizations have focused strictly on their specific organizational goals and have shunned an advocacy or policy role even in those areas that directly impact their work. Service delivery NGOs seem to prefer to work around governance obstacles rather than to lobby for change to poor policies and have been slow to recognize the potential of their own role in influencing government. On the other hand, human rights and issue-based NGOs have gained strength and experience in advocacy over the course of the two Chiluba administrations. The continuing weakness and fragmentation of political parties, as well as the lack of independence in parliament, has put the onus of advancing the democratic reform agenda in Zambia squarely on the shoulders of civil society. Providing civic education, encouraging public debate, and playing a watchdog function vis à vis government have all been the primary responsibility of civil society.

Impact of the 1996 and 2001 Elections on Civil Society

Multiparty elections in Zambia, while overall peaceful, have been polarizing and controversial. Disagreement over major Constitutional issues in both 1996 and 2001 pitted the government against popular opinion. In these debates, civil society has shown that it is capable of contributing positively and decisively to the outcome, but only if it is united in its efforts. During the controversy of the 1996 electoral

³² While trade unions played a significant role in the campaign for the re-introduction of multiparty democracy and were one of the architects of the MD, they have played a secondary role since 1991. The trade union movement has been preoccupied with leadership problems, and its independence was partly compromised by the earlier alliance with the MMD. Nonetheless, some analysts suggest that there has been a noticeable change in trade union policy towards the government, and that there are indications that trade unions may revert back to the role played in 1991 in providing leadership to opposition forces against the government on DG issues. (See DG Sector Review Background Paper, USAID/Lusaka, February 2002)

period, civil society remained fragmented and unable to effectively unite in opposition to the unpopular Constitutional amendments passed by the MMD-controlled legislature. While outspoken in their criticism of the 1996 elections, even to the point of suffering arrests of their leadership, arbitrary tax audits, fines, and harassment, CSOs did not succeed in moderating the illiberal actions of Chiluba's government. Participants and observers of the time feel that civil society was taken by surprise at the executive hijacking of the Constitutional review process and perhaps were too narrowly focused on civic education and voter apathy issues at the time to respond effectively to other governance challenges.

Fortunately, for the democratic development of Zambia, the 2001 elections were a much different story from 1996. This time, civil society proved itself able to unite and mobilize public opinion in defense of the Constitution. The Oasis Forum, an informal broad-based alliance of churches, human rights NGOs, professional associations, academics, and women's rights groups, took the lead in opposing the amendment of the Constitution to allow more than two terms for a Zambian President. In the process of opposing the third term, the Oasis Forum set a new standard in Zambia, and perhaps in the region, for popular participation in government and the power of citizens to hold government accountable. The green ribbon and car honking campaigns in which all citizens opposed to a third term wore green ribbons and honked their car horns at the same time of day proved to be low-cost and effective methods for expressing public sentiment, forcefully yet peacefully, and involving Zambians throughout the country. The united front presented by a coalition of diverse nongovernmental groups and the active involvement of the churches were also cited as key factors in the campaign's triumph.

Most of the Zambians interviewed during this assessment pointed to the Oasis Forum's Anti-Third Term Campaign as a watershed event in Zambia; one that convinced citizens of their power to influence their own political future. Civil society is now stronger than it has ever been and the hopes of many, including some opposition politicians, for future reform seem to be pinned on the Oasis Forum. For this reason perhaps, the unity of the Oasis Forum has been the subject of debate in the press and the civil society and donor community. There is some speculation, but no hard evidence, that the MMD has tried to influence the new leadership of the Law Association of Zambia (LAZ), a key player in the Anti-Third Term Campaign, to pull out of the coalition. For the moment, however, LAZ has elected to remain in Oasis Forum and the coalition seems poised to remain active and quite influential. If the alliance can be maintained, it may be the most important check on the powers of the central government since ZCTU on UNIP throughout the 1980's. The challenges for the Oasis Forum, and civil society in general, will be the same as those faced in years past: keeping the public engaged between elections and finding ways to mobilize citizens in the face of poverty and competing claims on their attention, especially on what can often be seen as abstract political issues such as constitutional and electoral reform.

Current Opportunities and Constraints

The elections of 2001 greatly strengthened the confidence and the credibility of civil society in Zambia. In fact, civil society is perhaps the greatest success story of the elections of 2001 and the best hope for continuing political reform in Zambia. There are a number of credible NGOs active in governance arena, including LAZ, the Forum for Democracy and Development (FODEP), NGO-Coordinating Committee (NGO-CC), Afronet, and Catholic Commission for Justice, Development, and Peace (CCJDP). All, perhaps excepting the churches, suffer from a lack of broad-based membership/constituencies, especially in the rural areas, and are overly dependent on donor funds for their survival. Despite these weaknesses (typical in the African context), many of those interviewed by the team shared the view that civil society has the confidence of the public and, in fact, is perhaps the most credible actor in governance debates today. Consequently, USAID should continue and perhaps expand its support for the advocacy and public debate role played by civil society. Current efforts should be also supplemented with capacity building activities to enable civil society to take a more constructive approach to interacting with the government on policy issues. In addition, there appear to be areas in which it may be possible to encourage the improvement of dialogue, mutual understanding and cooperation between select government agencies and civil society.

This would appear important both as a means of advancing a policy reform agenda and as a means of beginning to break down the legacy of mistrust and antagonism between public and private sectors—an important constraint on democratic consolidation

The de facto role of opposition that civil society has been forced to assume over the last few years has created a culture of suspicion between the government and the NGO community, especially human rights and election monitoring groups. Organizations like FODEP³³, one of the oldest and most effective of Zambia's many human and civic rights groups, have been periodically harassed by the government and attacked in the government-owned press for publicizing unfavorable reports. Freedom of association has been limited on occasion by the ruling party, particularly during elections, with permission for public meetings unlawfully denied by the police. Civil society groups have also been denied the purchase of commercial airtime on government-owned television and radio despite constitutionally protected right to freedom of speech. Numerous legal challenges have been mounted in response to the infringements of constitutional rights and their arguments have largely been upheld by court orders with an uneven record of compliance by the executive.

While the “oppositional” role of civil society is unlikely to change soon due to the weakness of political parties and the critical need for leadership to push forward a national reform agenda, some opportunities seem to exist in the “New Deal” administration to help make state/society relations more cooperative. Despite the perceived politicization of civil society and the adversarial character of state/society relations, some limited progress has already been made in forming effective partnerships between government and civil society that could be capitalized on. The passage of the Arbitration Act of 2000, in particular, set an important precedent for government working cooperatively with NGOs to implement civil society-initiated legislation. The Law Association of Zambia submitted a layman's draft of the bill to the Ministry of Legal Affairs that assisted in getting the legislation passed in less than a year. The media associations, ZIMA and PASA, are currently working together along a similar vein to enact critical freedom of information and media law reforms. The current government has expressed a desire to work with civil society on a number of key issues. Most civil society groups also expressed a willingness to work with the Mwanawasa government and cautious optimism about the new government's campaign against corruption. Both sides, however, admit to a lack of capacity and knowledge on when and how to engage the other on policy issues.

3.2.2 Media

The role of the independent media has been critical over the last decade, and will continue to be so in the future. Although taken as a whole press freedom in Zambia has made notable progress over the last ten year—compared both to the Kaunda era and to other countries in the region—the sector continues to face serious constraints. The environment for the operation of the independent media improved somewhat at the outset of the Third Republic, yet the promise of press freedom and the elimination of state monopolies contained in the MMD's early pronouncements was only partially met. Many restrictions on the operation of the independent media were removed, but state monopolies were maintained in practice (if not in law) for radio and television. Existing media law contains a variety of provisions which are subject to broad official interpretation, and both the arrest of journalists, editors and publishers and the use of civil libel as punitive measures has fluctuated over the decade, peaking during the lead up to national elections in 1996 and 2001. Licensing of independent radio and television stations has proved difficult. Physical violence has also claimed victims among the media, and in several instances bomb attacks have been carried out against prominent media figures, probably with the aim of intimidation. In wake of the Third Term Debate, independent Radio Phoenix was briefly closed, in what was widely viewed as an attempt to stifle opposition.

³³ The creation of FODEP was supported by USAID in 1991 and the partnership continued until last year.

Despite an environment intended to encourage self-censorship, independent print media institutions such as *The Post*, have continued to aggressively report on sensitive political issues, including allegations of electoral fraud, corruption, and the mismanagement of public resources. Periodic harassment of independent media was characteristic of the Chiluba period, and has continued on an episodic basis since the transition, although recent events—including machete attacks on street vendors and the apparent bomb attack on the residence of *Post* editor Fred Mbembe in June and July 2002—appear less obviously sanctioned by political authorities. They are deeply troubling, nonetheless, as signals that freedom of expression can have dire consequences, and underscore the fact that powerful interests are threatened by the prospect of political reform. Some observers have suggested that attacks of this sort are best viewed as legacies of Chiluba-era MMD cadre behavior intended to curry favor within the party hierarchy. Thus far they have apparently not been rewarded, even if the party leadership has not been aggressive in issuing public condemnations. Seen from this perspective these events can be expected decline, as cadres more accurately read political signals; the persistence or any increase in attacks on media should be cause for grave concern regarding political commitment to press freedom.

The government maintains control of two of Zambia’s three daily newspapers, despite its 1991 pledge to privatize government-owned mass media. Its continued control of the lion’s share of broadcast media means that it also competes with private media for the relatively small advertising market. Far more significant however, is the leverage afforded the ruling party during election periods, both to ensure coverage of its own agenda and candidates, but to deny access and coverage to the opposition. Charges of systematic bias in the allocation of airtime on state-owned media appear to have been largely justified in the context of both the 1996 and 2001 elections.

Print media remains largely based in Lusaka and firmly focused on the national political scene. Regional and local media outlets find it difficult to sustain themselves in an environment where production costs are relatively high and the readership’s disposable income is highly constrained. Anecdotal discussions with the publisher of one independent weekly municipal newsletter, suggest that regional media also face greater difficulties in generating advertising revenues that could help defray production costs and meet payroll by the relatively small size of local advertising markets. At the same time, it also appears likely that at least some of the difficulties faced by small media outlets of this sort might be addressed through programs intended to improve the performance of media as a business (as opposed, for example, to efforts to increase the skills or ethics of journalists.)

3.3 Anti-Corruption: Political Incentives and Specialized Institutions

Corruption is widely perceived to be a major problem in Zambia, and to have increase dramatically over the past decade. Zambia continues to drop on the TI (Transparency International) corruption index from its first ranking in 1998 through 2001, presently the 15th most corrupt in the world—20 countries further down the list. Instances of corruption have been widely reported in the public sector, but very limited prosecution was undertaken by Zambian law enforcement agencies under the previous government.

Although one of the motive forces behind the formation of the Movement for Multiparty Democracy was dissatisfaction with high levels of corruption during the Second Republic, in implementing the reform agenda it articulated in 1991 the MMD failed to address fundamental structural determinants of corruption and patronage. Indeed, a variety of the “liberalizing” reforms adopted in the context of structural adjustment and the transition to a market economy, but undertaken in a political context dominated by patron-client relations, have been vehicles for what might be termed the “criminalization” of the state. As others have pointed out, the freeing of market forces appears to have been accompanied by a weakening of the regulatory capacity of the state, while privatization has afforded opportunities for the political elite to acquire public assets, often at bargain-basement prices, or on credit. At the other end of the spectrum, decades of continuing economic crisis have eroded the capacity of the state to pay wages regularly and has

generally meant salary levels have not kept pace with the cost of living. The incentives for petty and not-so-petty corruption flowing from this equation are strong.

The causes of corruption in Zambia are multiple and overlapping, and it is useful to distinguish between two (at least) from the outset. On one hand, corruption driven by primarily by factors associated with individual accumulation, on the other, corruption driven by the broader system of patronage politics (though, to be sure, individual accumulation is closely linked to the latter as well). The latter results in distortion in the structure of authority as state assets are either privatized by the powerful, or used to influence political outcomes, through the financing of political machines, the distribution of patronage, or the outright buying of votes.

Although there is a new president who has not been intimately associated with MMD leadership in recent years, and some new faces are found in the administration, the MMD remains in power. This suggests a need for continued vigilance and pressure for reform. The president has forcefully stated his commitment to curbing corruption, and articulated a policy of “zero tolerance.” An essential first step, this alone will likely prove insufficient to curb systemic corruption in a backdrop of extreme poverty, institutional incapacity, and deeply entrenched systems of patronage-based politics.

Institutional and systemic change is needed to enhance governmental transparency and accountability, and make possible effective application of the rule of law. In the absence of structural reforms, continued forward movement on anti-corruption and in many other areas remains ultimately dependent on presidential goodwill. In this regard, a reexamination of the president’s power to appoint and remove the heads of all watchdog and supervisory governance agencies should be a priority for those interested in reform. Over the longer term, the financial autonomy of the autonomous regulatory institutions must also be safeguarded—implying ultimately, the elimination of the cash budget system that leaves the Ministry of Finance with the power to halt the flow of resources.

What is difficult to discern less than a year after the transition, is whether the Mwanawasa administration is sufficiently consolidated to resist the (political and physical) threats posed by those with a vested interest either in perpetuating business-as-usual, or at least avoiding prosecution. Because a wide spectrum of the Zambian political class held public office during the 1991-2001 period, the range of those who may feel threatened by aggressive anti-corruption investigations and prosecutions is large. Furthermore, elements of the civil service, the military, the police and other government agencies potentially have much to lose—either through loss of access to revenue streams or through prosecution. There remains the possibility that in the interests of consolidating his position (nationally and within the MMD), the president will either revert to patronage politics or be forced to limit the scope of anti-corruption efforts.

In a country where subtle signals generally guide political and administrative behavior, the president has been uncharacteristically blunt in stating his opinions on the subject of corruption. This appears to have been interpreted thus far by the Director of Public Prosecution (DPP) and the judiciary as a signal to move aggressively on corruption cases. The practical effects are also being felt further down the food chain where, either in reaction to official signals or reduced public tolerance for corruption, traffic police have discontinued the previously widespread practice of erecting “vehicle inspection” road-blocks which were widely perceived as mechanisms for extracting rents from taxi drivers and other members of the public.

Some action has following from rhetorical commitments, and public commitments to anti-corruption are of themselves worthy of note, and viewed as a signal of the President’s intentions. An Anti-Corruption Task Force has been established, chaired by the Director of Public Prosecution and including members of the Zambia Police, ACC, Zambia Revenue Authority (ZRA), and the Zambia Services.³⁴ The budget of the ACC has also been increased and its facilities upgraded. At present, however, the legal framework provides

³⁴ . “Ngulube appears before corruption probe team,” The Post, 7 August, 2002.

inadequate safeguards for the transparent operation of government agencies, adequate punitive measures are lacking, and the enforcement of penalties is also very weak. This has been one of the factors encouraging the task force charged with investigating and prosecuting cases of alleged corruption to engage in legal contortionism when pursuing high profile suspects. This is not a healthy development, and if unchecked could seriously undermine the credibility of the process.

At the same time, however, there has been as yet no movement to undertake the serious institutional reforms that will be essential if systemic abuses of authority are to be prevented in future. In the absence of such reform, it remains unclear whether their departure reflects the commitment to anti-corruption or is a function of on-going internal power struggles within the MMD (or perhaps both). Focused pressure to initiate structural changes, coupled with assistance in crafting and implementing reform measures is needed.

3.4 Decentralization and Local Governance

Over the long term, the devolution of significant authority and control over resources to locally elected officials would appear essential to the equitable development of both the Zambian economy and polity. Although government developed multiple draft decentralization policies in the mid-1990s, it has not moved to finalize or implement reforms in this area. Stimulating government action in this area is likely to be beyond the manageable interest of USAID. However, efforts to support public discussion of decentralization policy issues working with civic organizations and Parliament would however be worthy of serious consideration.

The complex of issues surrounding the functioning of systems of local governance in Zambia have been analyzed in considerable detail in recent years, and several excellent studies financed by USAID and the World Bank provide both a coherent overview of problems and recommendations for future action by government and the donor community. Table 3.1 summarizes key analytic points made by Crook & Manor in June 2001. Although in the wake of the 2001 elections there have been rumors of government plans to move forward with the finalization of a white paper on decentralization, the present situation of local government remains largely unchanged from that described below.

3.4.1 Devolution vs. Deconcentration

Following independence in 1964, the Local Government Act (CAP 480 of the Laws of Zambia) was passed in 1965; establishing councils with elected representatives controlling local government at district level while central government administration was represented by the district commissioner, an appointee of the central government. In 1968-1999 the United National Independence Party (UNIP) introduced radical local government reforms, which included the creation of the post of district governor (a government/UNIP appointee) to oversee all district activities.

The period 1971-1979 ushered in a variety of political reforms that were enacted in the context of establishing a system of “single party participatory democracy.” New grassroots political institutions, namely the Village Productivity, Ward Councils and Ward Development Committees, were established under the Registration and Development Villages Act of the Republic of Zambia in 1971. Multiparty politics were banned, and at the local level, the government and the ruling party (UNIP) were merged under the supremacy of the latter, through the 1980 Local Administration Act.

With the reintroduction of multiparty politics in 1991, the MMD government implemented a number of legislation changes affecting local governance and administrative systems. The Local Government Act (Cap 281 of 1991) was aimed at restoring the electoral process at council level, by allowing the election of council leadership (councilors) through universal suffrage. To guide local government operations, the Local Government Elections Act (CAP 282 of 1991) was also passed to pave way for the establishment of the

Local Government Electoral Commission to administer local government elections on a three-year basis (although mayors are elected by fellow councilors annually). The Electoral Commission of Zambia has taken over the conduct of local government elections since 1994.

Table 3.1. Characteristics of the Present, Dysfunctional System of Local Governance and Decentralization³⁵

- **Current structures:** Zambia currently has a dual system of: (i) devolved elected local governments (corporate bodies with powers and functions as defined under the *Local Government Act* of 1991 as amended); and (ii) deconcentrated sector Ministries reporting to their parent Ministries in Lusaka, through provincial level officials managed by a provincial official, the Provisional Permanent Secretary (PPS). The latter have long had far more power than the former, with unhappy consequences.
- **Widely recognized difficulties:** The proposed new local government policy is especially welcome because the present system is failing badly. Central government policies have weakened local governments—financially, administratively and politically. This has thwarted many development initiatives and has placed the completion of the government’s PRSP (of which decentralization is one component) in doubt. Crook & Manor found that these problems were not widely recognized within the higher ranks of the Ministry of Local Government and Housing (MLGH). Several very senior officials made it clear that they do not believe that a severe crisis now grips the local government system, or that substantial changes are needed—not even the changes proposed in the government’s draft local government policy... Senior MLGH personnel tend to blame urban and District Councils for the problems that originate with the Ministry itself, and tend to regard their role as one of *controlling* local government bodies rather than as one of *enabling* them to work creatively.
- **Financial Problems:** Urban and District Councils currently receive an average of between 1% and 3% of their total funds from central government. Even these utterly inadequate funds are often late in arriving. Since 1992, the urban councils have received nothing. Councils also face crushing burdens of debt or arrears. They have also been deprived of many former powers to mobilize resources. They are in severe financial crisis, and their already weak administrative capacity has been damaged by an exodus of personnel who have not been paid for long periods. Several measures during the 1990s have seriously undermined the financial strength of local government. Revenues have been reduced in a number of ways, costs have been imposed, and funds initially intended for local bodies have been placed under the control of MPs and others at higher levels. To ensure that local councils have sufficient financial resources, donors should focus on four things in their dialogue with the government: The crushing debts faced by Councils must be cleared before the new era begins. The revenue base for Councils must be expanded. Councils must be encouraged and equipped to audit their accounts regularly. Finally, donors should support the Local Government Association of Zambia (LGAZ).
- **Planning:** It is important to distinguish between basing urban and District Councils’ activities on reliable budgeting procedures, and elaborate exercises in planning. The former is essential and requires a degree of planning. The latter tend to be expensive, time-consuming and to fall short of expectations. However, evidence from elsewhere indicates that decentralized bodies can achieve many important things without elaborate planning.
- **Political problems:** Real revenues have declined so drastically during the 1990s, that most observers agree that the majority of rural councils are unable to fulfill their functions, or to provide any ‘meaningful level’ of service delivery. Tasks have been devolved onto these local bodies without the funds to perform them. Many Councils, crippled by these problems, have not developed proper budgets or had accounts audited. Interference from above has caused further problems. Omissions and ambiguities in the 1991 Local Government Act and the plethora of other laws affecting local governments—directly or indirectly—have created immense difficulties and confusion, and have weakened local government. Legal provisions fail to allocate functions of various kinds to the various local councils, and to clarify which functions are allotted exclusively to local and higher authorities. Amendments to legislation during the 1990s have, on balance, eroded the autonomy of local bodies by undermining their capacity to recruit their own employees and by empowering central authorities to intervene in local affairs—which they have done with destructive effect.
- **Implications for Popular Confidence in Government:** There is evidence to show that these problems have damaged the government’s standing in the country at large. A careful survey in 2000, which compared Zambia with six neighboring countries, found that ordinary people in the country take very dim views of things like the responsiveness of political institutions, and the performance by institutions in tackling major issues of concern to citizens.
- **The impact of donor activities:** In the absence of a strong government commitment to decentralization, and the lack of an agreed overall framework for governance at the local and district levels, donors have acted through a variety of agencies, both governmental and nongovernmental to implement their own forms of decentralized development, particularly at sub-district levels. The result has been a proliferation of unofficial parallel structures and organizations. The general view among donors is that a critical point has been reached with regard to decisions on whether to continue providing direct support for local government. There is considerable frustration with the poor results of many of the capacity building exercises, and this appears likely to persuade many agencies to switch to SWAPS or to work with NGOs and civil society.

³⁵ Adapted from Richard Crook and James Manor, *Local Governance and Decentralization in Zambia – Final Report*, 12 June 2001.

In November 1999, the government appointed DAs in response to the 1996 Mwanakatwe Constitutional Review Commission's recommendations that the government needed a presence at district level to coordinate development. The role performed by DAs became controversial because they were appointed primarily from outside the civil service and held MMD party positions. The DAs focused more on strengthening party structures, and during the Third Term Debate, became associated as the main agents advocating for amending the republican constitution to allow a third term for the president. Their role therefore was one of deconcentrating central government power without necessarily decentralizing.

Zambia currently has a dual system of local government—i.e., elected local governments, and the deconcentrated sector ministries reporting to their parent ministries in Lusaka. The council's relationship with line ministry service providers also undermines the effectiveness of democratic participation at the district level. The extensive deconcentration of sector-specific services such as education, health and agriculture over the past decade, combined with a switch of resources and investment to those sectors has meant that these services are mainly provided by sector agencies rather than councils. As a consequence of the above, councilors are perceived as powerless to affect or intervene in areas which most concern their constituents in their everyday lives.

3.4.2 Control of Resources

Prior to 1980, 70% of a local council's income came in the form of 11 different types of grants (including subventions for roads, health, police, general needs, as well as block grants in lieu of tax collections) disbursed through the Ministry of Local Government and Housing (MLGH). There were eleven types of grants, although they did also have the right, with ministerial approval, to raise additional revenues from local levies and fees and to charge national ministries for services. As the economy soured in the 1980s and UNIP attempted to decentralize within the framework of the one-party state, resources dwindled, grants were reduced and practically all the local councils entered into severe economic crisis, which they have yet to overcome.

Once in office, one of the MMD's first acts was the *Local Government Act of 1991* was designed to ensure that the central government, through the MLGH, honor its financial obligations to local authorities and grant broad powers to local authorities to raise revenues directly without prior approval or interference from the central government. These measures did not improve the financial situation of the local councils. In 1993 all central government grants-in-aid to city and municipal councils were withdrawn as part of the new fiscal measure. In the same year councils were directed, under the policy liberalization, to privatize commercial ventures. In 1994, the Personal Levy (Amendment) Act exempted many workers from paying this tax, further reducing local government fiscal resources. In parallel, with the reduction in sources of local government revenue, control over remaining resources was shifted away from local councils, in the direction of MPs. A key step in this process was Cabinet Circular No. 10 (1995) which established the Constituency Development Fund (CDF) and the Constituency Development Committees (CDC). This annual grant (approved by Parliament) was controlled by the CDC headed by the respective MP, although for administrative convenience it was disbursed to the local council. This further undermined the authority and performance of the councils, despite their mandate for district development.

Another Government Circular in 1996 directed all city/municipal councils to sell their housing stock to sitting tenants under a Home Ownership Empowerment Program. The below-market prices placed on these housing units by the central government (without council input) cost the council's extensive losses and cut off their major source of revenue. The property rates, being determined on the basis of the sale price, are not even worth the cost of collecting them, and are much lower than the rental value of the units. The 1997 Ratings Act, though rescinded in two years later, exempted a number of properties from being charged normal rates. Motor vehicle licensing, from which the council earned sales commission, was transferred from City/Municipal Councils to the Road Traffic Commission in 1997, thus further reducing the councils' revenue base.

Despite the authority to generate new revenues, the local councils have failed to effectively exploit their existing revenue base due to *lack of initiative and entrepreneurial ability*. More often than not, council enterprises were run for the benefit of the councilors and staff and not the public. In the Lusaka council, 80% of revenue is used to pay staff salaries.

The local government councils are in severe financial crisis, and their already weak administrative capacity has been damaged by an *exodus of personnel* who have not been paid for long periods. The councils have lost several productive assets such as road graders, Trucks, and buildings through auction as a result of legal action taken by *retired/retrenched* former employees seeking their terminal benefits.

- *Corruption* related to the provision of services or to the land allocation process, is common as council employees (most of them with salary arrears stretching back 2 or more years) use their official designations to obtain “extra income” at every stage of the lengthy land allocation process.
- *Incompetence* has now become a permanent feature of the councils as the more bright and skilled workers have left to more secure jobs leaving behind only those staffs who don't have adequate skills to seek alternative employment. The councils hardly maintain a filing system and even the most basic of civic responsibilities, such as maintenance of street lights and garbage collection, go unattended to.
- *Bureaucracy*, most of which is inherited from the British colonial system of government, is so entrenched in the local councils that it is now the main incentive for corrupt practices. While it can take more than a year to obtain trading or liquor license, this procedure can be reduced to one week with “the right incentives” to the council employee in charge.
- *Nepotism and Tribalism* is common in engagement of new employees or promotion, since transparency and accountability has remained low in the local councils, due to corruption and poor conditions of service. With nepotism and tribalism, coupled with lack of salary payments, workers are known to report to and knock off from work at any time they wish without being reprimanded.
- In terms of *patronage*, the party in government has also tended to use councils as institutions for appeasement of its party members, especially lower ranking cadres. Allocation of undeveloped residential plots of land is usually highly politicized with party officials in the councils dominating the allocation. Usually, ruling party cadres will be attended to before other applicants are considered.
- *A new form of patronage* has emerged in local government, following the success of opposition parties in the 2001 elections, where central government officials are said to be by-passing elected officials from opposition-dominated councils, preferring to work through central government appointed town clerks and District Administrators (DAs). Although not yet empirically provable, MMD dominated councils appear to be accessing more central government moral and material support compared to their opposition dominated counterparts. This has been worsened by the perpetual conflicts between elected council officials in opposition-dominated councils and their town clerks.

3.4.3 Local Government and Community Participation

In 1971, every village was required to establish a Village Productivity Committee (VPC). On the other hand, every local government ward was also required to establish a Ward Development Committee (WDC). This made the villages, the primary focus of development at district and local levels.

Reforms passed in 1993 created new community planning organizations at the provincial, district and subdistrict levels i.e., the Provincial Development Coordinating Committees (PDCCs), District Development Coordinating Committees (DDCCs) and Residents Development Coordinating Committees (RDCCs). These were designed to incorporate community participation at all levels. Some DDCCs seem to be functional but not effective. They have little authority and their relationship to other community and district structures is not well defined. The lack of legally constituted, local government institutions at the local and ward or area levels is a major weakness in the current governance landscape.

Community participation in governance seems to be most pronounced during periods of local government and general elections as politicians approach communities seeking their votes. Between electoral cycles, community participation in formal structures is largely limited to RDCCs (in those few localities where these organs exist). However, CSOs and community based-organizations (CBOs) are growing to become the main intermediary form of community participation in governance and democratic processes. Although most civil society organizations remain largely Lusaka-based, a few—including the Forum for Democratic Process (FODEP)—have managed to establish nationwide networks. To some extent these networks are available to other NGOs seeking to extend their contact with rural-based communities. The only other organization with a national network is the Catholic Church who has also in the past made their institutional infrastructure available for civic activities at grassroots level. These networks have facilitated the pre-election support to communities, especially reducing voter apathy among electorates and training polling agents.

3.4.4 Formal vs. Traditional Authority

In most rural areas (where over 60% of the population lives), hereditary chiefs command loyalty from the population and are consulted about most decisions effecting community, district and provincial life, even by elected authorities. Despite colonial rule and the imposition of modernizing humanist socialism during UNIP government, the contemporary nation-state has not succeeded in displacing traditional authority in rural areas of Zambia. Indeed, traditional leadership structures in Zambia could probably be described as the community leadership of last resort, after central and local government organs. As the custodians of land and natural resources, traditional authorities remain a critical factor affecting the livelihoods of rural Zambians.

What is less clear is the political role played by traditional authorities. Clearly their potential impact on the balance of political forces was sufficient in 1996 to prompt the MMD to include a prohibition on Chiefs standing as candidates for elected government position in the constitutional amendments of that year. During the Third Term Debate, Traditional Rulers became increasingly crucial to the governance of Zambia. Chiefs from almost all tribal groups took a firm stand for or against the third term. In fact, politicians sought the endorsement of the chiefs much more during the debate than they did a few months later during the 2001 general elections.

Women for Change, a local NGO affiliated to NGO-CC, has been conducting awareness-raising workshops among Chiefs in almost all provinces of Zambia. The workshops have provided the information on local governance and development, including information on existing legislation and policies concerning their traditional rights, roles and responsibilities.

4.0 Program Recommendations

In the wake of problematic elections in 1996 and following the recommendations of the 1997 democracy and governance assessment,³⁶ USAID/Zambia adopted a “demand-side” strategic approach to the DG sector, focusing on developing the capacity of civil society to press for reform, and increasing opportunities for citizen participation in governance. The 1997 assessment forcefully argued that the political sphere lacked consensus, competition, and inclusion, and that political will for progress was largely absent and that, hence, Zambia’s was an ambiguous, stalled transition. The report cautioned that until there was evidence of government commitment to reform and real multiparty competition, investments in public institutions would be ill advised, and unlikely to produce meaningful results.

The DG Strategic Objective was recrafted for the 1998-2003 CSP to focus on “Expanded Opportunity for Effective Participation in Democratic Governance,” and Intermediate Results (IRs) were defined around Increased Efficiency in the Administration of Justice; Increased Public Debate; and More Effective and Inclusive Local Government Institutions. At the same time, overall funding for the DG strategic objective was scaled back, reflecting declining availability of DG funding overall, and implementation constraints that resulted in a large pipeline of unexpended funds.

A subsequent realignment of the Action Plan in late 2000, resulted in a shift away from CSO capacity building and advocacy in favor of efforts to promote increased public debate, continued emphasis on the development of alternative dispute resolution (ADR) to promote the settlement of commercial disputes and to relieve pressure on the court system, and continued low-level support for municipal planning in Livingstone. In keeping with the demand-side strategy, USAID developed partnerships with a range of Zambian civic and professional associations, but dealt only indirectly with state institutions (e.g., development of a Web site for Cabinet Office). This approach made sense in the absence of either serious government commitment to reform or meaningful opposition representation in parliament. Both of these conditions now warrant a second look, although it remains too early to recommend a significant realignment of assistance resources in the direction of public sector institutions.

What is abundantly clear from the present assessment is that robust but focused assistance in support of democratic consolidation is essential and should be a high priority for USAID and other donors. Progress on issues related to democratic consolidation and the strengthening of systems of governance is intimately related to Zambia’s capacity to deal with the broad range of developmental and humanitarian crises with which it is beset. Although the motive force for reform and development must be rooted in and emanate from the Zambian body politic, external assistance has a critical role to play in supporting reform constituencies and encouraging forward momentum.

4.1 Strategic Direction

The stalling of political liberalization after the 1991 transition resulted in large part from the failure to alter institutional arrangements designed to entrench executive dominance of both state and ruling party structures during the period of one-party rule. With the maturation of the Third Republic the logic of Lord Acton’s dictum was again demonstrated: “Power tends to corrupt, and absolute power corrupts absolutely.”³⁷ As we have noted in the preceding analysis, the most pressing need is to reduce, rationalize and redistribute the power of the executive—a task made more difficult by the degree to which serious institutional reform is dependent on executive support or acquiescence. In the present political context, the prospects for such reform appear closely linked to what is perhaps the second most pressing issue for the Zambian polity—reducing the prevalence of official corruption, which drains scarce developmental resources and seriously undercuts state legitimacy.

36 “The Transition to Democracy in Zambia: a Democracy and Governance Strategy” (MSI, August 5, 1997).

37 Lord Acton, in a letter to Bishop Mandell Creighton, 1887.

Zambia is presently at a crossroad. The problems it faces in resuming and consolidating the transition to multiparty democracy begun in 1991 are significant, and will require both sustained commitment on the part of government and sustained pressure on the part of civil society, working in conjunction with representative institutions. Real opportunities for progress appear to exist in the present political context, but sustained support from the donor community must complement pressure from civil society for serious reforms. *The challenge facing donors is to craft interventions that encourage and support effective responses to these opportunities—in particular, interventions that encourage strategic partnerships between reform constituencies in civil society, government and among partisan political actors.*

Although there have been significant changes in the wake of the 2001 elections, it remains premature to predict the ultimate impact of these changes on democratic consolidation. Movement in the direction of structural and systemic reforms will be the ultimate test of the durability of change. Constitutional reform appears key to many observers, as does the reform of key pieces of subsidiary legislation. Of particular importance in this context are laws relating to media, decentralization, elections, and public order. Parliamentary reform will likely be key, as will the mounting of a serious anti-corruption reform strategy that transcends the prosecution of key members of the previous regime. Once the direction of structural and policy changes is clear, there are a myriad of areas in which assistance from USAID and other donors can assist in improving implementation capacity. For such interventions to have a meaningful impact however, serious steps must be taken to limit executive discretion and improve accountability. Positive rhetorical commitments to change have been followed to an extent by concrete actions, however there has as yet been no significant effort to undertake the serious institutional reforms that will be essential if systemic abuses of authority are to be prevented in future.

4.1.1 Public Debate and Civil Society Strengthening

Focused pressure to initiate structural reform, coupled with assistance in crafting and implementing reform measures is needed. Observers of the Zambian political scene appear virtually unanimous in asserting the importance of continued pressure for reform from civil society both to advance the reform agenda and to prevent backsliding. Civil society has matured and deepened during the past decade and, in the course of the Third Term Debate, demonstrated an impressive capacity for cooperative action. For civil society to be most effective, this momentum and focus must be maintained. The Oasis Forum has survived an apparent attempt to undermine its unity, and is currently in the process of defining a common strategy to guide further efforts to stimulate reform.

Pressure for a participatory process of constitutional reform will almost certainly be a principal focus of CSO advocacy in coming months, in parallel with the drive to reduce corruption. The fight against corruption appears likely to provide an essential focal point to maintain civil society momentum and energy in the near future, since it has more visceral appeal and is more readily conceptualized than “constitutional reform.” Opinion appears divided regarding the likelihood of presidential support for a fundamental reform of the constitution, but some constitutional change appears likely, and the initiation of a reform process will of necessity create opportunities for civil society engagement. *The challenge for those interested in reform will be to identify, bring together, and focus the energies of key reform constituencies in government, the political realm and civil society.* Serious attention should be devoted to ensuring that civil society is adequately prepared to take advantage of opportunities when they arise.

The Oasis Forum itself appears a worthy target of assistance, and within the context of Oasis, a number of individual CSOs stand out as potential partners and/or potential recipients of donor assistance, depending on the issue focus of reforms (i.e., anti-corruption, electoral reform etc.) at a given point in time. Given the management intensity of managing assistance to a potentially wide range of CSO partners, it would appear logical to continue to provide such assistance under an umbrella project, as is presently the case. CSO support should be broadened however, to allow for the possibility of providing capacity building assistance

targeted to key skill sets. In particular, the development of policy and budget analysis skills would better enable CSOs to engage effectively with government reform constituencies. Also critical to the fostering of cooperative relationships between reform constituencies in civil society, government, and the partisan political sphere is the development of a detailed understanding of the policy and legislative process among erstwhile CSO reformers.

Zambian political parties remain weak and poorly defined, but their development over the medium term is essential to the consolidation of electoral democracy. A recent NDI analysis concluded that Zambian parties “are characterized by dominant personalities, poorly articulated agendas, centralized decision-making procedures, lack of clear channels of responsibility and communication, few opportunities for advancement within the party and little outreach to the public (particularly women and minority groups).” (NDI 3/2002) The assessment team does not believe an attempt to work directly with political parties would produce significant results under the present condition, however a corollary of this CSO-focused, demand-side approach might be to address party strengthening via a “parties in parliament” approach, focusing on facilitating the formation of issue-based/focused party coalitions, within the context of assistance to parliament. Donor assistance in the area of party finance is likely to be counter-productive in the absence of significant prior party consolidation.

4.1.2 Civil Society – Public Sector Linkages

Strong emphasis should be placed on the development or strengthening of mechanisms that link civil society organizations to the policy process, probably around specific reform agendas. Demand-driven reform efforts appear likely to succeed more easily where key government stakeholders can be involved or brought along with the identification of needs, the articulation of problems and the identification of solutions. To the extent that these tasks can be addressed in a broadly participatory manner, an added benefit may be to break down bureaucratic cultures rooted in traditions of “government by command,” as well as unnecessarily confrontational postures on the part of CSOs.

In order to increase the efficacy of CSO interaction with government institutions, programming should be extended to include support for CSO capacity strengthening in key areas including analytic & policy research capacity, and understanding of the policy and legislative processes. In parallel, donors should support the establishment of neutral venues or fora where sustained interaction between CSO and selected government institutions on key policy issues can take place. The goal would be to create a habit of constructive interchange by actors from both spheres who are committed to reform.

Many observers suggest that the opportunity now exists to work with selected government institutions, and to support forming effective linkages between these structures and CSOs advocating for policy reform. A point of entry for promoting such linkages is provided by the *National Capacity Building Programme for Good Governance* that states that the government, “acknowledges the merits of increased civil society participation in the political life of the nation as it improves their capacity to express their opinion, formally and informally, and to fairly press their demands publicly within the framework of the rule of law. This underpins and recognizes the credibility and legitimacy of the Government.”

Opportunities to work with Parliament to advance both parliamentary reform and policy reforms on key governance issues have been created by the shift from the single-party-dominant system which prevailed during the decade of the 1990s, to the multiparty, and opposition-led Parliament that emerged from the 2001 tripartite elections. *Parliament is a natural place to focus attention if the overall intent of programming is to focus increased attention on developing the supply side response to more effective citizen advocacy.* We would not recommend that USAID work unilaterally with parliament, but encourage the development of existing multi-donor approaches. Efforts in the near term should continue to be focused on the internal institutional reform of parliament—including a realignment of the authorities now vested in the Speaker—and on broadening channels for public access to the legislative process.

The possibility for productive interaction between civil society organizations and government is also enhanced by a growing recognition on all sides that government reformers and civil society actors may have convergent interests. Successful civil society-government collaboration on ADR legislation and on-going work on media law reform are indications of what is possible. The fact that media law reform is proceeding via the introduction of “private members’ bills” (i.e., legislation initiated by members of parliament) also suggests that the National Assembly is becoming more vibrant. This is positive and should be encouraged, both through work with the Assembly and by encouraging further initiatives of this sort on the part of civil society organizations.

It may also be possible to selectively engage with other government agencies involved in key areas of institutional reform (e.g., Anti-Corruption Commission, Director of Public Prosecutions, or the Governance Unit of the Ministry of Legal Affairs). The fact that the Minister of Legal Affairs is both ultimately responsible for the direction of the MLA Governance Unit and chairman of the Parliamentary Reform Committee, and has expressed a commitment to advancing constitutional reform suggests that the MLA may also serve as a useful point of access for dialogue on reforms.

While constitutional reform may be essential, more focused initiatives to increase government transparency, protect media freedom, reform Parliament and the electoral process, and promote decentralization may provide opportunities to introduce meaningful checks on executive authority and improve the effectiveness of governance, and may serve to build confidence on both sides.

4.1.3 Anti-Corruption

If resources were available for the Mission to consider the development of an additional field of activity, a concerted effort in the domain of anti-corruption should be seriously considered. As an essential first step in developing such an effort, a detailed anti-corruption assessment should be conducted, focusing on both supply and demand sides of the equation.

Systematic anti-corruption efforts are critical in a number of regards, not least because a failure to address root causes will leave Zambia vulnerable to a recurrence of the systematic looting of public resources that characterized both previous presidential regimes. Issues of corruption will likely be among the most critical factors stimulating sustained citizen pressure for reform. The success of anti-corruption efforts appears to depend to an extent on continued pressure from civil society, the sequencing of efforts, and the development of credibility as reforms gain momentum. Credibility in turn appears to depend both on demonstrating success in prosecuting key individuals from the previous regime and, at the same time, on demonstrating that anti-corruption initiatives are both impartially applied and not merely instrumentally useful in eliminating political opponents. An incremental approach to policy design and institutional capacity building in key areas such as audit capacity, information management, regulatory reform, and a raft of transparency-related initiatives will be needed over the longer term. Whether USAID should become involved in this arena will likely be dictated by availability of resources. We would encourage the adoption of a demand-side approach to this arena, at least until serious commitment to reform has been demonstrated.

In addition to the Oasis Forum, which is likely to remain the most coherent unified voice for reform on corruption issues, several Anti-Corruption CSOs, including TI/Zambia (TIZ), the Integrity Foundation (IF), and the National Movement Against Corruption (NAMAC) have emerged, and to some extent have developed cooperative working relationships with the ACC. This interaction should be encouraged.

4.1.4 Crosscutting Themes

The mission is encouraged to explore the possibility of drawing on such lessons as may emerge in the context of other sectoral and crosscutting programs. D/G principles, for example citizen involvement in decision-making, are largely issue neutral and, as such can be directed at effecting desired policy changes in any sector. If a mechanism can be established to promote/nurture cooperative discussions between government and civil society actors on political reform issues, it can easily be adapted to address a variety of pressing cross-cutting issues, including the Governance-HIV/AIDS nexus, gender, and linkages between ADR and economic growth.

As Joel Barkan and others have noted, Zambia's developmental challenges—both economic and political—are exacerbated by the profound impact of the HIV/AIDS pandemic on already scarce human resources. "AIDS exacerbates poverty in at least three ways. First, the disease is robbing the public and private sector of skilled personnel, a fact that both limits economic growth and the ability of the public service to deliver social services to the poor. Second, AIDS is increasing the number of people who live in poverty. In addition to those who are sick and who cannot work, 11 percent of Zambia's children are AIDS orphans, a figure that is expected to rise to 14 percent by 2005. Third, AIDS diverts resources from programs that are directly addressed to poverty alleviation such as education and health services...AIDS is a governance issue as much as it is a health issue..."³⁸

Although practical advice on how to operationalize DG-HIV/AIDS linkages is beyond the scope of the present assessment, a useful approach to thinking through DG-HIV/AIDS linkages has recently been developed by PACT, in conjunction with several other partner organizations, and USAID.³⁹

4.2 Choosing Among Options

4.2.1 Criteria and Thresholds

The present assessment suggests that USAID/Zambia's emphasis on "demand-side" efforts to support democratic consolidation remains highly relevant. Such support should continue, though assistance could be productively broadened beyond the present focus on promoting public debate to include targeted CSO capacity building activities. *At the same time, this approach should be complemented by a progressive engagement with key public sector institutions as commitment to meaningful structural reform is demonstrated.*

Because overall government commitment to reform remains uncertain (or uneven), it may be useful to adopt a phased and selective approach to engagement with government entities, while actively maintaining and broadening programs designed to support "demand-driven" reform through work with Zambian civil society organizations. *It is always possible to identify reformers in host-country governments, but uncritical engagement can send counter-productive signals to government as a whole, undercutting pressure for systemic change.*

Levels of assistance and the choice of public-sector partners should be keyed to progress on the implementation of systemic and structural reforms. Assuming the availability of resources, the level of engagement with key government institutions would increase progressively over time as reform targets are met. A schematic overview of notional targets and areas of assistance is outlined below in Table 4.1.

³⁸ Joel Barkan, September 2000. p.6.

³⁹ "Applying Democracy & Governance Approaches to HIV/AIDS Work," PACT-AIDS Corps-USAID, 2002.

Table 4.1. Phased and Conditional Program Options, 2003-2008 Strategic Cycle (indicative)

	Movement toward systemic/structural reform		
	Low (year 1-2)	Medium (years 1-3)	High (years 3-5)
Observational Benchmarks	<p>Characterized by (e.g.): Corruption prosecutions (focusing on political opponents) but little effort to implement structural changes to limit opportunities/increase transparency; Rhetorical commitments to reform but limited action; Constitutional reform stalls, or remains preserve of administrative fiat; little public involvement in process.</p>	<p>Characterized by (e.g.): Constitutional reform process involving public participation both in drafting and adoption, leading to significant redistribution of powers between branches of government; Formal adoption of government policy on decentralization containing significant devolution of authority, resources and budgetary control to locally elected councils; Corruption prosecutions coupled with reforms to increase capacity, autonomy and resources of key regulatory institutions (ECZ, ACC, DPP, HRC, etc.); Progressive implementation of parliamentary reform recommendations —e.g., establishment of multi-partisan parliamentary control committee. Adoption of liberalizing media law, and freedom of information act.</p>	<p>Characterized by (e.g.): Implementation of policies to meaningfully institutionalize separation of party and state resources; Implementation of reform measures to increase accountability and transparency of governmental institutions and processes; Progressive implementation of local government reforms and institutional strengthening at local level.</p>
Funding Scenarios	Programmatic Focus: (additive, left to right, if resources available)		
Minimal/Declining Mission DG Resources	<p>Emphasize demand-driven change; provide resources and technical assistance as needed to support development of vibrant civil society and independent media; promote public debate. To maximum extent possible, attempt to leverage other donor resources through co-operative CSO support ventures.</p>	<p>Emphasize demand-driven change; provide resources and technical assistance as needed to support development of vibrant civil society and independent media; promote public debate. Provide encouragement but no direct support to key government agencies (ECZ, ACC, DPP, etc.), other than perhaps selectively funding participation in for a intended to encourage communication between CSOs and GOZ reformers. Available resources to be divided between these two areas.</p>	<p>Given diminishing resources, no further expansion of program activities would likely be possible;</p>

	Movement toward systemic/structural reform		
	Low (year 1-2)	Medium (years 1-3)	High (years 3-5)
Current Levels/Stable Mission DG Resources	<p>Emphasize demand-driven change; provide resources and technical assistance as needed to support development of vibrant civil society and independent media; promote public debate.</p> <p>In absence of broad constitutional reform, support CSO-led efforts to press for reform on subsidiary issues, both to resolve key legal & institutional constraints, and as a means to build pressure for more far-reaching reform over the medium term (wedge strategy);</p> <p>Provide encouragement but no direct support to key government reform constituencies (e.g., ECZ, ACC, DPP, etc.), other than perhaps selectively funding participation in for a intended to encourage communication between CSOs and GOZ reformers.</p> <p>Participate in donor coordination for a designed to promote common agenda in policy dialogue; increase pressure for meaningful reform;</p>	<p>Emphasize demand-driven change; provide resources and technical assistance as needed to support development of vibrant civil society and independent media; promote public debate.</p> <p>Emphasize formation of alliances between CSO and governmental reform constituencies; expansion of dialogue;</p> <p>Provide encouragement, and selective technical assistance, but no direct support to key government agencies (ECZ, ACC, DPP, etc.); such an approach would be productively focused within context of an anti-corruption program comprising both civil society and supply-side elements.</p> <p>Contribute to parliamentary development program emphasizing executive oversight and budgetary analysis/control functions in context of multi-donor assistance program;</p>	<p>As left, with greater degree of assistance to key public sector counterpart agencies.</p>
Expanding Mission DG Resources	<p>(unlikely)</p> <p>Expanded CSO-based corruption awareness and pro-transparency efforts, with outreach via independent media.</p>	<p>If implementation of planned GOZ decentralization policies begins, contribute to coordinated multi-donor program aimed at <u>Phase One</u> recommendations outlined by Crook & Manor report: dialogue with GOZ, development of implementation plan, training, etc.</p> <p>Explore possibility of supporting consolidation of political parties in context of parliamentary development (e.g., parties in parliament) program;</p>	<p>Explore initiation of pilot decentralization support activity (e.g., capacity development and participatory community planning at local council level in 4-5 geographically distributed municipalities—perhaps Southern, Western, Copper-belt, Northern);</p>
Opportunistic targets (e.g., ESF windfalls):	<p>As above.</p>		
Cross-sectoral initiatives (funded w/ non-DG resources):	<p>ADR Assistance phasing out over two-year period as association develops as market driven entity.</p> <p>Encourage expanded use of ADR in appropriate cases as alternative to formal legal system;</p>	<p>Encourage creation of linkages between HIV/AIDS-focused CSOs, health professionals and appropriate parliamentary committees;</p> <p>Explore need for legal and regulatory reform in areas related to economic diversification, sustainable tourism, entrepreneurship, etc.; promote linkages between relevant NGOs/professional associations and appropriate parliamentary committees.</p>	

This table is intended to suggest an approach, and indicate the type of targets we feel are appropriate, but should not be taken as a precise guide to program design. The mission is encouraged to adopt the general approach suggested, but to refine targets and program options based on a more detailed analysis of opportunities and constraints than is possible in the present context.

4.2.2 Donor Coordination

In each of the areas outlined above, sustained donor coordination is essential, both at the working level and in the area of high-level policy dialogue with government. At a minimum, the adoption of common (or at least consistent) donor positions on critical reform issues (e.g., constitutional, electoral, legislative and media reform) can help to maintain government commitment and momentum, and may provide useful leverage to reformers within government. An absence of coordination, or in the worst case, donor competition—in particular sectors, regions or for strategic partners—can add to already heavy management burdens faced by government and NGO counterpart organizations.

Cooperative working relationships among donors working on DG issues were developed in the course of the 1996 and 2001 elections, and facilitate both information sharing and the development of common approaches to specific institutions (e.g., parliamentary support). USAID/Zambia has played a leadership role in promoting donor coordination and can continue to do so even if its program resources remain modest. Relatively small investments in analytic and design activities are often useful as a basis for leveraging other donor-community resources. Under conditions of declining budgets this may be a better strategy than to progressively narrow the program focus.

Annexes

Annex 1: Persons Consulted

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Annex 3: Draft Democracy and Governance Concept Paper (27 June 2002)

Concept Paper Outline: Democracy and Governance Strategic Objective

Draft submitted to USAID/Zambia: 27 June 2002

Stevens Tucker

Background

In the wake of problematic elections in 1996 and following the recommendations of the 1997 democracy and governance assessment⁴⁰, USAID/Zambia adopted a “demand-side” strategic approach to the DG sector, focusing on developing the capacity of civil society to press for reform, and increasing opportunities for citizen participation in governance. The 1997 assessment forcefully argued that the political sphere lacked consensus, competition, and inclusion, and that political will for progress was largely absent and that, hence, Zambia’s was an ambiguous, stalled transition. The report cautioned that until there was evidence of government commitment to reform and real multiparty competition, investments in public institutions would be ill advised, and unlikely to produce meaningful results.

The DG Strategic Objective was re-crafted for the 1998-2003 CSP to focus on “Expanded Opportunity for Effective Participation in Democratic Governance,” and Intermediate Results were defined around *Increased Efficiency in the Administration of Justice; Increased Public Debate; and More Effective and Inclusive Local Government Institutions*. At the same time, overall funding for the DG strategic objective was scaled back, reflecting declining availability of DG funding overall, and implementation constraints that resulted in a large pipeline of unexpended funds. A subsequent realignment of the Action Plan in late 2000, resulted in a shift away from CSO capacity building and advocacy in favor of efforts to promote increased public debate, continued emphasis on the development of alternative dispute resolution (ADR) to promote the settlement of commercial disputes and to relieve pressure on the court system, and continued low-level support for municipal planning in Livingstone. In keeping with the demand-side strategy, USAID developed partnerships with a range of Zambian civic and professional associations, but dealt only indirectly with state institutions (e.g., development of web site for Cabinet Office). This approach made sense in the absence of either serious government commitment to reform or meaningful opposition representation in parliament. Both of these conditions now warrant a second look.

Rationale for Revised Strategy

The stalling of political liberalization after the 1991 transition resulted in large part from the failure to alter institutional arrangements designed to entrench executive dominance of both state and ruling party structures during the period of one-party rule. *The dilemma of Zambian politics is how to break the Gordian knot that confronts efforts to reduce and redistribute the power of the executive, since such efforts are ultimately subject to executive approval*. This question is closely related to what is perhaps the second most pressing issue for the Zambian polity—reducing the prevalence of official corruption, which drains scarce developmental resources and seriously undercuts state legitimacy.

Zambia is presently at a crossroads. The problems it faces in resuming and consolidating the transition to multiparty democracy begun in 1991 are significant, and will require both sustained commitment on the part of government and sustained pressure on the part of civil society, working in conjunction with representative institutions. Sustained support will also be required, but real opportunities for progress

⁴⁰ “The Transition to Democracy in Zambia: a Democracy and Governance Strategy” (MSI, August 5, 1997).

appear to exist. The challenge facing donors is to craft interventions that encourage and support effective responses to these opportunities; that encourage strategic partnerships for reform.

There have been significant political developments in the wake of the 2001 tripartite elections. Although the electoral process was deeply flawed, the political landscape (perhaps ironically) provides opportunities to move forward on a number of governance issues. Civil society is increasingly confident and capable of articulating a common vision of a reform process. In successfully opposing former President Chiluba's bid to extend his regime by amending the Constitution to permit a third term, it has proven its capacity to act collectively, and to galvanize public support to uphold the rule of law. In the process, public commitment to constitutional democracy has been amply demonstrated. Where political discourse in 1991 was largely limited to demands for multiparty competition, by 2002 civil society expectations have broadened to encompass the exercise of a wide range of fundamental rights. Political representation in Parliament is for the first time in Zambian history almost evenly balanced, with the opposition holding a majority of the 158 seats, if by a slim margin. This development offers the possibility that Parliament can be strengthened to serve as a meaningful institutional check on executive authority, and as a point-of-entry for citizen participation in the policy making process. There have also been significant changes in the executive branch, with the election of a president who comes from outside the entrenched MMD mainstream, and who has forcefully articulated a desire to address corruption and provide a "new deal" for Zambians. Taken together, these developments signal a significant departure from the political stasis of MMD rule under Chiluba.

Opportunities and Constraints

It is premature to predict the ultimate impact of these changes on democratic consolidation. Positive rhetorical commitments to reform have been followed to a certain extent by concrete action, yet the pattern remains far from uniform. The president has dismissed or demoted a number of senior government officials associated with corruption (or the failure to deal with it) under the previous government, including the Attorney General, Minister of Information, and the Permanent Secretary of the Cabinet Office. The budget of the Anti-Corruption Commission (ACC) has been increased and its facilities upgraded. In a country where subtle signals generally guide political and administrative behavior, the president has been uncharacteristically blunt in stating a policy of "zero-tolerance" for corruption. This appears to have been interpreted thus far by the Director of Public Prosecution (DPP) and the judiciary as a signal to move aggressively on corruption cases. At the same time, however, there has been as yet no movement to undertake the serious institutional reforms that will be essential if systemic abuses of authority are to be prevented in future. Focused pressure to initiate such reform, coupled with assistance in crafting and implementing reform measures is needed.

Observers of the Zambian political scene appear virtually unanimous in asserting the importance of continued pressure for reform from civil society both to advance the reform agenda and to prevent backsliding. Civil society has matured and deepened during the past decade and, in the course of the Third Term Debate, demonstrated an impressive capacity for cooperative action. For civil society to be most effective, this momentum and focus must be maintained. The Oasis Forum has survived an apparent attempt to undermine its unity, and is currently in the process of defining a common strategy to guide further efforts to stimulate reform. The fight against corruption appears likely to provide the "Zeitgeist" to maintain civil society momentum in the near future, since it has more visceral appeal and is more readily conceptualized than "constitutional reform."

A number of observers suggest that the opportunity now exists to work with selected government institutions, and to support the formation of effective linkages between these structures and civil society organizations advocating for policy reform. Opportunities to work with Parliament to advance both parliamentary reform and policy reforms on key governance issues have been created by the shift from

the single-party-dominant system which prevailed during the decade of the 1990s, to the multiparty, and opposition-led Parliament that emerged from the 2001 tripartite elections. It may also be possible to selectively engage with other government agencies involved in key areas of institutional reform (e.g., Anti-Corruption Commission, Director of Public Prosecutions, or the Governance Unit of the Ministry of Legal Affairs). The possibility for productive interaction between civil society organizations and government is also enhanced by a growing recognition on all sides that government reformers and civil society actors may have convergent interests. Successful civil society-government collaboration on ADR legislation and on-going work on media law reform are indications of what is possible.

Pressure for a participatory process of constitutional reform will almost certainly be a principal focus of CSO advocacy in coming months, in parallel with the drive to reduce corruption. The Mwanawasa administration has made several pronouncements acknowledging the need for constitutional reform, but as yet no steps have been taken to define the scope of reform efforts, the manner in which the process is to be undertaken, or the manner in which constitutional changes would be adopted. Opinion appears divided regarding the likelihood of presidential support for a fundamental reform of the constitution, but some constitutional change appears likely, and the initiation of a reform process will of necessity create opportunities for civil society engagement. Serious attention should be devoted to ensuring that civil society is adequately prepared to take advantage of opportunities when they arise.

High level commitment to improved governance and economic performance is both stimulated and threatened by the existence of serious divisions within the MMD which have the potential of blocking forward movement. Progress on reducing presidential powers may be limited in part by desire of executive to retain powers (“a good president needs discretion”) while he faces serious challenges from within his own party, and by the ambitions of key opposition political leaders to assume the presidency if he falls. The very real risk that the MMD will engineer a renewed parliamentary majority, as opposition MPs defect in the face of inducements and constraints, further complicates matters.

At the same time however, because the president is unable to rely fully on the MMD hierarchy for support, he has added incentive to build strategic alliances with elements of the opposition and with civil society on key reform issues. A strong opposition presence in Parliament is irreversible in the short term. This, together with heightened civil society advocacy for reforms will make it difficult for government to reverse its direction without significant cost. The challenge for those interested in reform will be to identify, bring together, and focus the energies of key reform constituencies in government, the political realm and civil society.

Strategic Direction

A recently completed DG Assessment suggests that USAID/Zambia’s emphasis on “demand-side” efforts to support democratic consolidation remains highly relevant. Such support should be continued, broadened beyond the present focus on promoting public debate to include targeted CSO capacity building activities. At the same time, as noted above, opportunities presently exist that did not in 1997: civil society is engaged and increasingly assertive in pressing for political reform and renewed anti-corruption efforts; the executive has both substantive and tactical incentives for pursuing a reform agenda; and a significant (if not entirely stable) opposition majority in Parliament offers civil society an unprecedented point-of-entry to the policy process.

Because the depth of government commitment to serious structural reform remains uncertain, it appears useful to adopt a phased and selective approach to engagement with government entities, while actively maintaining and broadening programs designed to support “demand-driven” reform through work with Zambian civil society organizations. CSO support should remain the primary vehicle, but with added emphasis on the development or strengthening of mechanisms that link civil society organizations to the

policy process, probably around specific reform agendas. Demand-driven reform efforts appear likely to succeed more easily where key government stakeholders can be involved or brought along with the identification of needs, the articulation of problems and the identification of solutions. To the extent that these tasks can be addressed in a broadly participatory manner, an added benefit may be to break down bureaucratic cultures rooted in traditions of “government by command,” as well as unnecessarily confrontational postures on the part of CSOs.

In order to increase the efficacy of CSO interaction with government institutions, programming should be extended to include support for CSO capacity strengthening in key areas including analytic & policy research capacity, and understanding of the policy and legislative processes. In parallel, donors should support the establishment of neutral venues or fora where sustained interaction between CSO and selected government institutions on key policy issues can take place. The goal would be to create a habit of constructive interchange by actors from both spheres who are committed to reform. While constitutional reform may be essential, more focused initiatives to increase government transparency, protect media freedom, reform Parliament and the electoral process, and promote decentralization may provide opportunities to introduce meaningful checks on executive authority and improve the effectiveness of governance, and may serve to build confidence on both sides. If a mechanism can be established to promote/nurture cooperative discussions of political reform issues, it can easily be adapted to address a variety of pressing cross-cutting issues, including the Governance-HIV/AIDs nexus, gender, and linkages between ADR and economic growth.

Zambian political parties remain weak and poorly defined, but their development over the medium term is essential the consolidation of electoral democracy. A recent NDI analysis concluded that Zambian parties “are characterized by dominant personalities, poorly articulated agendas, centralized decision-making procedures, lack of clear channels of responsibility and communication, few opportunities for advancement within the party and little outreach to the public (particularly women and minority groups).”(NDI 3/2002) The assessment team does not believe an attempt to work directly with political parties would produce significant results under the present condition, however a corollary of this CSO-focused, demand-side approach might be to address party strengthening via a “parties in parliament” approach, focusing on facilitating the formation of issue-based/focused party coalitions, within the context of assistance to parliament.

Proposed Results Packages

- Promotion of Public Debate & Civil Society Strengthening
- Promotion of fora for civil society-government collaboration (including National Assembly)
- Anti-Corruption
- Cross-Cutting Themes: ADR-Economic Growth; HIV/AIDS-Participatory governance

Critical Assumptions

- “New deal leadership” will continue, and will be able to marshal the political support to actively pursue a reform agenda; in-fighting within the MMD will not derail reform efforts;
- Opportunities for active engagement between civil society and government on reform issues will continue to evolve;
- Past experience with political manipulation under the Chiluba regime will reinforce public scrutiny of government actions and sustain pressure for accountable governance;

Donor Coordination

In each of the areas outlined above, sustained donor coordination is essential, both at the working level and in the area of high-level policy dialogue with government. At a minimum, the adoption of common (or at least consistent) donor positions on critical reform issues (e.g., constitutional, electoral, legislative and media reform) can help to maintain government commitment and momentum, and may provide useful leverage to reformers within government.

Cooperative working relationships among donors working on DG issues were developed in the course of the 1996 and 2001 elections, and facilitate both information sharing and the development of common approaches to specific institutions (e.g., parliamentary support). USAID/Zambia has played a leadership role in promoting donor coordination and can continue to do so even if its program resources remain modest.

Annex 4: Scope of Work—D/G Strategic Assessment for Zambia

1. Purpose

The assessment will 1) briefly review USAID/Zambia’s experience for lessons to consider in a new SO; 2) define the D/G challenges and problems in Zambia; 3) analyze the constraints and causes of the D/G problems; 4) recommend D/G activities in the context of other donors activities; and 5) recommend future strategic options and results framework for D/G Zambia in the context of resource constraints.

2. Background

2.1 The Zambian DG Context:

Of great significance to Zambia and possibly to the sub-region was the “Oasis” debate on a third term for President Chiluba, who was trying to run again in 2001 as were others in Southern Africa whose terms had expired. The third term would have demanded constitutional change for political end. Within a few weeks, the issue skyrocketed into “Oasis” named after the venue of the first public meeting in which the organizers, a group combining both Catholic and Protestant churches, the Law Association and a women’s NGO coordinating group peacefully led a broad-based fight against the proposed amendment to the Zambian Constitution. “Oasis” became a series of seminars and public gatherings throughout the country, with the ‘green ribbon’ and car honking campaigns, street protests and debate within the political opposition about coalitions. In May 2001, President Chiluba declared he would not run again.

The hotly contested and controversial December 2001 Presidential, Parliamentary and local government elections resulted in a new political configuration in Parliament, with combined opposition holding three more seats than the MMD (party in power since 1991), and the MMD President having won by only 2% over his nearest rival. The elections were poorly administered by the Electoral Commission, leading to delays and extensions in voting and other administrative inadequacies that raised serious concerns among independent election observers. However, by April 2002, the allegations of vote rigging and dissatisfaction with the results had died down as the new President showed signs of much greater cooperation with the opposition and civil society than had his predecessor. The President also declared that fighting corruption and the rule of law were among his priorities.

An Overview of the DG Strategic Objective (SO4) and program:

Strategic Objective: **Expanded Opportunity for Effective Participation in Democratic Governance**

Intermediate Results: IR1 Increased Efficiency in the Administration of Justice and IR2 Increased Public Debate

The current USAID program in democracy and governance is funded using Development Assistance Funds (DA) and Economic Support Funds (ESF). Components funded with DA resources include:

- technical assistance and training to facilitate more efficient and faster resolution of court cases through mediation and for development of arbitration and an Alternative Dispute Resolution Center (ADR) as an option in addition to commercial and civil court systems; and
- grants to local church-based groups, professional associations, labor unions, and media organizations to promote public debate on development and political issues.

Program components funded with ESF resources include:

- training to local non-governmental organizations and journalists on election monitoring, codes of conduct, and media reporting; and

- technical assistance for international election observation and post-election conflict resolution, and strengthening the legislative branch.

Achievements of the SO

- LAZ with USAID/Zambia support became the first civil society group to lead a policy reform exercise, from legislative drafting to approval by Parliament in a record 14 months. In December 2000, the Arbitration Act was passed, replacing a law from the 1930s and bringing Zambia in line with international standards for commercial dispute resolution through arbitration, all essential for attracting foreign investors needed to create jobs and build the economy.
- “Oasis” is confirmed as a successful example of civil society influencing the political arena. Zambia achieved non-violent hand over of power twice in a decade; although the new President is from the same ruling party, political configurations have changed. USAID was one of 10 donors to “Oasis,” contributing about 20%; donors had chosen to share the costs as a group to reduce the risk of being seen funding a partisan political issue. “Oasis” as the test model demonstrated the influence that civil society can carry in the political-democratic arena and gives confidence that public debate will achieve results for SO4 Zambia.
- The Arbitration Association was legally formed as the associational and regulatory base for newly trained arbitrators, and 150 trained arbitrators and mediators began resolving cases expeditiously on a basis of client-contracted services.

3. Scope of Work

Within the context of U.S. National Interest, the USAID Democracy Pillar and USAID’s comparative advantage, the assessment will review and include discussions on findings as detailed in Section 4.

The team will draw on a prior literature review that will have listed and prepared abstracts for selected key documents covering Zambia’s democracy studies but will be free to review additional literature as provided in Appendix A. The team will consult with key GRZ, NGOs, independent Zambian professionals, Embassy, USAID and other donor stakeholders. The consultations will include a series of meetings and feedback briefings as appropriate to gather information from stakeholders on their prior analyses of the context and problems, strategies, activities targeted and resources, partners, and their concerns and perspectives on opportunities. The team will make a presentation of findings and a draft report for USAID/Zambia’s consideration. Upon USAID/Zambia’s feedback, the contractors will prepare a final report acceptable to USAID/Zambia.

4. Detailed D/G Assessment and Analysis

The D/G Assessment will include the following elements:

4.1 Briefly review USAID/Zambia’s experience in terms of lessons learned

What strategies and approaches have worked well and which ones have not and why?
What is the nature of the development partnership?

4.2 Define the Political/Development Challenge and Problems in Zambia

- What are the key development problems and challenges in Zambia?
- How has the context changed since 1997 when a prior assessment was conducted (MSI report). Where possible, a similar structure should be followed so as to have comparability of analysis.
- What are the lessons of election results – 1991, 1996, 2001? Are there signs of progress on the continuum of democratic evolution?
- Generally, to carry out a situation analysis of the Zambian D/G context.

4.3 Diagnosis and Analysis of Key Constraints and Causes of the D/G Problems

- To what extent are there now political consensus, multi-party competition, and inclusion? Is there evidence of political will for governance reforms? Is there evidence of government commitment to reforms such as decentralization, legislature reform and implementation of the PRSP? Is the electoral process considered ‘free and fair’, is the electoral context appropriate (legal framework, legal enforcement, playing field level, election administration effective, etc.), as judged by all parties or by experienced international observers and consultants?
- Rule of Law? Is there evidence that the rule of law is increasingly respected and disputes are resolved without violence? Are gender-inequitable laws being changed so women share the same rights under the law as men?
- Do institutions and processes exist to provide sufficient democratic education?
- How best could USAID address the following D/G themes, which have been identified as areas of concern to citizen groups in D/G? a) constitution (with electoral reform); b) corruption; c) HIV/AIDS; d) gender; e) rule of law: and parliamentary reform.
- Do the institutions of a civic society take an increasingly active role in policy making? Do they measurably influence policy outcomes? Do they involve broad sectors of society, including vulnerable groups such as women and different tribes? Are communities being empowered to engage in a participatory democracy?
- What are the perceived political, civil-military, regional conflict or social concerns that could lead to violent conflict in Zambia? What are the related impacts of poverty, jobs, agricultural or economic development, HIV/AIDS, refugees, minorities, child’s rights and conflict resolution?

4.4 Recommend D/G Activities: Options for Donors

- Identify opportunities for donor activities
- Prepare summary of interventions which are being addressed by other donors
- Where might greatest impact be achieved with limited resources?
- Where is cooperation with other donors likely to be most productive?

4.5 Options for a New D/G Strategy and Results Framework

- Prioritize a list of niche options for a D/G program in Zambia
- Develop three scenarios with associated key assumptions and program resources (increased level, current level and a decreased level). Each option should include: A DG results framework, with SO and IRs and indicators of progress; proposed activities/approaches, partners and possible development partnership alliances; development hypothesis and critical assumptions; and key constraints
- Identify stand-alone activities to be funded by ESF

5. Team Composition and Level of Effort

The assessment team will consist of a Team Leader, a Senior Consultant (who is the D/G Advisor) and a local consultant all of whom will work about 20 days each. The team will commence the assessment on June 3, 2002 and the final report will be due from the consultants, on June 25, 2002. The D/G Advisor will be both a member of the team and the prime client. The D/G Specialist will also be closely consulted.

6. Work and Reporting Schedule

Commencement of D/G Assessment

06/03/02

Orientation meeting for Consultants with Strategy Planning Team	06/04/02
Submit a work plan with activities, research questions and roles	06/05/02
Submit Table of Contents to D/G Advisor for clearance	06/05/02
Make presentation to USAID/Zambia, for feedback	06/14/02
Hold meetings with stakeholders to vet findings	06/18/02
Submit draft report presenting the analysis, findings and conclusions	06/24/02
USAID/Zambia provides feedback on draft report	07/05/02
Submit final report to USAID/Zambia	08/05/02

7. Deliverables

- A work plan with activities, research questions and roles by
- Table of Contents to D/G Advisor for clearance
- Presentation of the assessment, analysis, findings and conclusions
- Five hard copies of the draft report
- Twelve hard copies and an electronic copy on diskette of the final report which will include but not limited to an Executive Summary, three Strategic Options Results Frameworks; List of Interviewees; and a Summary of Other Donor DG Activities
- Submit copy of final report direct to CDIE