TRANSPARENCY INTERNATIONAL ZAMBIA

ANALYSIS OF THE UNITED PARTY FOR NATIONAL DEVELOPMENT (UPND) ADMINISTRATION'S TWO YEARS PERFORMANCE ON ANTI-CORRUPTION AND GOOD GOVERNANCE

1. INTRODUCTION

The United Party for National Development (UPND) was elected on a promise of change following a period of sustained economic and good governance decline under the Patriotic Front (PF) administration, during which corruption became entrenched and institutionalized, thereby eroding public trust in governance institutions[1], among other effects. As part of their 2021-2026 Manifesto[2], the UPND promised to address the obtaining ills through restoring law and order, macroeconomic stability and enhancing the fight against corruption.

This analysis seeks to evaluate the UPND's performance and progress during the first 2 years of office, following the August 2021 elections. The analysis focuses on governance and anti-corruption commitments as outlined in the UPND manifesto. Under section 1, sub section 1.1 presents the objectives of the analysis while sub section 1.2 presents the methodology. We present the main analysis on Anti-corruption performance in section 2, the General governance performance in section 3, before concluding with some key recommendations in section 4.

1.1. Objectives

The objectives of this analysis are:

I. To provide an assessment of the UPND administration's progress in the anti-corruption fight and promulgation of good governance.
II. To provide practical recommendations on strengthening the anti-corruption agenda and overall governance in Zambia during the remaining three years of the UPND mandate.

[1] https://www.imf.org/-/media/Files/Publications/CR/2023/English/1ZMBEA2023001.ashx
[2] https://static1.squarespace.com/static/607ecab103ab20228defa27d/t/6093f07e5281d054decacc79/1620308100501/UPND+MANIFESTO.pdf

1.2. Methodology

In analyzing the UPND administration's progress and performance, TI-Z utilized the ruling party's manifesto 2021 – 2026[2]; specifically, the objectives on corruption, rule of law and economic management. These provided the basis for a qualitative assessment of the progress of the administration across seven (7) anti-corruption thematic areas and three (3) sub-themes on the general governance environment. We utilized a three-point scale from low to high, with low meaning poor performance, moderate meaning fair performance and high meaning good performance. The analysis was also informed by government documents including the Eighth National Development Plan (8NDP) 2022 – 2026, the 2022 Annual Progress report on the implementation of the 8NDP, and National Budgets 2021 - 2023. We also made use of creditable media reports and articles were to corroborate our observations from desk review.

2. ANALYSIS OF ANTI CORRUPTION OBJECTIVES IN UPND'S MANIFESTO

2.1. Strengthening the Anti-Corruption Commission

Manifesto Promise: *"The UPND is fully committed to fighting this scourge, based on a strong principle of zero tolerance to corruption in all its forms. In addition to strengthening the Anti-Corruption Commission, the UPND will increase the benefits of being honest and the costs of being corrupt."*

Table 1: Assessment of efforts taken to strengthen the Anti-Corruption Commission

Positives	Negatives
• **Political Will:** The President has continued to set a positive policy direction through periodic pronouncement and statements.[3] This is critical as it sends a positive message to Law Enforcement Agencies about government support in fighting corruption. The UN Resident Coordinator commended the government for "boldly	• **Delayed Anti-Corruption Policy:** Government is yet to finalize the Anti-Corruption Policy, although the policy is at an advanced stage.[4] • **Unfavorable Legal Framework**: The Anti-Corruption Act No. 3 of 2012 is at odds with the Constitution (Amendment) No. 2 of 2016 with regards the definition of a public officer. This means that the ACC cannot charge constitutional office holders and state officers for the offence of abuse of authority of office, for example, because

[3] https://www.znbc.co.zm/news/hh-tells-accdpp-to-be-fearless/

Positives	Negatives
demonstrating political will to persistently fight corruption in order to strengthen good governance, transparency, and accountability especially in public service delivery."[4]	they are essentially not "public officers."[5] Further, the requirement to seek consent from the Director of Public Prosecutions on the prosecution of corruption cases undermined the operational autonomy of The Anti-Corruption Commission.[6]
• **Prompt Appointment of Director General:** The UNPD administration has also been prompt in appointing a substantive Director General to lead the Anti-Corruption Commission.[7] Under the PF regime, one Director General had been acting in that position for approximately two years.[8]	• **Limited Geographical Coverage:** The ACC is physically present in only 12 out of Zambia's 116 districts. This limited geographical presence has inhibited the effective reporting of corruption and the implementation of preventive measures.[9]
• **Increased Budget Allocations**: Government has increased budget allocations to the Anti-Corruption Commission. More specifically, funding for the Commission increased from K72.3 million in 2021 to K101.1 million in 2022, a 39.8% increase.[10]	• **Limited PFM autonomy:** All budget and Public Financial Management (PFM) purposes, payments and operations made by the Commission go through the Treasury, including payroll processing, and obtaining approval for its personnel structure.[11] This is unlike other independent bodies such as the Electoral Commission of Zambia and the Human Rights Commission.
RATING:	***Moderate***

[4] https://zambia.un.org/en/211481-international-anti-corruption-day-commemoration
[5] Section 21 of the Anti-Corruption Act No. 3 of 2012 only applies to a Public Officer while the Constitution defines a public officers as "a person holding or acting in a public office, but does not include a State officer, Councillor, a Constitutional office holder, a judge and a judicial officer."
[6] Section 6(1) (b) of the Anti-Corruption Act No. of 2012 provides that the ACC has the mandate to " initiate, receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute-(i) offences under this Act;"
[7] https://diggers.news/local/2022/03/30/hh-appoints-gilbert-phiri-as-acc-dg/v
[8] https://diggers.news/local/2019/07/30/weve-failed-to-find-the-owner-of-seized-48-houses-so-we-cant-go-to-court-acc/
[9] https://www.acc.gov.zm/contact/
[10] https://www.mofnp.gov.zm/?page_id=4096#
[11] International Monetary Fund (10th January 2023), Zambia: Technical Assistance Report-Diagnostic Report on Governance and Corruption, (https://www.elibrary.imf.org/view/journals/002/2023/003/article-A001-en.xml) accessed on 20th June 2023.

2.2. Performance on other Measures taken to Combat Corruption

In their manifesto, the UPND made seven (7) specific commitments with regard to the anti-corruption fight. **Table 2** present an analysis on the administration's performance with respect to these commitments.

Table 2: Assessment of efforts taken to strengthen Anti-Corruption Measures

Specific Commitment	Outturn/Performance	Rating
1. Establish special fast track anti-corruption courts to clear the backlog of outstanding corruption cases and expedite the conclusion of similar cases going forward.	The UPND administration committed to establishing fast track courts in an effort to expatiate the dispensation of justice, particularly related to financial crimes and corruption cases. This administration has so far established one court-"The Economic and Financial Crimes Fast Track Court."[12] However, in practice is the court is under establishment because the regulations are not yet development and it has no designated buildings or specialized judges.[13] Consequently, there is no evidence that the court has cleared the backlog of cases or expedited the conclusion of current cases.	**Moderate**
2. Ensure that all public offices will have open door policies at all levels from the minister to the lowest technocrat.	This measure is somewhat ambiguous because it is unclear whether the "Open-door policy" is internal or external. A General definition of an "Open-door policy" is an indication to employees that a supervisor or manager is open to an employee's questions, complaints, suggestions, and challenges. [14]	**Inconclusive**
3. ***Ensure that all unclassified public records are readily***	Just like previous administrations, in efforts to make strides towards public availability of information, the new administration has committed to enacting the	**Low**

[12] https://judiciaryzambia.com/wp-content/uploads/2023/03/Remarks-by-the-Hon.-Chief-Justice-at-the-Official-Opening-of-the-two-day-Conference-on-Economic-and-Financial-Crimes-.pdf

[13] https://www.parliament.gov.zm/sites/default/files/documents/committee_reports/REPORT%20OF%20THE%20COMMITTEE%20ON%20LEGAL%20AFFAIRS%20ON%20THE%20REVIEW%20OF%20THE%20ADMINISTRATION%20AND%20OPERATIONS%20OF%20THE%20JUDICIARY%20IN%20THE%20DELIVERY%20OF%20JUSTICE%20IN%20ZAMBIA.pdf

[14] https://www.paychex.com/articles/human-resources/open-door-policy-in-the-workplace#:~:text=In%20most%20companies%2C%20an%20open,any%20concerns%20employees%20may%20have.

Specific Commitment	Outturn/Performance	Rating
available and open to the public for scrutiny.	Access to Information (ATI) Law. It is apparent that the non-enactment of the ATI law has undermined public access to unclassified information, as most public institutions have maintained the culture of secrecy. [15] Although Cabinet has approved the Access to Information Bill for presentation to Parliament, the fact is it still remains an unfulfilled promise, especially since government made similar commitments in early 2022.	
4. Ensure government officials declare any new wealth annually.	Although the President declared his assets and liabilities as a presidential candidate during the 2021 general elections, this declaration is not publicly available. [16] However, there is evidence that some Ministers have been declaring their assets and liabilities, albeit not on time.[17] It is however concerning that not all Ministers have made declarations. This limited adherence to the law has limited anti-corruption efforts since there is no reference point for illicit enrichment.	**Low**
5. Conduct lifestyle audits, with any civil servant found wanting to be suspended until a court ruling.	In December 2022, a Members of Parliament (MPs) passed a motion to compel government to bring to Parliament a Bill on a mechanism for lifestyle audits.[18] However, there has not been any indication of the Bill's development since then. Currently, the government has indicated that lifestyle audit mechanisms will be part of the National Anti-Corruption Policy[19], which is a complete departure	**Low**

[15] The News Diggers Newspaper (15th October 2021) There's no law compelling us to publish declared assets of presidential candidates – ECZ, (https://diggers.news/courts/2021/10/15/theres-no-law-compelling-us-to-publish-declared-assets-of-presidential-candidates-ecz/), accessed on 15th July 2023.

[16] The News Diggers Newspaper (15th March 2022) ConCourt dismisses Tembo's HH assets declaration case, (https://diggers.news/courts/2022/03/15/concourt-dismisses-tembos-hh-assets-declaration-case/) , accessed on 15th July 2023.

[16] ZNBC (23rd August 2022) President HICHILEMA Declares Assets And Liabilities – BWALYA,

[17] https://diggers.news/local/2022/03/08/all-ministers-have-declared-their-assets-govt/

[18] https://diggers.news/local/2021/12/23/parley-approves-lifestyle-audit-motion/

[19] https://diggers.news/local/2023/01/04/lifestyle-audit-is-addressed-in-the-anti-corruption-policy-haimbe/

Specific Commitment	Outturn/Performance	Rating
	from the motion that Parliament passed last year, which clearly called for a law rather than a Policy.	
6. ***Introduce unexplained wealth orders to allow law enforcement to seize any property purchased using means that cannot be proven within the courts of law;***	The UPND administration has ardently pursued this approach[20] through the 'Forfeiture of Proceeds of Crime Act No. 19 of 2010.[21] However, some sections of society consider the forfeiture as an elitist approach to fighting graft and corruption[22], in thus perpetuating unfairness in the justice system.[23]	**Moderate**
7. ***Launch "Operation Recovery", to ensure public money corruptly obtained is returned to the public***	The UPND has launched Operation Recovery with the money forfeited to the state returned to public use.[24] However, this campaigned has been smeared as a witch-hunt, targeting only members of the former ruling party. [25] There is need for increased transparency of the strategy being used as well as improved updates to the public about the progress being made in implementing the operation. Moreover, there is need for enhanced transparency and accountability on the use of recovered assets and funds. Additionally TI-Z's is of the view that this approach should be used exceptionally rather than becoming the default approach for addressing corruption. Criminal prosecution should still be the primary approach.	**Moderate**

[20] https://diggers.news/local/2022/03/22/investigative-wings-seize-31-vehicles-abandoned-in-makeni/
[21] https://www.znbc.co.zm/news/faith-musonda-money-property-seized/
[22] https://diggers.news/local/2021/10/22/faith-walks-free-after-admitting-crime-surrendering-k64m-house/
[23] https://tizambia.org.zm/blog/2021/10/28/rebuttals-to-money-heist-and-the-sleepy-law-enforcement/
[24] https://diggers.news/local/2022/03/02/using-recovered-loot-on-students-bursaries-wasnt-well-thought-out-tiz/
[25] https://diggers.news/local/2022/12/12/its-not-vengeance-were-only-holding-those-who-stole-accountable-hh/

3. ANALYSIS OF GENERAL GOVERNANCE MEASURES IN THE UPND'S MANIFESTO

In addition to the anti-corruption promises analyzed above, the UPND administration also made general commitments regarding the general governance environment. Table 3 presents an analysis of the UPND's performance with respect to these commitments.

Table 3: Assessment of Performance on measures to enhance the Governance Environment

Specific Commitment	Outturn/Performance	Rating
1. Upholding the rule of law, security and justice	The UPND was elected on the premise that they would restore and uphold the rule of law, civil liberties, and the general security of all citizens regardless of political inclination. The current administration has restored law and order, especially in attempting to root out political cadreism and political violence.[26] Notwithstanding these improvements, pockets of cadreism and politically motivated intimidation have persisted, as seen in the flare-ups of violence during by-elections[27] and storming of radio stations by cadres.[28] Further, while there have been general improvements in citizens being able to exercise their right to assembly and peacefully demonstrate, the archaic Public Order Act still threatens freedom to assembly and has continued to be misapplied primarily by the Zambia Police Service.[29]	**Moderate**
2. Enhancing economic management and the management of public resources	During the past 2 years, the UPND government has managed to negotiate a debt restructuring deal with the support from the International Monetary Fund and other lenders.[30] This has been a significant achievement given its potential implications on the country's economic recovery aspirations. Instrumental to achieving this	**High**

[26] https://diggers.news/local/2021/08/26/saccord-hails-upnd-govts-commitment-to-ending-caderism/
[27] https://tizambia.org.zm/blog/2022/09/13/ti-z-statement-on-the-kabushi-and-kwacha-by-elections/
[28] https://zambia.misa.org/2023/01/02/misa-zambia-dismayed-with-act-of-censorship-at-kokoliko-fm/
[29] https://diggers.news/local/2023/03/12/police-release-lusaka-ndola-road-protesters-on-bond/
[30] https://www.reuters.com/world/africa/zambia-seals-63-billion-debt-restructuring-deal-2023-06-22/

Specific Commitment	Outturn/Performance	Rating
	included the amendment of the Public Debt Management Act No. 15 of 2022[31] and Public Procurement Act No. 8 of 2020[32]. The government has also increased adherence to the National Planning and Budgeting Act and demonstrated fiscal discipline.[33]	

Based on this analysis, TI-Z is of the view that the UPND administration has fared **moderately** in fulfilling its manifesto and campaign promises in the first two years of its mandate. We also take cognizance of the fact that the manifesto promises were largely crafted in broad terms, with no specific articulation of when they would be achieved, which has enabled the regime to highlight that they have a 5-year mandate in response to any criticism about their failure to fulfil campaign promises. While it is commendable that some progress has been made on several campaign promises, it is also clear that there remains more that the UPND needs to do in order to actualize what they promised the people of Zambia, especially on the anti-corruption and good governance landscapes.

In that regard, it would be beneficial to the citizenry for the UPND to improve their communication regarding not only the commitments they have fulfilled or are on the way to fulfilling, but also being transparent enough to openly communicate their failures and how they intend to improve in that regard. With reference to some unfulfilled promises, TI-Z has noted some backtracking on political commitments and positions of the UPND in government, when compared to when they were in opposition. These include the clear backtracking on developments in Forest 27[34] and the issuance of mining licenses in national parks.[35]

[31] https://www.parliament.gov.zm/node/10341

[32] https://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Public%20Procurement%20Act%20No.%208%202020.pdf

[33] https://diggers.news/business/2023/01/20/2022-saw-fiscal-discipline-baz/

[34] https://www.times.co.zm/?p=115231

1. [35] https://diggers.news/local/2022/02/03/mining-in-lower-zambezi-sparks-outrage-as-minister-explains-technicality-in-reversing-decision/

4. RECOMMENDATIONS

Following the above assessment of the UNPD's performance during the period 2021 to 2022, TI-Z makes the following recommendations to the UPND administration:

1. Government should ensure the full domestication of the United Nations Convention Against Corruption (UNCAC). The UNCAC has specific articles on enhancing the autonomy of the anti-corruption body, access to information, and improving the management of public funds that are in line with the UPND Manifesto.
2. In amending the Anti-Corruption Act, the government should enhance the operational and financial autonomy of the Anti-Corruption Commission. Further, the amended Act should ensure that Director General of the ACC is appointed on merit through the Board as opposed to Presidential appointment, guarantee the autonomy of the office and insulate the office from political influence.
3. The government, through the Ministry of Justice, should expedite the finalisation of the National Anti-Corruption Policy in order to provide policy direction for the anti-corruption fight.
4. The Judiciary should expedite the development of regulations for the Economic and Financial Crimes fast track court and ensure the court has specialized judges.
5. Considering the progress made so far in developing the access to information law, Cabinet and Parliament should facilitate and advance its enactment.
6. The government, through the Ministry of Justice, should facilitate the streamlining of asset declarations with clear procedures and process for annual declarations and a monitoring mechanism of the declaration within the year. This should also ensure the establishment of an autonomous institution or specific directorate under the Anti-Corruption Commission to collect the declarations and conduct lifestyle audits.
7. Considering the resolution by Parliament, the Ministry of Justice should draft legislation on lifestyle audits ensuring wide consultation in the process.
8. The government, through the Anti-Corruption Commission, should provide a formal update on 'Operation Recovery' and state the worth of forfeited and recovered resources so far. This should be coupled with strengthening mechanism for managing the fund from forfeited and recovered assets.

9. The government should guard against the resurgence of caderism and political violence during politically competitive moments such as elections.
10. Government should provide a roadmap for the enactment of the Public Gathering Bill that should promulgate the civil rights and liberties of Zambians to lawful assembly.
11. The government should clearly state their position on the Political Parties Bill (Act) which espouses to increase transparency and governance of political parties' affairs.