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“Making hay while the sun shines”:

Experiences with the Zambian Task Force on corruption

In 2002 the Government of Zambia established an intra-governmental task force to investigate allegations of corruption against former President Frederick Chiluba and his inner circle. The task force was mandated to prosecute those who had engaged in corrupt conduct, and to recover any state assets that had been stolen by them. This U4 Practice Insight examines the challenges faced by the task force and by the development community which supported its work.

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Background

Politics in the African Copper Belt

Rich in copper, Zambia was a relatively prosperous and stable country through its first years of independence, particularly when set against the profound economic and political struggles that afflicted Sub-Saharan Africa at that time. Yet the prosperity of early independence was short lived. Falling copper prices and chronic mismanagement of the state-owned mining companies crippled the economy during the 1970s and 1980s. Zambia borrowed heavily from foreign lenders in an effort to reverse the country's downward spiral, but the challenges were acute. Calls for meaningful reform intensified and protests were staged to confront the government's leadership.

In 1990, after serving as Zambia's first and only president for almost thirty years, Kenneth Kaunda lifted the ban against opposition parties. This opened the way for Frederick Chiluba, a charismatic union leader and former bus driver, to challenge Kaunda for the presidency the following year. Through an election lauded as "free and fair" by observers, Chiluba became Zambia's second president in one of the first peaceful, democratic transfers of power in Africa.

A Legal Twist: "Chiluba Is a Thief"

Chiluba immediately instituted programs to

liberalize the economy and privatize the copper industry. It was through this economic transition, according to some observers, that new revenue streams were created which state officials could easily divert for their personal use. Hand-picked by Chiluba to serve as his vice president, Levy Mwanawasa resigned after three years, publicly accusing the government of corruption and economic irresponsibility. Chiluba allegedly allowed public officials to embezzle assets from the ministries they controlled and rewarded key supporters with old-style paper bags filled with cash.

Late in Chiluba's second term, an independent Zambian newspaper ran a series of articles detailing government corruption, including an accusation by two Members of Parliament that Chiluba had diverted public funds for his private benefit. For this, the reporter and editor of the newspaper were arrested and charged with criminal libel for publishing lies and falsehoods about the President.

In order to prove that the article did not contain falsehoods, the newspaper had to prove that the allegations were true – that Chiluba had, in fact, diverted public funds. This legal twist allowed the newspaper to turn a legal defence into a frontal assault on Chiluba. With the power to call witnesses and subpoena documents to support their claims, the newspaper obtained the financial records of the London based Zambia National Commercial Bank (ZANACO). "You never expect to find a smoking gun," said their lawyer – but they had.

The bank records indicated a massive fraud that generously benefited a long list of Chiluba's political allies and close associates. Exploiting the secrecy surrounding national security, Chiluba's inner circle had opened an account at ZANACO in the name of the Ministry of Intelligence and funnelled state assets through the account to their personal accounts held in various countries. As the legal proceeding gained momentum it became popularly referred to as the "Chiluba is a Thief" trial.

Despite this, Chiluba still commanded considerable public support. But he was

constitutionally prohibited from running for a third term and, in a move that surprised many, he endorsed Mwanawasa's bid for the presidency. Chiluba's decision appears to have been based on his conviction that Mwanawasa's personal integrity would reflect well on the party and on his own legacy. It was also fair to expect that in a political system based largely on patronage, a grateful Mwanawasa would protect Chiluba's own interests. This proved to be a crucial miscalculation.

Immunity Removed

In 2002 Mwanawasa won the presidency. The legal proceeding against the newspaper was terminated, and pressure increased to investigate the overwhelming evidence that it had produced against Chiluba.

Calling the Zambian National Assembly into special session later that year, President Mwanawasa made a landmark speech in which he asked parliament to remove the constitutional life immunity that protected Chiluba. His request, though strongly debated, was accepted by the National Assembly with no members voting against it, and few refusing to vote. Mwanawasa quickly established an *ad hoc* interagency task force (the Task Force) to investigate and prosecute public corruption and to recover assets plundered during the period 1991 to 2001, the years Chiluba was in power. The stage was set for one of the first trials of a former African president for corruption.

The Chiluba Task Force

An Anti-Corruption Commission (ACC) was established in Zambia in the early 1980s and was tasked with broad duties including investigating and prosecuting corrupt conduct. Under the Chiluba government, perhaps not surprisingly, the ACC had not been developed into an effective institution. Mwanawasa's decision to bypass the ACC and create the Task Force appears to have been founded on a number of factors, both practical and political.

First, he needed a crack team to hit the ground

running and capitalize on the momentum he had created. The ACC simply did not seem up to the task. Asset recovery actions are notably complex, often requiring the services of diverse professionals like financial investigators, forensic accountants, and legal advisors. The ACC did not have the internal capacity for such an undertaking, especially one involving such high-profile defendants. Consequently, it would have been necessary to second expertise from other Zambian institutions, but attracting the most qualified individuals to the ACC would have been difficult given the ACC's low standing - a transfer to the ACC would have been viewed by many as a demotion. Even if staff transfers had been made mandatory, it was doubtful whether the ACC had the strength to sufficiently blend recruits coming from diverse work cultures to create an effective team.

Perhaps most important, however, was the highly confidential nature of the investigations. At stake were the fortunes of a powerful political elite who, for the past decade, had controlled the very offices that were to investigate them. Maintaining secrecy over information uncovered by the investigations would be essential, and perhaps better managed by a new entity.

Challenges for the Development Community

President Mwanawasa appealed to the development community (or "cooperating partners" as they are referred to in Zambia) to support the work of the Task Force. Clearly there were important long-term benefits to supporting the rule of law and strengthening enforcement agencies. However, providing the type of support that Mwanawasa requested also created challenges.

Conventional development programs are apolitical and designed to serve and empower the poor - not the current government. Material support for an elite task force that targets a former president is inherently political, particularly in the case of Zambia where Chiluba was still politically active and popular.

Given this, the cooperating partners were vulnerable to allegations of neo-colonial meddling. They did not wish to be perceived as serving political interests that might not appear directly related to poverty.

Nor did they wish to be viewed as serving domestic political agendas. Many Zambians believed that Mwanawasa was exploiting the donors by using the Task Force to play dirty politics against Chiluba. By attacking Chiluba's integrity, especially with the imprimatur of the judiciary, Mwanawasa could both minimize the political threat that Chiluba posed and lead anti-corruption watchdogs away from his own administration. Mwanawasa's election had been tainted by allegations of vote rigging, and by tackling corruption at the highest level he fortified his image as a champion of clean government.

Zambia's cooperating partners also had to consider what would be the best vehicles to deliver assistance. Financial and technical support would be helpful, even necessary, but perhaps not sufficient for the Task Force to achieve its mandate. The cooperation of foreign enforcement agencies was essential to obtain evidence located abroad, but requests for such legal assistance are notoriously difficult. How could this be addressed?

And how to measure progress? Where the ACC was a long-term project on which progress could be built and benchmarked over years, the life of the Task Force was limited, its mandate was narrow, and, most importantly, the outcome was far from sure. Given the many risks and uncertainties, it was unclear how the cooperating partners should justify expending resources on such a program.

There were no immediate answers to these concerns. But there was an overriding understanding that opportunities for asset recovery and/or high-level prosecutions are rare, and that this was an opportunity to be seized.

Engagement

At the same time, the risks to the country were also high. In countries where corruption is systemic, illegal means are often used to entrench the political elite. Decades may pass before the opposition is able to put a successor government in place and, when it does, very often there are deep political, social, and even familial ties to the corrupt government that preceded it. Indeed, the successor government may have benefited from the corruption of the former government and, consequently, cannot target former officials without exposing itself. Prosecuting those who have held high office can be a highly charged and divisive undertaking, perhaps even destabilizing for the country.

Even where the political will to challenge corruption exists, many practical obstacles must be overcome. Preparing for a criminal prosecution or asset recovery action is an expensive endeavour requiring highly skilled professionals in multiple jurisdictions. The costs alone can be reason to think twice. The cooperation of foreign enforcement agencies is also necessary, and investigations often lead to secrecy jurisdictions where the inability or unwillingness to provide assistance can effectively terminate an investigation. In short, scarce resources must be committed toward an uncertain outcome in the distant future. Many new governments, understandably, are unwilling to do this.

And yet, while the Zambian experience illustrates these challenges, a confluence of events gave rise to the groundbreaking work of the Task Force. Observers point to Mwanawasa's personal commitment to fight corruption, his political strategies to minimize Chiluba's influence, the legal defence which generated evidence of grand corruption, and, crucially, the public's continued interest and involvement. These intrinsically Zambian events culminated in the decision at the highest levels of government to remove the immunity that protected Chiluba.

Once the wheels were in motion, the

cooperating partners were quick to respond by providing innovative and flexible support.

Structure and Mandate

The Task Force on Corruption was established by presidential decree in 2002 for an initial period of four years. Its mandate was clear: (i) investigate suspected cases of corruption arising between 1991 and 2001; (ii) prepare prosecutions on the basis of the strongest available evidence; (iii) recover stolen assets belonging to the Government of Zambia for the benefit of Zambia; and (iv) build capacity for the investigation of complex financial crimes and make recommendations on appropriate anti-corruption measures to minimize future abuses.

As an *ad hoc* body the Task Force did not possess the legal personality that an act of parliament would have conferred. Without this, it was forced to rely on other government agencies in fundamental ways, most significantly, to initiate legal proceedings. In Zambia, the Director of Public Prosecutions has authority over criminal prosecutions and the Attorney General has authority over civil proceedings, and one or the other had to approve a recommendation by the Task Force to take legal action. And because the Task Force was created by presidential decree it was tied directly to the will of the President. Although Mwanawasa could provide political cover, the Task Force had no legal foundation on which to stand without his support, which made it vulnerable to questions concerning its legitimacy.

In organization, the Task Force was designed to be flexible so that personnel could be quickly assembled based on the changing needs of the investigations and legal proceedings. Experts were seconded from existing Zambian institutions, including the police, security intelligence, drug enforcement (for anti-money laundering expertise), the public prosecutor, and the Anti-Corruption Commission. Private lawyers were brought in as needed for additional support. The Task Force staff was paid by the institutions in which the secondees were formally employed, supplemented by a

generous allowance (typically 100% of the salary) paid directly by the Task Force.

Leadership was two-tiered. For general oversight, President Mwanawasa created an executive board made up of the directors of institutions from which the secondees were drawn. By giving these institutions a seat at the table he provided them with the opportunity to guide the work of the Task Force. At the same time, he made them responsible for its success. For the day-to-day management of the Task Force, Mwanawasa appointed an executive chairman. The chairman was responsible for, amongst other things, developing legal strategies, case management, and arguing the government's position before the courts. Both the board and the executive chairman reported directly to the President.

The cooperating partners liaised with both the executive board and the executive chairman. On matters of high importance, they worked directly with the President.

Novel Approaches: A Prelude to the Paris Declaration

In 2002, a Memorandum of Understanding was signed by the Government of Zambia and the cooperating partners, including Denmark, Ireland, the Netherlands, Norway, Sweden, and the United Kingdom. The United States provided technical cooperation separately. The Memorandum reflects an understanding that the process must be led by Zambia, and that fundamental decisions on how to proceed must be made by the Task Force.

The cooperating partners jointly supported the Task Force instead of individually supporting particular aspects of its work. Their united front not only signalled the importance with which they viewed the initiative, but, arguably, provided cover from possible political fallout. It also helped mitigate any legal risks which might have arisen from a donor being identified with funding a specific legal action.

Technically, finances were provided through a pooled funding mechanism without earmarking funds for certain tasks. Known today as "basket

funding", this mechanism was rather unusual at the time. The cooperating partners provided three-quarters of the funding needed by the Task Force in roughly equal contributions, and the Zambian Government paid the remaining amount. Consequently, in relation to each partner, the Zambian Government was the larger contributor. The cooperating partners also agreed not to redirect funds from existing programs to fund the Task Force, which placated Zambian concerns that the existing programs might be sacrificed. They also established a separate fund to support payments necessary for private sector prosecutors in Zambia and foreign investigators and lawyers working overseas.

In return for this support, the Zambian Government agreed that any money realized from the disposal of recovered assets would be used for development purposes only. This helped address concerns that development funds should be used to address poverty in a country that was, at the time, one of the poorest in the world: 80% of the population lived on under USD 1 a day, life expectancy was under 40, and debt servicing ate 20% of the domestic revenue.

Impact

The public in Zambia closely followed the work of the Task Force. Expectations were high that looted assets would be quickly recovered and that corrupt officials would be duly punished. The international community also took interest. Not only was it one of the first times that a former president in Sub-Saharan Africa was prosecuted for corruption in his own country, but there was concern that Zambian assets had been laundered through Europe.

It was becoming more widely understood by the international community that northern financial centres often served as the complicit partners of southern kleptocrats. Internal due diligence or "Know Your Customer" (KYC) requirements and anti-money laundering laws (AML) had only recently been introduced in many jurisdictions, and it was possible that Zambian

assets had been moved through well-respected financial institutions in financial capitals. Indeed, Zambian assets had already been traced to London.

Evidence of a Crime

Obtaining evidence or recovering assets in foreign jurisdictions requires the cooperation of enforcement agencies and, possibly, private practitioners operating there. A Mutual Legal Assistance (MLA) request is the formal way in which countries request and provide assistance in obtaining evidence. MLA is considered so vital to anti-corruption enforcement that it is incorporated in detail in the United Nations Convention against Corruption (UNCAC).

To be effective, MLA requests must be filed quickly to capture assets that can be moved instantaneously across borders through electronic money transfers. They must also be crafted to avoid legal obstacles that can arise when practitioners from different legal systems work together, for example, where the evidentiary or procedural standards in the recipient country are higher than the requesting country. In practice, requests for assistance are often improperly drafted and, even if not, the recipient country may simply not have the resources to address the request.

Zambia's cooperating partners clearly understood the challenges that the Task Force would face obtaining evidence from abroad – for example, following assets that were channelled through the bank accounts in London. To counter this, the UK Department for International Development (DfID) took the unusual step of working closely with enforcement agencies, investigators, and others in London to secure assistance for the Zambians. Subsequently, building on this experience, DfID established the International Corruption Group Project (ICG), bringing together discreet police units within the Metropolitan Police Service and City of London Police that are dedicated to the investigation of corruption between developed and developing countries. The ICG has two focus areas: bribery by UK firms and nationals committed in

developing countries, and money laundering by "politically exposed persons" (PEPS) - persons precisely like Chiluba and those involved in diverting Zambian public assets through financial networks in London.

The Trials

A comprehensive list of actions filed by the Task Force has not been made public, but preliminary figures indicate that as many as twenty-four criminal actions were filed between 2001 to 2009, resulting in thirteen convictions. Most of the convictions, if not all, have been or are being appealed. Defendants include the former Minister of Finance, Permanent Secretary of Finance, Director of Budget, Secretary to the Treasury, Director of the Security Intelligence Services, the Managing Director of the Zambia National Commercial Bank, the Secretary of the MMD (a national political party), Army and Air Force commanders, and Chiluba's wife, Regina Chiluba.

Chiluba: Criminal Prosecution in Zambia

In 2003, a criminal action was filed in Lusaka before a magistrate judge charging Chiluba with six counts of theft by a public servant in the amount of USD 500,000. Charges were also filed against two close associates for the diversion of state assets through the London branch of ZANACO. Chiluba argued that any money that had been moved out of ZANACO and used for his personal benefit was actually his money that had been inadvertently co-mingled with public money. When questioned as to the source of this money, he pointed to financial gifts from his many supporters.

The trial ended in 2009 after six long years. On the charges against Chiluba, the magistrate concluded, "We are satisfied beyond reasonable doubt that the prosecution failed to prove that the accused stole funds." Chiluba was acquitted. His two associates, however, were found guilty of theft and of possession of state funds, and were sentenced to three years of hard labour.

The Task Force immediately filed an appeal regarding Chiluba's acquittal, but it was withdrawn days later by the Director of Public Prosecutions who had not approved the filing. The Director stated that he did not believe the appeal would succeed because the account from which Chiluba allegedly diverted funds appeared to have received transfers from sources other than the Zambian Government. Consequently, in his view, it would be extremely difficult to prove that Chiluba diverted public funds. The Director of the Task Force disagreed publicly and was promptly sacked by the President for insubordination. Critics of the judgement claimed political interference.

Separately, Chiluba's wife was found guilty in 2009 of receiving stolen state assets in the amount of USD 300,000 and was sentenced to three and a half years in prison. She appealed the decision and was acquitted in late 2010.

Chiluba: Civil Asset Recovery in London

Separately, a civil action was filed in London with the High Court in 2006. The action sought to establish liability on the part of Chiluba and nearly twenty associates. Like the criminal prosecution in Zambia, the civil claim in London was based largely on the alleged diversion of state assets through the account held at ZANACO. Also like the criminal prosecution, the claim was heard by a single judge and without a jury.

The final judgement, issued the following year, found the defendants liable for a total of USD 46 million (later increased to USD 58 million with interest and costs). To illustrate the extent to which the average Zambian had been defrauded by Chiluba and his cronies, Justice Peter Smith noted that Chiluba had managed to spend over USD 1 million in a single exclusive Swiss boutique on hundreds of designer shirts and suits, and on shoes handcrafted to Chiluba's personal specifications. He contrasted this with Chiluba's state salary of approximately USD 10,000 per year. As Zambia's President for two five-year terms, his total earned income was not more than USD 100,000.

The importance of the London judgement is not only that it allowed assets in the UK belonging to the defendants to be seized, but that it could be enforced in other jurisdictions that recognize UK jurisprudence, through bilateral treaties or otherwise. Consequently, assets that the defendants hold elsewhere in Europe or the US, for example, could be seized by registering the London judgement in the countries where assets are found.

The Task Force attempted to register the London judgement in Zambia in 2007. Chiluba challenged the registration before a Zambia court, which ruled against him. Chiluba appealed the decision to the High Court of Zambia arguing, amongst other things, that the London High Court lacked jurisdiction and that Zambian law on the enforcement of foreign judgements had not been fully satisfied. The High Court agreed and determined that the London judgement could not be used in Zambia – even though the Government of Zambia, through the Task Force, sought and obtained the judgement. Again, critics cried political interference.

Where does this leave us?

The different outcomes of the civil and criminal proceedings have generated considerable comment. Why was Chiluba acquitted in one country and found liable in another when the proceedings were based largely on the same evidence?

From a legal perspective, a finding of civil liability is based on a lower evidentiary standard than in a criminal prosecution and, given this, the trials are not directly comparable. In the civil proceeding the evidence must have shown "by a balance of the probabilities" that a nexus existed between the property subject to seizure and the criminal conduct. The higher standard of evidence used in the criminal proceeding, however, required the prosecution to prove "beyond a reasonable doubt" that the defendants engaged in corrupt conduct or, in Chiluba's case, that he had diverted funds belonging to the people of Zambia. This, in the view of the Zambian criminal court, was not

possible on the evidence presented- even if sufficient for the civil proceeding.

Critics of Chiluba's criminal acquittal point to possible irregularities in the legal basis of the decision. The magistrate considered, for example, the definition of a government official under Zambian law and found that the office of President is not the office of a government official. Consequently, under this interpretation, laws on political corruption were inapplicable to Chiluba. Zambian legal experts found the magistrate's view a highly irregular interpretation of the law. It is worth noting that UNCAC's common sense definition of a public official includes anyone holding an executive office, whether appointed or elected, or permanent or temporary, as being a public official. This would include the office of the president, as the highest executive office.

Critics also point to the convictions of Chiluba's two business associates for being in possession of money stolen or unlawfully obtained. How could Chiluba be found innocent, they ask, when his co-defendants were found guilty on the same evidence? Chiluba gave a statement under oath but never testified (and thus was never cross-examined) that the money was given by supporters and accidentally co-mingled with public funds. His co-defendants similarly testified that their personal funds were co-mingled with public funds. The difference in the court's treatment between Chiluba and his co-defendants smacked of political influence, the critics claimed. It was simply *quid pro quo* - appeasing the public by jailing Chiluba's handmaids on the one hand, and securing Chiluba's loyalty by keeping him a free man on the other.

From a political perspective, it seems clear that the winds in Zambia had shifted. In 2008 Mwanawasa unexpectedly died, and with his death, some argue, the political will to prosecute Chiluba evaporated. Public sympathy for Chiluba had grown over the six years that he was on trial. As President he had inherited a country deeply in debt to foreign lenders and one of the poorest in Africa. Corrupt or not, even his critics concede that he instituted

market reforms that improved copper production and strengthened the Zambian economy. He had peacefully relinquished the presidency and had been, his supporters claimed, unjustly attacked by the very man he pulled up the political ladder. Chiluba declared that Mwanawasa had used the Task Force as a political tool. He claimed to be the victim of a British-led witch-hunt and that Mwanawasa had "betrayed the national trust" by using a foreign court to pursue him. Chiluba asked, "What kind of a government is this that could put its president at the hands of a foreign land and imperialists?"

Beyond Chiluba's claims of unjust treatment, as long as he remained out of jail many of his colleagues stood to benefit from the support that he still commanded throughout Zambia. And this, his detractors argue, was sufficient reason to use whatever means available to unduly influence the proceedings against Chiluba – which the untimely death of Mwanawasa may have facilitated.

The Recovery of Stolen Assets

In the view of some, the legal process of pursuing the stolen assets was most important – not the actual recovery. Testing and strengthening the legal system through the trials and appeals was an important step in the country's long-term development. However, it cannot be ignored that both cooperating partners and the Zambian Government must evaluate their programmes, measure their success, and account for the tax dollars that have been spent. In this context, the value of the assets recovered is important.

And even though asset recovery was a central component of the Task Force's mandate, information on precisely what has been recovered and the value of the recovery is not easily available. By some accounts, civil actions undertaken by the Task Force have established legal claims to date of more than USD 50 million (both inside and outside of Zambia), of which almost USD 20 million has been realized in either cash or assets, including real property, planes, and boats.

Separately, the Task Force assisted the Zambian Attorney General to defend against two unrelated actions (involving commercial matters) filed against the Zambian Government in foreign jurisdictions. In both actions, the Zambian Government paid less than the amounts claimed by the petitioners, arguably saving USD 200 million that it would otherwise have been required to pay. When assessing the recovery efforts of the Task Force, many include this sum.

Disbanding the Task Force

In 2009, the Task Force on Corruption was formally dissolved. The Zambian Government transferred all operations to the Anti-Corruption Commission (ACC) and ordered the ACC to pursue the open cases to their conclusion. Efforts were made to build up the ACC during the existence of the Task Force, though whether the ACC has the capacity to pursue complex financial fraud remains to be seen. An important indicator, perhaps, will be the ability of the ACC to handle the many appeals from prosecutions initiated by the Task Force. It is worth noting that few members of the Task Force were seconded from the ACC and, consequently, the institutional benefit gained from prosecuting complex fraud cases is expected to be minimal.

Lessons learned

The challenges that were faced by both the Task Force and the cooperating partners were considerable, and a number of lessons for stakeholders and donors in Zambia and elsewhere might be drawn from their experiences:

- **Be ready** – When a window of opportunity opens, be ready to move quickly because it may not be open for long. The untimely death of Mwanawasa arguably shortened the life of the Task Force. Consider what can be done in advance to prepare the host country and enforcement agencies in jurisdictions where looted assets may have been channelled. A strong framework can

allow stakeholders to act rapidly to recover public assets (or development finance or international aid) if evidence of misconduct emerges.

- **Speak with one voice** – Coordination can be key, first among the donors and, separately, among the donors and their respective embassies and home offices. Coordinating with one's diplomatic missions can ensure their support for interventions that have political ramifications. In Zambia, there appeared to be general agreement between the cooperating partners and their respective embassies on whether and how the Task Force should be supported, though it is easy to imagine that different agendas, priorities, and views could have led to internal conflicts amongst them.
- **Support home-country partners** – In Zambia, the cooperating partners clearly understood the challenges that the Task Force would face to obtain evidence from abroad – for example, tracing the assets in London. To address this, the UK Department for International Development (DfID) took the unusual step of working directly with enforcement agencies, investigators, and others in London to secure their assistance. Supporting home-country institutions with funds earmarked for international development may seem counterintuitive, especially to those not involved in development work. But programs like the innovative ICG Project can bring development benefits, especially through returned assets. It can also substantially improve the exchange of information between countries, creating an environment that makes it far more difficult for kleptocrats to move assets through global networks to avoid detection.

As a potential entry point, UNCAC Article 14 requires State Parties to implement comprehensive domestic regulatory and supervisory measures to prevent money laundering and to ensure that law enforcement and other authorities dedicated to combating money laundering

are able to coordinate at the national and international levels.

- **Share the risk** – Pooling support provides the advantage of sharing responsibility and risk. In Zambia, support funds were not tied to a particular donor or earmarked for a particular purpose. The Task Force was able to channel support when and where it was needed. It also provided a degree of political cover for those cooperating partners that had reservations about supporting targeted legal actions, and it distanced individual cooperating partners from particular expenditures.
- **Chart the course** – Delays and missteps can be reduced by developing a comprehensive case strategy up front, including technical assistance in the form of experts in case development and management to advise on jurisdictions of interest. A clear understanding of what actions must be taken, in what order, and by what date is essential for success. In some jurisdictions, for example, it is necessary to have a criminal conviction on which to base the asset recovery action – in others it is not. In some jurisdictions the prescriptive period during which the actions must be filed is quite short – in others, again, it is not. Issues like these must be unpacked in order to develop a viable legal strategy.

While it is important to understand how different jurisdictions treat key issues, it is also important to strategize for purely domestic proceedings. In Zambia, for example, the original criminal action against Chiluba alleged 168 criminal counts relating to theft. The charges were later reduced to six counts of theft by a public servant. Throwing all possible charges against a defendant is not unusual in novel corruption cases, but assembling the initial case based only on the most viable charges will save time and resources, and prevent misperceptions that the government's case is weak because many charges are later dropped.

- **Build the team** – Diverse expertise from various institutions can be very useful, necessary in fact, to pursue actions for asset recovery and complex financial fraud. Not only does it build the capacity of individual institutions, it builds links between institutions themselves. At the same time, however, attention must be paid to the impact of this approach on the receiving body.

In practice this strategy had negative implications for the Task Force. The availability of secondees was controlled by the institutions from which they were drawn, and secondees were offered or withdrawn based on the needs of those institutions. This caused a significant turnover of staff within the Task Force that seriously compromised its institutional memory, especially in combination with less than adequate case management systems.

- **Remove the obstacles** – Broad immunities that unjustifiably protect government officials should be challenged. The concept of immunity is based on the notion that public servants should be protected from legal action in order to protect the office they hold. If they have to respond to politically motivated legal attacks, they will be unable to fulfil the responsibilities of the office. The rationale for immunity is undermined, however, when it is used as a means to escape justice, especially when the person is no longer in office.

In the case of Chiluba, the Zambian constitution granted him life immunity from prosecution, and it took all three branches of government to act before immunity was lifted. President Mwanawasa requested the National Assembly to remove the immunity and, once done, Chiluba challenged the parliament's action by taking the issue to the judiciary. The court found that the National Assembly had acted within its constitutional mandate and allowed the immunity to be removed. At any point the effort could have failed.

As a potential entry point, UNCAC Article 30 requires State Parties to strike an appropriate balance between any immunities accorded to public officials for the performance of their functions and the need to effectively enforce anti-corruption norms.

- **Keep it simple** – It does not require complex laws to prosecute complex fraud. Before rushing to offer technical assistance to draft new laws, consider carefully whether adequate laws are already in place. Some Zambians recall the eagerness of the international community to redraft Zambian anti-corruption laws in order to facilitate the work of the Task Force. In the view of some, however, new legislation was unnecessary and might have made the work of the Task Force harder. Complicated and sophisticated laws can be difficult to use, both for the prosecutor and the judge who must apply them. Moreover, the push for drafting legislation, though well intentioned, risked putting the Zambians in the awkward position of having to either refuse assistance, or accept assistance that might have been better directed elsewhere.
- **Support the courts that count** – Targeting support to courts where complex economic crimes are filed, or should be, is crucial for successful corruption prosecutions and asset recovery actions. Many of the actions filed by the Task Force were before magistrate courts, which are subordinate courts and not suitable for evidence-heavy complex cases. Large scale and high level corruption should be the jurisdiction of higher courts which, ideally, have sufficient independence and experience to render timely decisions – supporting these courts should be prioritized with respect to anticorruption enforcement.
- **Ensure transparency** – Authorities should agree at the outset what information should be disclosed and to whom, and resist the temptation to require a higher level of

confidentiality than normal for higher-risk initiatives like the Task Force. While releasing information concerning ongoing cases must be judged case by case, there is a clear need for open communication among the government, the public, and the cooperating partners in order to manage expectations and evaluate results.

How much was actually recovered by the Zambian Government? This is difficult to pinpoint precisely, and it is unclear why this information is not immediately available. While there may be political reasons for withholding this information, it might be, more simply, a reflection of government practice. There are often no traditions for sharing information with the public or civil society. This should be expected and addressed at the outset.

- **Agree on asset disposal** – Clear agreement should be reached on how and when recovered assets should be disposed. As a first step, it is reasonable to request that the assets be put toward development goals to justify spending development money on their recovery. As a next step, consider defining what constitutes "development" generally, and describing in detail the process through which an agreement on the disposal of recovered assets can be reached.

At the early stages, negotiating a detailed agreement on the disposal of (unknown) assets can waste valuable time and risk delaying an investigation. Focus on moving the process forward, but preserve the right to be involved in how the recovered assets are disposed. Strategically, it can be beneficial if they are used to fund projects that can be enjoyed by the public in order to reinforce the value of the asset recovery action.

In Zambia, the Memorandum of Understanding between the Zambian Government and the cooperating partners provided that the recovered assets should be used for development. But development

is a broad concept. The agreements did not clearly articulate how assets should be disposed and for what development purposes the funds should be used. Consequently, the disposal process has been less than transparent. Significant delays further disappointed the public, and the Task Force was easy to blame even though it had no control over the disposal mechanisms.

- **Manage public expectations** – The creation of an elite task force in itself raises the public's expectations. In Zambia, the public anticipated quick convictions and expected their lives to improve when the recovered assets were reinvested in development programs. The Task Force relied on traditional public relations tools, like press briefings on specific cases, which proved insufficient. The public was not fully prepared for the long trials and the uncertain outcomes and was provoked by press coverage of high fees paid to foreign and Zambian private lawyers. It was a fine balance between heralding the establishment and promise of the Task Force and preparing the public to support the commitment of scarce resources with no guarantee of return.
- **Beware of the backlash** – Legal actions provide an opportunity to assess the strengths and weaknesses of a country's legal framework – which laws worked well, which did not, and why? The actions brought by the Task Force catalyzed a review of the Zambian legal framework, and new laws were drafted on whistleblower protection, plea-bargaining and the forfeiture of proceeds of crime.

On the flip side, however, the same opportunity can be used to weaken laws that might work too well. In 2010, the Zambian National Assembly passed the Anti-Corruption Commission Act to replace the Corrupt Practices Act of 1980. The new law included a provision on illicit enrichment, which makes an offence any significant increase in the assets of a

government official which cannot be reasonably explained. Illicit enrichment laws are found in many jurisdictions and are powerful tools to fight corruption, especially complex fraud involving secrecy jurisdictions (which make it nearly impossible to follow financial paper trails). In fact, Article 20 of UNCAC asks States Parties to consider establishing such an offense.

But illicit enrichment also touches on constitutional presumptions of innocence by shifting the burden to the defendant to prove his or her innocence – instead of keeping it on the prosecutor to prove the defendant's guilt. This, the Zambian Government argued, was reason enough to strike the provision from the new law.

- **Take the good with the bad** – International development often involves tradeoffs, especially in the field of governance and corruption. Did Mwanawasa create the Task Force as a political tool to use against Chiluba, and did he exploit the cooperating partners to do it? Or was Mwanawasa a champion of clean government who prosecuted the worst corrupt officials, starting at the top?

As is often the case, it was probably some of both. But the cooperating partners recognized that even if Mwanawasa's political agenda was advanced by bringing Chiluba down, the enduring benefit to Zambia and Sub-Saharan Africa of demanding accountability from the highest office was manifestly important. Such tradeoffs are not uncommon, and should not be seen as diminishing the value of the intervention.

Conclusion – Was it worth it?

The investigation and trials took almost eight years, consuming resources of both the Zambian government and contributing partners. Despite this, and to the disappointment of many Zambians and anti-corruption campaigners around the world, no civil or criminal liability

was attached to Chiluba in Zambia. Which raises the very relevant question - was it worth it?

This is not an easy question to answer, and perhaps the answer depends on how you measure success in anti-corruption efforts – an issue itself the source of much discussion. In the field of governance, and particularly in respect of anti-corruption, it is difficult to tangibly measure whether a program, or a task force for that matter, has been effective. Counting the number of convictions and the value of the assets recovered can be illuminating, but many have argued that determining whether a process has been successful should not be limited to these variables alone. A better approach looks at a broader set of benchmarks – some quantitative others qualitative, that, held together, can reveal the true value of an effort.

Consider that while the international press focused on the trials of Chiluba, there were many other high-level government officials, including his wife, who were prosecuted. This is noteworthy for the many ways in which participating institutions were strengthened, and also for the deterrent effect this may have on government officials going forward.

Possibly more important, the proceedings tried and tested the Zambian legal system. Bringing cases to court is a difficult but necessary step toward long-term development and political accountability. Inevitably the strengths and weaknesses of the system are revealed as the trial progresses. Understanding where the system works - and where it fails - is crucial to implementing targeted reforms and sharpening tools to enforce the rule of law.

As for Chiluba, although he walked away, he was nonetheless called to account and made to answer the charges. This alone represents an enormous step forward in the struggle to change the country's political culture - a precedent has been established by demanding accountability from a head of state and those around him. This has importance not only within Zambia, but beyond.

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