

**SPEECH BY FR. JOE KOMAKOMA, TIZ BOARD MEMBER, AT THE LAUNCH OF THE
2007 TRANSPARENCY INTERNATIONAL (TI) GLOBAL CORRUPTION REPORT
24th MAY 2007
TIZ SECRETARIAT**

DISTINGUISHED INVITED GUESTS,
LADIES AND GENTLEMEN,
ALL PROTOCOLS OBSERVED.

I WOULD LIKE TO BEGIN BY WELCOMING AND THANKING YOU FOR ACCEPTING OUR INVITATION TO THIS FUNCTION TODAY. THE PURPOSE OF OUR GATHERING IS TO OFFICIALLY WITNESS THE LAUNCH OF THE TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION REPORT FOR 2007. THE GLOBAL CORRUPTION REPORT (GCR), A PRODUCT OF TRANSPARENCY INTERNATIONAL (TI) IS AN ANNUAL REPORT WHICH GIVES AN ANALYSIS ON THE LEVELS OF CORRUPTION AMONG MANY NATIONS OF THE WORLD.

LADIES AND GENTLEMEN, THE DECISION TO FOCUS THE 2007 *GLOBAL CORRUPTION REPORT* ON THE JUDICIARY COMES FROM ITS CENTRALITY TO ANTI-CORRUPTION WORK. IT WAS ALSO INFORMED BY THE WORK OF MANY OF THE 100 NATIONAL CHAPTERS THAT MAKE UP THE TRANSPARENCY INTERNATIONAL GLOBAL MOVEMENT. THIS TAKES MANY FORMS AND INCLUDE WORKING TO TACKLE JUDICIAL CORRUPTION BY MONITORING JUDGES' COURT ATTENDANCES AND THE QUALITY OF THEIR JUDGMENTS; OFFERING FREE LEGAL ADVICE TO PEOPLE EMBROILED IN COMPLEX PROCESSES IN WHICH BRIBES ARE DEMANDED AT EVERY TURN; AND STILL MORE ARE COMMENTING PUBLICLY ON THE CALIBRE OF CANDIDATES NOMINATED FOR JUDGESHIPS.

TRANSPARENCY INTERNATIONAL'S *GLOBAL CORRUPTION REPORT 2007* BRINGS TOGETHER SCHOLARS, LEGAL PROFESSIONALS AND CIVIL SOCIETY ACTIVISTS FROM AROUND THE WORLD TO EXAMINE HOW, WHY AND WHERE CORRUPTION MARS JUDICIAL PROCESSES, AND TO REFLECT ON REMEDIES FOR CORRUPTION-TAINTED SYSTEMS. IT FOCUSES ON JUDGES AND COURTS, SITUATING THEM WITHIN THE BROADER JUSTICE SYSTEM AND EXPLORING THE IMPACT OF JUDICIAL CORRUPTION ON HUMAN RIGHTS, ECONOMIC DEVELOPMENT AND GOVERNANCE. TWO PROBLEMS ARE ANALYSED: POLITICAL INTERFERENCE TO PRESSURE JUDGES FOR RULINGS IN FAVOUR OF POLITICAL OR ECONOMIC INTERESTS, INCLUDING IN CORRUPTION CASES; AND PETTY

BRIBERY INVOLVING COURT PERSONNEL. THE RESULT IS A THOROUGH ANALYSIS OF HOW JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY, TWO CONCEPTS KEY TO THE PROMOTION OF JUDICIAL INTEGRITY, CAN BE BOLSTERED TO TACKLE CORRUPTION IN JUDICIAL SYSTEMS. INCLUDED ARE THIRTY-SEVEN COUNTRY CASE STUDIES; RECOMMENDATIONS FOR JUDGES, POLITICAL POWERS, PROSECUTORS, LAWYERS AND CIVIL SOCIETY; AND SIXTEEN EMPIRICAL STUDIES OF CORRUPTION IN VARIOUS SECTORS, INCLUDING THE JUDICIARY.

AS WE ALL KNOW, TRANSPARENCY INTERNATIONAL (TI) IS THE CIVIL SOCIETY ORGANISATION LEADING THE GLOBAL FIGHT AGAINST CORRUPTION. THROUGH MORE THAN NINETY CHAPTERS WORLDWIDE AND AN INTERNATIONAL SECRETARIAT IN BERLIN, GERMANY, TI RAISES AWARENESS OF THE DAMAGING EFFECTS OF CORRUPTION, AND WORKS WITH PARTNERS IN GOVERNMENT, BUSINESS AND CIVIL SOCIETY TO DEVELOP AND IMPLEMENT EFFECTIVE MEASURES TO TACKLE IT.

INVITED GUESTS, LADIES AND GENTLEMEN, IN PREVIOUS EDITIONS OF THE *GCR*, MANY OF OUR NATIONAL CHAPTERS HAVE WRITTEN ABOUT JUDICIAL CORRUPTION AS A SERIOUS PROBLEM IN THEIR COUNTRIES, ARGUING THAT PLIANT JUDGES AND JUDICIARIES UNDERMINE THE VERY ANTI-CORRUPTION EFFORTS THEY ARE EXPECTED TO ENFORCE, AND THEREBY ERODE THE RULE OF LAW.

LADIES AND GENTLEMEN, THE *GCR* 2007 DEFINES JUDICIAL CORRUPTION AS 'THE ABUSE OF ENTRUSTED POWER FOR PRIVATE GAIN'. JUDICIAL CORRUPTION EXTENDS FROM PRE-TRIAL ACTIVITIES THROUGH THE TRIAL PROCEEDINGS AND SETTLEMENT TO THE ULTIMATE ENFORCEMENT OF DECISIONS BY COURT BAILIFFS. IT INCLUDES ANY INAPPROPRIATE INFLUENCE ON THE IMPARTIALITY OF THE JUDICIAL PROCESS BY ANY ACTOR WITHIN THE COURT SYSTEM. FOR EXAMPLE, A JUDGE MAY ALLOW OR EXCLUDE EVIDENCE WITH THE AIM OF JUSTIFYING THE ACQUITTAL OF A GUILTY DEFENDANT OF HIGH POLITICAL OR SOCIAL STATUS. JUDGES OR COURT STAFF MAY MANIPULATE COURT DATES TO FAVOUR ONE PARTY OR ANOTHER. IN COUNTRIES WHERE THERE ARE NO VERBATIM TRANSCRIPTS, JUDGES MAY INACCURATELY SUMMARISE COURT PROCEEDINGS OR DISTORT WITNESS TESTIMONY BEFORE DELIVERING A VERDICT THAT HAS BEEN PURCHASED BY ONE OF THE PARTIES IN THE CASE. JUNIOR COURT PERSONNEL MAY 'LOSE' A FILE – FOR A PRICE. OTHER PARTS OF THE JUSTICE SYSTEM MAY INFLUENCE JUDICIAL CORRUPTION. CRIMINAL CASES CAN BE CORRUPTED BEFORE

THEY REACH THE COURTS IF POLICE TAMPER WITH EVIDENCE THAT SUPPORTS A CRIMINAL INDICTMENT, OR PROSECUTORS FAIL TO APPLY UNIFORM CRITERIA TO EVIDENCE GENERATED BY THE POLICE.

LADIES AND GENTLEMEN, IN THE GCR 2007, JUDICIAL CORRUPTION INCLUDES THE MISUSE OF THE SCARCE PUBLIC FUNDS THAT MOST GOVERNMENTS ARE WILLING TO ALLOCATE TO JUSTICE, WHICH IS RARELY A HIGH PRIORITY IN POLITICAL TERMS. FOR EXAMPLE, JUDGES MAY HIRE FAMILY MEMBERS TO STAFF THEIR COURTS OR OFFICES, AND MANIPULATE CONTRACTS FOR COURT BUILDINGS AND EQUIPMENT. WHEN DOMINANT POLITICAL FORCES CONTROL THE APPOINTMENT OF SENIOR JUDGES, THE CONCEPT OF APPEALING TO A LESS PARTIAL AUTHORITY MAY BE NO MORE THAN A MIRAGE. EVEN WHEN APPOINTMENTS ARE APPROPRIATE, THE EFFECTIVENESS OF THE APPEALS PROCESS IS DENTED IF THE SCREENING OF REQUESTS FOR HEARINGS IS NOT TRANSPARENT, OR WHEN THE BACKLOG OF CASES MEANS YEARS SPENT WAITING TO BE HEARD. APPEALS TEND TO FAVOUR THE PARTY WITH THE DEEPEST POCKETS, MEANING THAT A PARTY WITH LIMITED RESOURCES, BUT A LEGITIMATE COMPLAINT, MAY NOT BE ABLE TO PURSUE THEIR CASE BEYOND THE FIRST INSTANCE.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN, THE GCR 2007 NOTES THE NEGATIVE IMPACT OF CORRUPTION ON THE LIVES OF PEOPLE CAN NOT BE OVEREMPHASIZED. JUDICIAL CORRUPTION ERODES THE FOUNDATION OF SOCIETY. IT UNDERMINES JUSTICE AROUND MANY PARTS OF THE WORLD INCLUDING ZAMBIA, DENYING VICTIMS AND THE ACCUSED THE BASIC HUMAN RIGHT TO A FAIR AND IMPARTIAL TRIAL. IT ALLOWS CRIMINALS TO GO UNPUNISHED, DESTROYING EFFECTIVE GOVERNANCE AND DEMOCRATIC PARTICIPATION. IT ERODES THE ABILITY OF THE INTERNATIONAL COMMUNITY TO TACKLE TRANSNATIONAL CRIME AND TERRORISM; IT DIMINISHES TRADE, ECONOMIC GROWTH AND HUMAN DEVELOPMENT; AND, MOST IMPORTANTLY, IT DENIES CITIZENS IMPARTIAL SETTLEMENT OF DISPUTES WITH NEIGHBOURS OR THE AUTHORITIES. WHEN THE LATTER OCCURS, CORRUPT JUDICIARIES FRACTURE AND DIVIDE COMMUNITIES BY KEEPING ALIVE THE SENSE OF INJURY CREATED BY UNJUST TREATMENT AND MEDIATION. JUDICIAL SYSTEMS DEBASED BY BRIBERY UNDERMINE CONFIDENCE IN GOVERNANCE BY FACILITATING CORRUPTION ACROSS ALL SECTORS OF GOVERNMENT, STARTING AT THE HELM OF POWER. IN SO DOING THEY SEND A BLUNT MESSAGE TO THE PEOPLE: IN THIS COUNTRY CORRUPTION IS TOLERATED.

LADIES AND GENTLEMEN, JUDICIAL CORRUPTION UNDERMINES CITIZENS' MORALE, VIOLATES THEIR HUMAN RIGHTS, HARMS THEIR JOB PROSPECTS, UNDERMINES NATIONAL DEVELOPMENT AND COMPROMISES THE QUALITY OF GOVERNANCE. A GOVERNMENT THAT FUNCTIONS ON BEHALF OF ALL ITS CITIZENS REQUIRES NOT ONLY THE RULE OF LAW, BUT AN INDEPENDENT AND EFFECTIVE JUDICIARY TO ENFORCE IT TO THE SATISFACTION OF ALL PARTIES. THE PROFESSIONALS THAT MAKE UP THE JUDICIAL SYSTEM CAN USE THEIR SKILLS, KNOWLEDGE AND INFLUENCE TO UPHOLD THE TRUTH AND BENEFIT THE GENERAL PUBLIC. THE VAST MAJORITY DO. THESE QUALITIES HAVE HOWEVER ALSO BEEN ABUSED. THEY HAVE IN SOME CASES BEEN USED TO ENRICH THEMSELVES OR TO IMPROVE THEIR CAREERS AND INFLUENCE.

TYPES OF CORRUPTION THAT MOST AFFECT JUDICIARIES

A. POLITICAL INTERFERENCE IN JUDICIAL PROCESSES

INVITED GUESTS, THE GCR 2007 CONFIRMS THAT POLITICAL INTERFERENCE COMES ABOUT BY THREAT, INTIMIDATION AND SIMPLE BRIBERY OF JUDGES, BUT ALSO BY THE MANIPULATION OF JUDICIAL APPOINTMENTS, SALARIES AND CONDITIONS OF SERVICE. IN ALGERIA JUDGES WHO ARE THOUGHT 'TOO' INDEPENDENT ARE PENALISED AND TRANSFERRED TO DISTANT LOCATIONS. IN KENYA JUDGES WERE PRESSURED TO STEP DOWN WITHOUT BEING INFORMED OF THE ALLEGATIONS AGAINST THEM IN AN ANTI-CORRUPTION CAMPAIGN THAT WAS WIDELY SEEN AS POLITICALLY EXPEDIENT. JUDGES PERCEIVED AS PROBLEMATIC BY THE POWERFUL CAN BE REASSIGNED FROM SENSITIVE POSITIONS OR HAVE CONTROL OF SENSITIVE CASES TRANSFERRED TO MORE PLIABLE JUDGES.

LADIES AND GENTLEMEN, KEY TO PREVENTING THIS TYPE OF CORRUPTION, ARE CONSTITUTIONAL AND LEGAL MECHANISMS THAT SHIELD JUDGES FROM SUDDEN DISMISSAL OR TRANSFER WITHOUT THE BENEFIT OF AN IMPARTIAL INQUIRY. THIS PROTECTION GOES MUCH OF THE WAY TOWARD ENSURING THAT COURTS, JUDGES AND THEIR JUDGMENTS ARE INDEPENDENT OF OUTSIDE INFLUENCES. BUT IT CAN BE EQUALLY PROBLEMATIC IF JUDGES ARE PERMITTED TO SHELTER BEHIND OUTDATED IMMUNITY PROVISIONS, DRACONIAN CONTEMPT LAWS OR NOTIONS OF COLLEGIALLY, AS IN TURKEY, PAKISTAN AND NEPAL RESPECTIVELY.

B. BRIBERY

IN THE 2007 GCR, BRIBERY CAN OCCUR AT EVERY POINT OF INTERACTION IN THE JUDICIAL SYSTEM: COURT OFFICIALS MAY EXTORT MONEY FOR WORK THEY SHOULD DO ANYWAY; LAWYERS MAY CHARGE ADDITIONAL 'FEES' TO EXPEDITE OR DELAY CASES, OR TO DIRECT CLIENTS TO JUDGES KNOWN TO TAKE BRIBES FOR FAVOURABLE DECISIONS. FOR THEIR PART, JUDGES MAY ACCEPT BRIBES TO DELAY OR ACCELERATE CASES, ACCEPT OR DENY APPEALS, INFLUENCE OTHER JUDGES OR SIMPLY DECIDE A CASE IN A CERTAIN WAY. WHEN DEFENDANTS OR LITIGANTS ALREADY HAVE A LOW OPINION OF THE HONESTY OF JUDGES AND THE JUDICIAL PROCESS, THEY ARE FAR MORE LIKELY TO RESORT TO BRIBING COURT OFFICIALS, LAWYERS AND JUDGES TO ACHIEVE THEIR ENDS. IT IS IMPORTANT TO REMEMBER THAT FORMAL JUDICIARIES HANDLE ONLY A FRACTION OF DISPUTES IN THE DEVELOPING WORLD; TRADITIONAL LEGAL SYSTEMS OR STATE-RUN ADMINISTRATIVE JUSTICE PROCESSES ACCOUNT FOR AN ESTIMATED 90 PER CENT OF NON-LEGAL CASES IN MANY PARTS OF THE GLOBE.

LADIES AND GENTLEMEN, THE GCR 2007 TAKES NOTE OF AN IMPORTANT DISTINCTION THAT EXISTS BETWEEN JUDICIAL SYSTEMS THAT ARE RELATIVELY FREE OF CORRUPTION AND THOSE THAT SUFFER FROM SYSTEMIC MANIPULATION. INDICATORS OF JUDICIAL CORRUPTION MAP NEATLY ONTO BROADER MEASURES OF CORRUPTION: JUDICIARIES THAT SUFFER FROM SYSTEMIC CORRUPTION ARE GENERALLY FOUND IN SOCIETIES WHERE CORRUPTION IS RAMPANT ACROSS THE PUBLIC SECTOR. THERE IS ALSO A CORRELATION BETWEEN LEVELS OF JUDICIAL CORRUPTION AND LEVELS OF ECONOMIC GROWTH SINCE THE EXPECTATION THAT CONTRACTS WILL BE HONOURED AND DISPUTES RESOLVED FAIRLY IS VITAL TO INVESTORS, AND UNDERPINS SOUND BUSINESS DEVELOPMENT AND GROWTH.

DISTINGUISHED GUESTS, LADIES AND GENTLEMEN, THE GLOBAL CORRUPTION 2007 ATTESTS THAT MANY FACTORS MITIGATE CORRUPTION AND MANY STEPS CAN BE TAKEN TO ENSURE THAT JUDICIAL PROFESSIONALS AVOID ENGAGING IN IT. THESE INCLUDE ACCOUNTABILITY MECHANISMS THAT INCREASE THE CHANCES THAT JUDICIAL CORRUPTION WILL BE DETECTED AND PENALISED; SAFEGUARDS AGAINST INTERFERENCE FROM THE SPHERES OF POLITICS, BUSINESS AND ORGANISED CRIME; PROCESSES OF TRANSPARENCY THAT ALLOW THE MEDIA, CIVIL SOCIETY AND THE PUBLIC TO SCRUTINISE THEIR OWN JUDICIAL SYSTEMS; AND DECENT CONDITIONS OF EMPLOYMENT THAT CONVINCED JUDICIAL STAFF TO REMAIN ON THE STRAIGHT AND

NARROW. A JUDGE WORKING IN A JURISDICTION WHERE THE PROFESSION IS RESPECTED AND WELL COMPENSATED IS LESS LIKELY TO EXTRACT A BRIBE FROM A LITIGANT IN A LAND OR FAMILY DISPUTE THAN ONE WORKING IN LESS FAVOURABLE CONDITIONS.

WHAT THE GCR REVEALS ABOUT ZAMBIAS JUDICIARY STRUGGLES TO MODERNISE

LADIES AND GENTLEMEN, INVITED GUESTS, THE GCR 2007 REPORT STATES THAT THE SUPREME COURT IS AT THE APEX OF THE ZAMBIAN COURT SYSTEM PRESIDING OVER 453 LOCAL COURTS. BETWEEN THEM ARE 53 SUBORDINATE COURTS, ONE PER DISTRICT, AND FOUR PERMANENT HIGH COURTS SERVING THE COUNTRY'S NINE PROVINCES. ZAMBIA HAS A DUAL LEGAL SYSTEM, COMPRISING THE CUSTOMARY LAW OF ITS 73 ETHNIC GROUPS AND CONSTITUTIONAL LAW, BASED ON ENGLISH COMMON LAW. COMMON LAW IS ADMINISTERED BY THE HIGH COURTS, WHICH HAVE AUTHORITY TO HEAR CRIMINAL AND CIVIL CASES, AND APPEALS FROM THE LOWER COURTS. THE LOCAL COURTS ADMINISTER CUSTOMARY LAW. IT IS COMMON FOR THE TWO LAWS TO CLASH; SOME JUDGMENTS BASED ON COMMON LAW ARE UNPOPULAR BECAUSE THEY CONTRADICT TRADITION, MAINLY IN CASES RELATED TO MARRIAGE, PROPERTY AND INHERITANCE. LOCAL JUSTICES RECEIVE NO FORMAL TRAINING, RELYING INSTEAD ON EXPERIENCE, COMMON SENSE AND CUSTOM.¹ IN THE LOWER FORMAL COURTS THERE ARE THREE TYPES OF MAGISTRATES, ALL OF WHOM MUST HOLD LAW DEGREES: RESIDENT MAGISTRATES, SENIOR RESIDENT MAGISTRATES AND PRINCIPAL RESIDENT MAGISTRATES. THE PRESIDENT APPOINTS HIGH COURT AND SUPREME COURT JUDGES FROM AMONG THE PRINCIPAL RESIDENT MAGISTRATES, BASED ON EXPERIENCE AND COMPETENCE, BUT SUBJECT TO RATIFICATION BY THE NATIONAL ASSEMBLY.

HIGHER COURTS NOT FREE FROM CORRUPTION

INVITED GUESTS, THE GCR 2007 FURTHER STATES THAT CORRUPTION AFFECTS A NUMBER OF ZAMBIA'S INSTITUTIONS AND THE JUDICIARY HAS NOT BEEN SPARED. IN 2004 THE WORLD BANK CARRIED OUT A SERIES OF INDEPTH, COUNTRYWIDE SURVEYS OF CORRUPTION, ASSESSING THE VIEWS OF THREE GROUPS: HOUSEHOLDS, PUBLIC OFFICIALS AND BUSINESS ENTERPRISES.³ ABOUT 40 PER CENT OF HOUSEHOLDS AND 25 PER CENT OF BUSINESS MANAGERS REPORTED THAT BRIBES WERE PAID TO SPEED

UP LEGAL PROCEEDINGS. THIS HAS LED TO A NOTABLE EROSION OF CONFIDENCE IN THE JUSTICE SYSTEM. FOR EXAMPLE, OVER 80 PER CENT OF THE HOUSEHOLDS SURVEYED REPORTED THAT THEY NEEDED TO USE THE COURT SYSTEM, BUT DECIDED NOT TO, AND JUST OVER 60 PER CENT OF BUSINESSES SAID THE SAME. THE MOST NOTABLE EXAMPLE WAS THE FIRST ELECTION PETITION OF FORMER PRESIDENT CHILUBA IN WHICH THE SUPREME COURT WAS WIDELY PRESUMED TO HAVE BOWED TO EXECUTIVE PRESSURE. BUT THERE HAVE BEEN OCCASIONS WHEN THE COURTS STOOD UP TO THE GOVERNMENT TO PREVENT UNCONSTITUTIONAL LAWS AND ABUSE OF POWER.

THE GCR 2007 QUOTES THE WORLD BANK SURVEY IN 2004, WHICH REVEALED THAT 52 PER CENT OF BUSINESS MANAGERS BELIEVED THE COURTS WERE NOT INDEPENDENT FROM GOVERNMENT OR ECONOMIC PRESSURES, AND THAT JUSTICE WAS NOT ADMINISTERED FAIRLY OR TRANSPARENTLY. WHILE SOME COMMENTATORS HAVE SUGGESTED THAT JUDGES ARE INDEPENDENT FROM THE EXECUTIVE, THE SURVEY FINDINGS INDICATE THAT COURT USERS FEEL THAT IN REALITY THEY ARE NOT. ONE REASON FOR THIS IS THAT THE SYSTEM OF APPOINTMENTS ALLOWS THE PRESIDENT GREAT DISCRETION IN DECISION MAKING, THEREBY NEGATING SELECTION CRITERIA BASED ON INTEGRITY, MERIT AND POLITICAL IMPARTIALITY. TO EXPECT JUDICIAL OFFICERS, WHO MAY HAVE BEEN DEEPLY INVOLVED IN CORRUPTION WHEN THEY SERVED IN LOWER COURTS, TO UNDERGO A TRANSFORMATION ON THE ASSUMPTION OF HIGHER OFFICE IS A LOT TO ASK.

LACK OF HUMAN AND FINANCIAL RESOURCES

THE GCR 2007 ALSO STATES THAT THE SALARIES OF JUDGES, MAGISTRATES AND JUSTICES REMAIN UNSATISFACTORY, PARTICULARLY IN LOWER COURTS. IN JULY 1997, JUDGES' SALARIES WERE MORE THAN DOUBLED, BUT MAGISTRATES AND JUSTICES DID NOT BENEFIT. INADEQUATE HUMAN RESOURCES BESET THE DISPENSATION OF JUSTICE. ACCORDING TO THE MINISTRY OF JUSTICE, THERE WERE 65 DISTRICTS WITH 150 MAGISTRATES AND 453 LOCAL COURTS WITH AROUND 900 JUSTICES IN 2002. THE CHIEF ADMINISTRATOR OF COURTS AT THE TIME SAID THERE WERE ONLY MAGISTRATES TO COVER MAGISTRATE POSITIONS. UNDER THE LOCAL COURTS ACT CHAPTER, THE JUDICIAL SERVICE COMMISSION APPOINTS AS MANY LOCAL JUSTICES, LOCAL COURT ADVISERS AND LOCAL COURTS OFFICERS AS IT SEES FIT. LACK OF TRAINING AND SHORTAGES OF MAGISTRATES MEAN THAT POORLY TRAINED INDIVIDUALS (SOME OF

WHOM MAY SIMPLY BE RETIRED CIVIL SERVANTS RECOMMENDED BY TRADITIONAL LEADERS) ARE APPLYING COMPLEX LAWS TO DIFFICULT FACTS AND HAVE TO RELY ON THE COMPETENCE OF LAWYERS TO GUIDE THEM. IN THIS WAY, JUDGES ARE OPEN TO MANIPULATION BY LAWYERS SEEKING THE BEST DEAL FOR THEIR CLIENTS.

NEW DEAL' INCLUDES JUDICIAL REFORM

THE GCR 2007 NOTES THAT PRESIDENT MWANAWASA LAUNCHED HIS PRESIDENTIAL CAREER IN 2002 ON A STRONG ANTI-CORRUPTION PLATFORM. HIS 'NEW DEAL' VISION SEEKS TO DEVELOP A PROSPEROUS ZAMBIA FREE OF CORRUPTION. THE CURRENT FOCUS OF JUDICIAL REFORM IS TO BUILD COURT BUILDINGS AND PROPERLY EQUIP THEM. THE GOVERNMENT RECENTLY ALLOCATED FUNDS TO COURTS IN LUAPULA AND THE SOUTHERN PROVINCES AS A DEMONSTRATION OF THIS COMMITMENT TO REFORM AND IT HAS RECEIVED CONSIDERABLE ASSISTANCE FROM DONORS. NORWAY PROVIDED NEARLY US \$3 MILLION TO BUILD THE NEW MAGISTRATES' COURT COMPLEX IN LUSAKA. SWEDEN FURNISHED THE BUILDINGS, SPENDING APPROXIMATELY US \$650,000, AND CHINA SUPPLIED JUDICIAL STAFF WITH ELECTRIC TYPEWRITERS. MORE BROADLY, USAID BEGAN THE COURT ANNEXED MEDIATION PROGRAMME IN 2000, AND AS OF MARCH 2005 90 US-TRAINED ZAMBIANS HAD MEDIATED 1,800 CASES AND TAKEN A CERTAIN AMOUNT OF CONGESTION OUT OF THE SYSTEM. THE GERMAN DEVELOPMENT AGENCY, GTZ, IS WORKING WITH THE JUDICIARY, THE ZAMBIAN LAW DEVELOPMENT COMMISSION AND RURAL NGOS TO IMPROVE THE LEGAL STATUS OF THE FEMALE POPULATION, ALONGSIDE TRAINING LOCAL COURT PERSONNEL IN LAW, PROCEDURE AND SOCIAL ISSUES. THE PROJECT IS DESIGNED TO EQUIP LOCAL JUSTICES WITH THE SKILLS NECESSARY TO HANDLE CASES AND REDUCE CORRUPTION

BUT PERCEPTIONS OF CORRUPTION ON THE RISE

THE 2007 GCR REPORTS THAT IN VIEW OF THE FACT THAT PRESIDENT MWANAWASA HAS PLEDGED TO DO ALL HE CAN TO RID PUBLIC INSTITUTIONS OF CORRUPTION, IT IS DISTURBING THAT THE LOCAL CORRUPTION PERCEPTION INDEX OF 2005 SURVEY OF LUSAKA RESIDENTS SUGGESTS THAT THE COURTS ARE NOT IMPROVING: IN A RANKING OF INSTITUTIONS IN ORDER OF THE PERCEIVED MAGNITUDE OF CORRUPTION, THE COURTS HAVE SIGNIFICANTLY WORSENEDED. YET 60 PER CENT OF RESPONDENTS BELIEVE THAT THIS GOVERNMENT IS TAKING CORRUPTION MORE SERIOUSLY THAN ITS PREDECESSOR. IT REMAINS TO BE SEEN WHETHER THE PROMISE TO UPDATE

COURTHOUSES AND PROVIDE STAFF WITH TRAINING WILL BE MET. MEANWHILE, ATTENTION NEEDS ALSO TO BE PAID TO THE FOLLOWING:

- THERE IS A NEED TO RECRUIT MORE COURT OFFICIALS, FOR MORE CONTINUOUS PROFESSIONAL TRAINING AND IMPROVED SALARIES TO FACILITATE QUICKER DISPOSAL OF CASES
- A POLICY ON FURTHER TRAINING AND CAPACITY BUILDING OF JUDICIAL PERSONNEL IS REQUIRED
- • THE METHOD OF APPOINTING JUDGES, MAGISTRATES AND COURT JUSTICES REQUIRES REFORM
- • BENEFACTORS SHOULD CONSULT THE JUDICIARY IN NEEDY AREAS BEFORE DESIGNING PROGRAMMES.

TACKLING JUDICIAL CORRUPTION

LADIES AND GENTLEMEN, TI'S GLOBAL CORRUPTION REVIEW OF 32 COUNTRIES ILLUSTRATES THAT JUDICIAL CORRUPTION TAKES MANY FORMS AND IS INFLUENCED BY MANY FACTORS, WHETHER LEGAL, SOCIAL, CULTURAL, ECONOMIC OR POLITICAL. BENEATH THESE APPARENT COMPLEXITIES LIE COMMONALITIES THAT POINT THE WAY FORWARD TO REFORM. THE PROBLEMS MOST COMMONLY IDENTIFIED IN THE COUNTRY STUDIES ARE:

JUDICIAL APPOINTMENTS

FAILURE TO APPOINT JUDGES ON MERIT CAN LEAD TO THE SELECTION OF PLIANT, CORRUPTIBLE JUDGES.

TERMS AND CONDITIONS

POOR SALARIES AND INSECURE WORKING CONDITIONS, INCLUDING UNFAIR PROCESSES FOR PROMOTION AND TRANSFER, AS WELL AS A LACK OF CONTINUOUS TRAINING FOR JUDGES, LEAD TO JUDGES AND OTHER COURT PERSONNEL BEING VULNERABLE TO BRIBERY

ACCOUNTABILITY AND DISCIPLINE

UNFAIR OR INEFFECTIVE PROCESSES FOR THE DISCIPLINE AND REMOVAL OF CORRUPT

JUDGES CAN OFTEN LEAD TO THE REMOVAL OF INDEPENDENT JUDGES FOR REASONS OF POLITICAL EXPEDIENCY.

TRANSPARENCY

OPAQUE COURT PROCESSES PREVENT THE MEDIA AND CIVIL SOCIETY FROM MONITORING COURT ACTIVITY AND EXPOSING JUDICIAL CORRUPTION. THESE POINTS HAVE BEEN CONSPICUOUSLY ABSENT FROM MANY JUDICIAL REFORM PROGRAMMES OVER THE PAST TWO DECADES, WHICH HAVE TENDED TO FOCUS ON COURT ADMINISTRATION AND CAPACITY BUILDING, IGNORING PROBLEMS RELATED TO JUDICIAL INDEPENDENCE AND ACCOUNTABILITY. MUCH MONEY HAS BEEN SPENT TRAINING JUDGES WITHOUT ADDRESSING EXPECTATIONS AND INCENTIVES FOR JUDGES TO ACT WITH INTEGRITY. MONEY HAS ALSO BEEN SPENT AUTOMATING THE COURTS OR OTHERWISE TRYING TO REDUCE COURT WORKLOADS AND STREAMLINE CASE MANAGEMENT WHICH, IF UNACCOMPANIED BY INCREASED ACCOUNTABILITY, RISKS MAKING CORRUPT COURTS MORE EFFICIENTLY CORRUPT.

RECOMMENDATIONS

THE FOLLOWING RECOMMENDATIONS REFLECT BEST PRACTICE IN PREVENTING CORRUPTION IN JUDICIAL SYSTEMS AND ENCAPSULATE THE CONCLUSIONS DRAWN FROM THE ANALYSIS MADE THROUGHOUT THIS VOLUME. THEY ADDRESS THE FOUR KEY PROBLEM AREAS IDENTIFIED ABOVE: JUDICIAL APPOINTMENTS, TERMS AND CONDITIONS, ACCOUNTABILITY AND DISCIPLINE, AND TRANSPARENCY.

JUDICIAL APPOINTMENTS

INDEPENDENT JUDICIAL APPOINTMENTS BODY

AN OBJECTIVE AND TRANSPARENT PROCESS FOR THE APPOINTMENT OF JUDGES ENSURES THAT ONLY THE HIGHEST QUALITY CANDIDATES ARE SELECTED, AND THAT THEY DO NOT FEEL INDEBTED TO THE PARTICULAR POLITICIAN OR SENIOR JUDGE WHO APPOINTED THEM. AT THE HEART OF THE PROCESS IS AN APPOINTMENTS BODY ACTING INDEPENDENTLY OF THE EXECUTIVE AND THE LEGISLATURE, WHOSE MEMBERS HAVE BEEN APPOINTED IN AN OBJECTIVE AND TRANSPARENT PROCESS. REPRESENTATIVES FROM THE EXECUTIVE AND LEGISLATIVE BRANCHES SHOULD NOT FORM A MAJORITY ON THE APPOINTMENTS BODY.

MERIT-BASED JUDICIAL APPOINTMENTS

ELECTION CRITERIA SHOULD BE CLEAR AND WELL PUBLICISED, ALLOWING CANDIDATES, SELECTORS AND OTHERS TO HAVE A CLEAR UNDERSTANDING OF WHERE THE BAR FOR SELECTION LIES; CANDIDATES SHOULD BE REQUIRED TO DEMONSTRATE A RECORD OF COMPETENCE AND INTEGRITY.

CIVIL SOCIETY PARTICIPATION

CIVIL SOCIETY GROUPS, INCLUDING PROFESSIONAL ASSOCIATIONS LINKED TO JUDICIAL ACTIVITIES, SHOULD BE CONSULTED ON THE MERITS OF CANDIDATES.

TERMS AND CONDITIONS

JUDICIAL SALARIES

SALARIES MUST BE COMMENSURATE WITH JUDGES' POSITION, EXPERIENCE, PERFORMANCE AND PROFESSIONAL DEVELOPMENT FOR THE ENTIRETY OF THEIR TENURE; FAIR PENSIONS SHOULD BE PROVIDED ON RETIREMENT.

JUDICIAL PROTECTIONS

LAWS SHOULD SAFEGUARD JUDICIAL SALARIES AND WORKING CONDITIONS SO THAT THEY CANNOT BE MANIPULATED BY THE EXECUTIVE AND THE LEGISLATURE TO PUNISH INDEPENDENT JUDGES AND/OR REWARD THOSE WHO RULE IN FAVOUR OF GOVERNMENT.

JUDICIAL TRANSFERS

OBJECTIVE CRITERIA THAT DETERMINE THE ASSIGNMENT OF JUDGES TO PARTICULAR COURT LOCATIONS ENSURE THAT INDEPENDENT OR NON-CORRUPTED JUDGES ARE NOT PUNISHED BY BEING DISPATCHED TO REMOTE JURISDICTIONS. JUDGES SHOULD NOT BE ASSIGNED TO A COURT IN AN AREA WHERE THEY HAVE CLOSE TIES OR LOYALTIES WITH LOCAL POLITICIANS.

CASE ASSIGNMENT AND JUDICIAL MANAGEMENT

CASE ASSIGNMENT THAT IS BASED ON CLEAR AND OBJECTIVE CRITERIA,

ADMINISTERED BY JUDGES AND REGULARLY ASSESSED PROTECTS AGAINST THE ALLOCATION OF CASES TO PRO-GOVERNMENT OR PRO-BUSINESS JUDGES.

ACCESS TO INFORMATION AND TRAINING

JUDGES MUST HAVE EASY ACCESS TO LEGISLATION, CASES AND COURT PROCEDURES, AND RECEIVE INITIAL TRAINING PRIOR TO OR UPON APPOINTMENT, AS WELL AS CONTINUING TRAINING THROUGHOUT THEIR CAREERS. THIS INCLUDES TRAINING IN LEGAL ANALYSIS, THE EXPLANATION OF DECISIONS, JUDGMENT WRITING AND CASE MANAGEMENT, AS WELL AS ETHICAL AND ANTI-CORRUPTION TRAINING.

SECURITY OF TENURE

SECURITY OF TENURE FOR JUDGES SHOULD BE GUARANTEED FOR AROUND 10 YEARS, NOT SUBJECT TO RENEWAL, SINCE JUDGES TEND TO TAILOR THEIR JUDGMENTS AND CONDUCT TOWARDS THE END OF THE TERM IN ANTICIPATION OF RENEWAL.

ACCOUNTABILITY AND DISCIPLINE

IMMUNITY

LIMITED IMMUNITY FOR ACTIONS RELATING TO JUDICIAL DUTIES ALLOWS JUDGES TO MAKE DECISIONS FREE FROM FEAR OF CIVIL SUIT; IMMUNITY DOES NOT APPLY IN CORRUPTION OR OTHER CRIMINAL CASES.

DISCIPLINARY PROCEDURES

DISCIPLINARY RULES ENSURE THAT THE JUDICIARY CARRIES OUT INITIAL RIGOROUS INVESTIGATION OF ALL ALLEGATIONS. AN INDEPENDENT BODY MUST INVESTIGATE COMPLAINTS AGAINST JUDGES AND GIVE REASONS FOR ITS DECISIONS.

TRANSPARENT AND FAIR REMOVAL PROCESS

STRICT AND EXACTING STANDARDS APPLY TO THE REMOVAL OF A JUDGE. REMOVAL MECHANISMS FOR JUDGES MUST BE CLEAR, TRANSPARENT AND FAIR, AND REASONS NEED TO BE GIVEN FOR DECISIONS. IF THERE IS A FINDING OF CORRUPTION, A JUDGE IS LIABLE TO PROSECUTION.

DUE PROCESS AND APPELLATE REVIEWS

A JUDGE HAS THE RIGHT TO A FAIR HEARING, LEGAL REPRESENTATION AND AN APPEAL IN ANY DISCIPLINARY MATTER.

CODE OF CONDUCT

A CODE OF JUDICIAL CONDUCT PROVIDES A GUIDE AND MEASURE OF JUDICIAL CONDUCT, AND SHOULD BE DEVELOPED AND IMPLEMENTED BY THE JUDICIARY. BREACHES MUST BE INVESTIGATED AND SANCTIONED BY A JUDICIAL BODY.

WHISTLEBLOWER POLICY

A CONFIDENTIAL AND RIGOROUS FORMAL COMPLAINTS PROCEDURE IS VITAL SO THAT LAWYERS, COURT USERS, PROSECUTORS, POLICE, MEDIA AND CIVIL SOCIETY CAN REPORT SUSPECTED OR ACTUAL BREACHES OF THE CODE OF CONDUCT, OR CORRUPTION BY JUDGES, COURT ADMINISTRATORS OR LAWYERS.

STRONG AND INDEPENDENT JUDGES' ASSOCIATION

AN INDEPENDENT JUDGES' ASSOCIATION SHOULD REPRESENT ITS MEMBERS IN ALL INTERACTIONS WITH THE STATE AND ITS OFFICES. IT SHOULD BE AN ELECTED BODY; ACCESSIBLE TO ALL JUDGES; SUPPORT INDIVIDUAL JUDGES ON ETHICAL MATTERS; AND PROVIDE A SAFE POINT OF REFERENCE FOR JUDGES WHO FEAR THEY MAY HAVE BEEN COMPROMISED.

TRANSPARENCY

TRANSPARENT ORGANISATION

THE JUDICIARY MUST PUBLISH ANNUAL REPORTS OF ITS ACTIVITIES AND SPENDING, AND PROVIDE THE PUBLIC WITH RELIABLE INFORMATION ABOUT ITS GOVERNANCE AND ORGANISATION.

TRANSPARENT WORK

THE PUBLIC NEEDS RELIABLE ACCESS TO INFORMATION PERTAINING TO LAWS, PROPOSED CHANGES IN LEGISLATION, COURT PROCEDURES, JUDGMENTS, JUDICIAL VACANCIES, RECRUITMENT CRITERIA, JUDICIAL SELECTION PROCEDURES AND REASONS FOR JUDICIAL APPOINTMENTS.

TRANSPARENT PROSECUTION SERVICE

THE PROSECUTION MUST CONDUCT JUDICIAL PROCEEDINGS IN PUBLIC (WITH LIMITED EXCEPTIONS, FOR EXAMPLE CONCERNING CHILDREN); PUBLISH REASONS FOR DECISIONS; AND PRODUCE PUBLICLY ACCESSIBLE PROSECUTION GUIDELINES TO DIRECT AND ASSIST DECISION MAKERS DURING THE CONDUCT OF PROSECUTIONS.

JUDICIAL ASSET DISCLOSURE

JUDGES SHOULD MAKE PERIODIC ASSET DISCLOSURES ESPECIALLY WHERE OTHER PUBLIC OFFICIALS ARE REQUIRED TO DO SO.

JUDICIAL CONFLICTS OF INTEREST DISCLOSURE

JUDGES MUST DECLARE CONFLICTS OF INTEREST AS SOON AS THEY BECOME APPARENT AND DISQUALIFY THEMSELVES WHEN THEY ARE (OR MIGHT APPEAR TO BE) BIASED OR PREJUDICED TOWARDS A PARTY TO A CASE; WHEN THEY HAVE PREVIOUSLY SERVED AS LAWYERS OR MATERIAL WITNESSES IN THE CASE; OR IF THEY HAVE AN ECONOMIC INTEREST IN THE OUTCOME.

WIDELY PUBLICISED DUE PROCESS RIGHTS

FORMAL JUDICIAL INSTITUTIONAL MECHANISMS ENSURE THAT PARTIES USING THE COURTS ARE LEGALLY ADVISED ON THE NATURE, SCALE AND SCOPE OF THEIR RIGHTS AND PROCEDURES BEFORE, DURING AND AFTER COURT PROCEEDINGS.

FREEDOM OF EXPRESSION

JOURNALISTS MUST BE ABLE TO COMMENT FAIRLY ON LEGAL PROCEEDINGS AND REPORT SUSPECTED OR ACTUAL CORRUPTION OR BIAS. LAWS THAT CRIMINALISE DEFAMATION OR GIVE JUDGES DISCRETION TO AWARD CRIPPLING COMPENSATION IN LIBEL CASES INHIBIT THE MEDIA FROM INVESTIGATING AND REPORTING SUSPECTED CRIMINALITY, AND SHOULD BE REFORMED.

QUALITY OF COMMENTARY

JOURNALISTS AND EDITORS SHOULD BE BETTER TRAINED IN REPORTING WHAT HAPPENS IN COURTS AND IN PRESENTING LEGAL ISSUES TO THE GENERAL PUBLIC IN AN UNDERSTANDABLE FORM. ACADEMICS SHOULD BE ENCOURAGED TO COMMENT ON COURT JUDGMENTS IN LEGAL JOURNALS, IF NOT IN THE MEDIA.

CIVIL SOCIETY ENGAGEMENT, RESEARCH, MONITORING AND REPORTING

CIVIL SOCIETY ORGANISATIONS CAN CONTRIBUTE TO UNDERSTANDING THE ISSUES RELATED TO JUDICIAL CORRUPTION BY MONITORING THE INCIDENCE OF CORRUPTION, AS WELL AS POTENTIAL INDICATORS OF CORRUPTION, SUCH AS DELAYS AND THE QUALITY OF DECISIONS.

- **DONOR INTEGRITY AND TRANSPARENCY**

DONORS SHOULD SHARE KNOWLEDGE OF DIAGNOSTICS, EVALUATION OF COURT PROCESSES AND EFFICIENCY; AND ENGAGE OPENLY WITH PARTNER COUNTRIES. THESE RECOMMENDATIONS COMPLEMENT A NUMBER OF INTERNATIONAL STANDARDS ON JUDICIAL INTEGRITY AND INDEPENDENCE, AS WELL AS VARIOUS MONITORING AND REPORTING MODELS THAT HAVE BEEN DEVELOPED BY NGOS AND GOVERNMENTAL ENTITIES. THEY HIGHLIGHT A GAP IN THE INTERNATIONAL LEGAL FRAMEWORK ON JUDICIAL ACCOUNTABILITY MECHANISMS.

CONCLUSION

IN CONCLUSION, LADIES AND GENTLEMEN, THERE IS NO MAGIC SET OF STRUCTURES AND PRACTICES THAT WILL REDUCE CORRUPTION IN ALL SITUATIONS. NEVERTHELESS, THE RECOMMENDATIONS SERVE AS A GUIDE FOR REFORM EFFORTS TO PROMOTE JUDICIAL INDEPENDENCE AND ACCOUNTABILITY, AND ENCOURAGE MORE EFFECTIVE, EFFICIENT AND FAIR ENFORCEMENT. AS THE REPORT DEMONSTRATES, MULTI-FACETED, HOLISTIC REFORM OF THE JUDICIARY IS A CRUCIAL STEP TOWARD ENHANCING JUSTICE AND CURBING THE CORRUPTION THAT DEGRADES LEGAL SYSTEMS AND RUINS LIVES THE WORLD OVER.

LADIES AND GENTLEMEN, AN ENORMOUS CHALLENGE FOR THE ANTI-CORRUPTION MOVEMENT IS TO ENSURE THAT ANTI-CORRUPTION LAWS ARE ENFORCED AND THAT LEGAL REDRESS FOR INJUSTICE CAN BE SECURED THROUGH A FUNCTIONING JUDICIAL SYSTEM. THE FAILURE OF JUDGES AND THE BROADER JUDICIARY TO MEET THESE LEGITIMATE EXPECTATIONS PROVIDES A FERTILE BREEDING GROUND FOR CORRUPTION. IN SUCH ENVIRONMENTS EVEN THE BEST ANTI-CORRUPTION LAWS BECOME MEANINGLESS.

I THANK YOU.