

# **Full Text of Letter to Donor Community from Zambian Opposition**

**6 June 2012**

**Open Letter to the International Donor Community to the Republic of Zambia**

**RE: Crisis of Confidence in Zambia's Public Institutions**

Dear Friends,

We are writing to you today on an urgent basis to draw your attention to worrying events that have arisen in the Republic of Zambia since September 2011. The developments outlined below, which have taken place under the Patriotic Front administration of President Michael Chilufya Sata, have contributed to a rapid erosion of public trust across all of Zambia's institutions of government, resulting in a crisis of confidence. Providers of foreign aid can no longer trust the Zambian government at its word to observe the law or fulfill its promises, and steps must be taken to monitor and ensure that these critical resources are not diverted away from their intended purposes.

It is our concern that continued unconditional donor support to the Patriotic Front administration will further fuel the disturbing trends that represent a sharp departure from the laws, norms, traditions, and constitutional culture of the country. As detailed below, President Sata has engaged in a concerted effort to 1) install members of family and friends in all key positions of the country's economic management, 2) assault the independence of the judiciary, and 3) systematically eliminate democratic rights of the political opposition and freedom of expression.

Foreign aid is critically important to the Zambian economy and the wellbeing of her people, and we do not make this appeal without measured consideration. However, as international donors, there is a responsibility to ensure that the resources provided in trust to the guardians of the state will include a reasonable expectation of delivery of public goods and services to the citizens. Given the alarming circumstances related to the deterioration of governance in Zambia, we are calling on the donor community to closely monitor compliance of programs by the state, and where possible, work directly with recipient groups to ensure against diversion of resources by unaccountable state officials. In these circumstances it is reasonable

for the donor community to ask basic questions concerning the intentions and motives of the Patriotic Front government.

## **1. Nepotism and Deficient Economic Management**

The most worrying sign that Sata's government is incapable of competent economic management is the wide-ranging trend of nepotism across most key positions. Sata appointed his uncle, Alexander Chikwanda, as Minister of Finance. He has appointed his nephew, Miles Sampa, as Deputy Minister of Finance. As Secretary to the Treasury, the third position in the hierarchy of the Ministry of Finance, Sata has installed a Brother In Law, Fredson Yamba. He appointed Robert Sichinga as Minister of Commerce, whose son is married to his daughter. He also appointed another nephew, Godfrey Bwalya Mwamba, as Minister of Defense. Further, in a country of so many regions, more than 50% of his cabinet originates from his region.

As a result of the installation of close members of family over the key financial levers of the state, we have already observed rampant abuses of power and several alleged cases of corruption that bear close examination by the donor community.

Contributing to the crisis of confidence in Zambia's public institutions was President Sata's rushed decision to repossess Finance Bank from its South African owners, First National, and hand the financial institution back to the bank's former owner, Rajan Mahtani, one of Sata's largest financial supporters. [\[1\]](#) This transaction was executed on October 3, 2011 – just ten days after Sata's inauguration – while two charges of forgery against Mr. Mahtani concerning his management of Finance Bank were mysteriously dropped without reason by the new government.

The seizure of Finance Bank by the Patriotic Front government calls into question the independence of banking regulation in Zambia. On December 31, 2010, the Bank of Zambia (BOZ), whose Governor is tasked with public oversight of the country's financial institutions, [issued a Government Gazette outlining all the violations of law by the management of Finance Bank that prompted the State to intervene](#). The findings of the BOZ investigation of Finance Bank, which included fraudulent representation of shareholdings and numerous violations of the Banking and Financial Services Act, CAP 387 (BFSA), have never been disputed or retracted.

The repossession of Finance Bank and transfer back to the former owner was conducted in violation of normal judicial process. Dr. Caleb Fundanga, the highly regarded Governor of the Bank of Zambia,[\[2\]](#) was removed from his post by President Sata. The position was left vacant for a period of three months, essentially rendering Zambia in the unique position of having no acting regulator over the banking sector for a considerable period of time.

The installation of members of the president's family to key economic posts has also resulted in highly controversial public procurement awards. For example, President Sata has recently awarded a 600 million kwacha no-bid contract for the renovation of State House to a company owned by Finance Minister Chikwanda. The ownership of the company and the single-sourced nature of the contract is not disputed by the government. A company owned by Sata's nephew and Minister of Defense, appropriately titled "GBM," has procured a lucrative contract for the provision of foodstuffs to the armed forces, and is alleged to be involved in other public contracts.

In addition to these conflicts of interest, President Sata has begun personally rewarding his political cadres with positions in state-owned companies, when by law the candidates for such positions should be nominated and selected only by the board of directors. At several key public companies, such as ZESCO, ZNBC, the Zambian National Building Society (ZNBS), Food Reserve Agency (FRA), National Pension Scheme (NAPSA), and the Workers Compensation Fund, Sata has appointed new chief executive officers and other positions. The competency of the individuals chosen for these important positions has been called into question – for example, Sata appointed the secretary general of the party, Wynter Kabimba, to act as interim head of Zamtel, the re-nationalized telecom, despite a total absence of any experience in telecommunications.

## **2. The Patriotic Front's Attack on the Independence of the Judiciary**

Accompanying this takeover of Zambia's economic institutions has been a parallel campaign to take political control over the judiciary, damaging the ability of Zambia's courts to administer justice, and leaving the system vulnerable to abuses benefitting friends and allies of the president.

As clearly stated in the Patriotic Front's 2011-2016 Manifesto under Section 22, page 42, the government declares its intention to install PF members throughout all positions of the judiciary, which by definition contravenes the principle of judicial independence.<sup>[3]</sup>

In the brief eight months since Sata has been in office, there have been numerous instances of executive interference in judicial matters, as the president has sought to circumvent due process through politically appointed commissions of inquiry, persecuting opponents with false cases, tribunals, and calling for the removal of independent judges.

This worrying confrontation between the executive and the judiciary culminated in May 2012, as President Sata brought judge with whom he has a personal relationship from Malawi to sit on a judicial review tribunal aimed at clearing out members of the judiciary he deems as insufficiently loyal to the Patriotic Front. Even before the Tribunal could sit, and providing no stated reason, Sata suspended one Supreme Court judge and two High Court judges for their involvement in a ruling in the case of Development Bank of Zambia (DBA) vs. JCN Holdings, Nchito, Nchito, and M'membe.

One of these judges had found that the defendants, which include newspaper editor Fred M'Membe – Sata's close political ally – and Mutembo Nchito – who works as Sata's Director of Public Prosecutions (DPP), were liable for the repayment of a 14 billion kwacha debt to the publicly owned financial institution following the bankruptcy of Zambian Airways. The president intervened to suspend the judges for this "unfavorable" judicial finding, and appointed a Tribunal to remove the judges despite the fact that the case in question had not yet gone through the appeals process, representing a constitutional violation.

On May 17, a High Court judge issued an injunction on Sata's Tribunal pending the outcome of two of the suspended judges' appeals for judicial review, postponing until May 30 a decision whether or not the unlawfully formed Tribunal will be able to proceed. In response, the Patriotic Front's Minister of Justice Sebastian Zulu lashed out at the judiciary with pointed threats, saying that they had acted out of "panic."<sup>[4]</sup>

The government's attacks against judicial independence have increased in recent weeks. The Deputy Minister of Mines Richard Musukwa was quoted in The Post Newspaper on June 4, 2012, arguing for the complete dissolution of the judiciary, leaving Zambia entirely without any legal system for a period of months while a new politically loyal judiciary would built

anew. Days earlier, Justice Minister Zulu threatened that the Patriotic Front would be willing to dissolve the judiciary in the event that they are unable to accomplish their agenda. Such statements are deeply troubling to foreign investors and cause significant damage to Zambia's reputation of stability and sanctity of contracts.

Amid calls by Patriotic Front members for the Chief Justice and other members of the judiciary to resign en masse and then "reapply" for their positions, Justice Minister Zulu remarked "This growing trend where we are having a dictatorship of the judiciary is a recipe for anarchy, and if not nipped in the bud may lead to serious problems in this country."<sup>[5]</sup>

These events occur within the context of an ongoing campaign to apply pressure on the judiciary and instrumentalize the courts with pre-determined verdicts.

During the swearing in ceremony of Mr. Nchito to the position of DPP,<sup>[6]</sup> President Sata violated the constitutional separation of powers by giving specific instructions regarding prosecution. President Sata stated the following:

*"Today we have a very deadly legal joint with attorney general, the solicitor general and yourself. We expect you to assist the judiciary because don't blame the judiciary if they are acquitting people if you don't prepare your cases properly. If you are you have half baked cases, you have to improve. Look at some of the old cases privatisation of Roan Mine, privatisation of Kagem, privatisation of Lima Bank, privatisation of Intercontinental Livingstone. All of those are cases stinking with corruption. You have all been called back. Your former chairman is now permanent secretary and the minister of home affairs and I'm sure that with the attorney general who was once harassed because they didn't like his hands stinking or that he was going to round them up, we expect to leave Zambia better than we found it. **There are still some Chinese companies, there are still some Chinese companies which are funding MMD If you get in touch with the people the drug enforcement they'll give you the details, and they will give you the names, and when you go to Zamtel don't look at Zambians only. These Libyans is the one who corrupted Zambians so don't go for Zambians you must also go for the Libyans from "Lap Green" They are the ones who have dirty money and dirty hands. Sort them out!**" (emphasis added)<sup>[7]</sup>*

In the first eight months of the Patriotic Front's administration, no fewer than eight separate Commissions of Inquiry have been appointed. These handpicked commissions have served as

a convenient tool to circumvent normal judicial processes to justify both the seizure of assets and persecutions of opponents. Concluding that “President [Sata] had a pre-determined idea” in establishing his commissions of inquiry, Zambia’s Centre for Policy Dialogue has found that “the commissions of inquiry constituted by President Michael Sata to investigate the alleged corruption activities by the MMD are a waste of public funds”.[\[8\]](#)

The credibility of several of these Commissions of Inquiry has been called into question for the independence of the appointed chairpersons. The commissions are rarely chaired by politically neutral judicial figures. The commission studying oil supply deals is chaired by the aforementioned Mr. Kabimba of the Patriotic Front party, while the commissions on the revenue authority and Zamtel (which was already expropriated) were chaired by Justice Minister Zulu. Another Commission of Inquiry has investigated the sale of Zanaco bank, which has raised fears that another expropriation could be forthcoming.[\[9\]](#) These fears of expropriation have resulted in two successive credit rating downgrades by international rating agency Fitch.[\[10\]](#)

Beyond the judiciary, President Sata is determined to appoint members of the Patriotic Front throughout every level of public institutions. Since his election to the presidency, Sata has repeatedly violated protocol by naming the Secretary General of the party, Mr. Kabimba, as third in command behind Vice President Guy Scott and ahead of the speaker of parliament – despite Mr. Kabimba not having an official portfolio in the cabinet.[\[11\]](#)

### **3. Sata’s crackdown on opposition and freedom of expression**

In conjunction with the installation of family members throughout the Ministries of Finance, Commerce, and Defense and the campaign to eliminate judicial independence, President Sata has embarked on an increasingly open war on the rights of the political opposition and freedom of expression.

Under the guise of an “anti-corruption campaign,” the Patriotic Front has persecuted numerous political opponents on implausible grounds. The report by the Commission of Inquiry set up to look into the Zambia Revenue Authority has been the main source of allegations mounted against former Finance Minister Musokotwane as well as the former President Rupiah Banda. President Sata has exerted clear pressure over this commission to deliver the desired results. On December 23, 2011, Sata publicly berated the chairman of the

Commission for failing to take action against the former government over scanners, over which he was personally convinced of wrongdoing despite the absence of an investigation and a normal judicial process.[\[12\]](#) Following that intervention, the Chairman of the Commission returned on January 27, 2012 recommending that Rupiah Banda, Musokotwane, and eleven other government officials be sanctioned over the procurement of scanners and a tax deferment.[\[13\]](#)

The government's manipulation of the investigative wings has had a profound impact on the ability of opposition parties to operate. Despite very few formal charges or concluded trials, the Patriotic Front has seized hundreds of vehicles, thousands of bicycles, and even bags of cornmeal and t-shirts from various opposition figures, preventing them from competing in upcoming by-elections.

The anti-corruption campaign has also been used to launder reputations of members of the Patriotic Front. For example, the President's son, Mulenga Sata, briefly appeared before the Drug Enforcement Commission (DEC) to answer questions regarding two luxury vehicles that were allegedly given to him in exchange for access to the president. He was promptly cleared without undergoing any serious investigation. Similarly, the PF Member of Parliament Sylvia Masebo was cleared by the Anti-Corruption Commission (ACC) in a case involving the procurement of funeral vehicles. While former members of MMD who switched parties to the PF have had their cases dropped, not a single member of the opposition has been cleared by the anti-corruption authorities, leaving some on the hook since October 2011, with their property seized and movements limited.

Although the President enjoys immunity from prosecution, he initiated a series of defamation lawsuits aimed at his critics that stifle freedom of expression among the Zambian media. In May, a civil servant employed by the Zambian government was convicted and sentenced to three months in jail for having allegedly defamed the president. Within a period of one week, the independent Daily Nation newspaper has received two legal suits from President Sata for defamation of character, demanding payments of more than US\$400,000.

President Sata has also sued University of Zambia lecturer Choolwe Beyani over comments made in a news article. Hakainde Hichilema, an opposition leader of the United Party for National Development, has also been named in a lawsuit from President Sata for having commented publicly about the aforementioned no-bid contract to renovate State House.

President Sata has also launched lawsuits against the independent radio station HOT FM, along with UPND member Douglas Siakalima. In total, the president is seeking payment of more than \$1 million in these various suits, which, no matter what the outcome in the courts, place enormous financial pressure on the opposition and the few remaining independent media outlets in the country.

In light of the witch hunt currently being conducted against the opposition under the guise of “anti-corruption” and the ongoing attack against any media outside the state’s control, we urge the international donor community to demand a higher standard of conduct from the ruling party.

## **Conclusion**

Given the events and circumstances described above, Zambia is currently experiencing a crisis of confidence in the quality of its governance, raising credible and legitimate doubts that the current group of individuals in the seats of power can be trusted to issue debt, transparently manage financial resources, or conduct themselves within the boundaries of the constitution.

Considering the nepotism exercised within the Ministry of Finance and the unlawful handling of major transactions such as the repossession of Finance Bank and the judicial intervention to block the repayment of 14 billion kwacha to the state, it is no longer possible to regard the Patriotic Front administration as operating with constitutional regularity framed by observation of the law. Members of the international donor community must be made aware of these worrying signs of state capture by a small group of economic elites who have repeatedly applied their influence within the official apparatus to manufacture outcomes directed toward their personal gain, rather than the public good.

It is expected of the donor community that they will act in the interests of the Zambian people, and support their universal rights to freedom of expression and association to participate as citizens in the administration of public affairs no matter what political beliefs they may hold. In order to effectively protect these rights, while we encourage continued financial and other assistance to Zambia, as we are concerned about our own Zambian tax payers money, we expect that the donors too would ensure that their own tax payers money is used to promote the above.

Among the questions that should be answered by the government of President Sata as donors provide aid are the following:

- Why was a large donation of fuel made to Malawi just weeks before Zambia experienced its own fuel shortage? How was the company selected to carry out the transportation of this fuel to Malawi?
- In the recent oil procurement contract awarded to Trafigura and Gunvor, why were the more competitively priced bids overlooked? Who acted as agent for these suppliers, and does this person have a relationship to any political figures?
- Which government accounts have been moved to which commercial banks since President Sata was inaugurated as president?
- Which insurance government portfolios have been shifted to which insurance companies since Sata's inauguration?
- Who acted as agent for the company selected to print currency as part of the rebasing of the kwacha?

We believe in light of the above, an emergency visit should be undertaken where members of civil society, opposition, and the government might dialogue with you to work out a suitable arrangement to ensure that donor funds reach those who were intended.

Sincerely,

Nevers Mumba

Movement for Multiparty Democracy (MMD)

Hakainde Hichilema

United Party for National Development (UPND)

Charles Milupi

Alliance for Democracy and Development (ADD)

Sakwiba Sikota

United Liberal Party (ULP)

Edwin Sakala

Zambia Direct Democracy Movement (ZDDM)

Robert Amsterdam

International Counsel to the Former President Rupiah Banda and son Henry Banda

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[1] Rajan Mahtani's financial support to Sata's campaign was first acknowledged in a newspaper advertisement following the 2008 elections, in which Sata thanked his financiers for all their generous support.

[2] Dr. Fundanga was named the 2008 Central Bank Governor of the Year by Annual Meetings Daily. A citation by the Annual Meetings Daily stated: "Zambia's monetary policy, in the past half a decade has been designed to have a positive impact on the country's economy. Today, the economy is buoyant, thanks to a number of factors, including the work of the economic management team, favourable commodity prices and of course, sound macro economic policies managed by the Bank of Zambia (BoZ)."

[3] Under Section 22 of the Manifesto, the ruling party declares its intention to "Deploy government sponsored law graduates to public legal institutions, such as the magistrates courts, attorney-General's and DPP's chambers, Public Defender's chambers as well as local authorities." Source: <http://www.scribd.com/Zambian-Economist/d/52257938-Patriotic-Front-2011-16-Manifesto>

[4] [http://www.postzambia.com/post-read\\_article.php?articleId=27286](http://www.postzambia.com/post-read_article.php?articleId=27286)

[5] [http://www.gulf-times.com/site/topics/article.asp?cu\\_no=2&item\\_no=506338&version=1&template\\_id=39&parent\\_id=21](http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=506338&version=1&template_id=39&parent_id=21)

[6] "Sort Out Lap Green, Sata Orders Nchito," The Post, Jan. 14, 2012 ([http://www.postzambia.com/post-read\\_article.php?articleId=24703](http://www.postzambia.com/post-read_article.php?articleId=24703))

[7] The video of President Sata's comments to the Director of Public Prosecutions Mutembo Nchito was uploaded by MuviTV on January 12, 2012 (<http://youtu.be/Pz46kPD1t9Q>)

[8] "Simuntanyi: All commissions of inquiry by Sata waste of public money", Zambia Watchdog, April 11, 2012 (<http://www.zambianwatchdog.com/?p=33330>).

[9] As recently as May 18, 2012, President Sata threatened to expropriate Zanaco bank from its private owners. Source: [http://www.postzambia.com/post-read\\_article.php?articleId=27313](http://www.postzambia.com/post-read_article.php?articleId=27313)

[10] "Fitch revises Zambia outlook to negative," Reuters, March 2, 2012. <http://af.reuters.com/article/investingNews/idAFJJOE82105320120302>

[11] On April 26, 2012, Mr. Kabimba was given "a position" in the cabinet, but no one is sure what his duties are, while Mr. Kabimba himself has subsequently denied that he has any role in the government (<http://www.lusakatimes.com/2012/05/18/role-government-kabimba/>).

[12] “Inquiry on ZRA annoys Sata ,” The Post Newspaper, Dec. 23, 2011.  
([http://www.postzambia.com/post-read\\_article.php?articleId=24332](http://www.postzambia.com/post-read_article.php?articleId=24332))

[13] “Prosecute Rupiah, urges ZRA inquiry ,” The Post Newspaper, Jan. 27, 2011.  
([http://www.postzambia.com/post-read\\_article.php?articleId=24824](http://www.postzambia.com/post-read_article.php?articleId=24824))