

Zambia

Deregulation and the denial of human rights

Submission to the Committee on
Economic, Social and Cultural Rights

Full Report

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Preface

The material in this submission is drawn from both field work in Zambia and from extensive desk studies. Project staff visited Zambia in January 1998, and returned to the country in August 1998, December 1998, and March 1999.

In the Copperbelt, meetings and interviews were conducted with smallholders, retrenched, miners, and residents of squatter settlements in urban, peri-urban and mining communities; with community-based organisations and domestic NGOs (*inter alia*, The Copperbelt Retrenched Association, The Mufulira Peri-Urban Project); with ZCCM officials in the operating Divisions, Corporate Offices and the Operations Centre; with Town Clerks (the Administrative Heads of local councils) and council officials in several mining towns; and with trade union officials in the Mineworkers Union of Zambia.

In Lusaka, meetings were held with the Zambia Privatisation Agency; with government officials and civil servants at the Ministry of Mines, the Ministry of Community Development, and the National Social Safety Net Co-ordinating Committee within the Ministry of Labour and Social Security; with staff at the Environmental Council of Zambia; with the World Bank Country Representative, the Commonwealth Development Corporation, UNICEF, UNDP, USAID, the Study Fund, development NGOs (*inter alia*, Oxfam Zambia, The Catholic Commission for Justice and Peace), and staff at the University of Zambia; and with representatives of the business community and officials in the Zambia Congress of Trade Unions. The principal private companies involved in the purchase of ZCCM packages have, in most instances, been contacted by letter in an attempt to clarify issues relating to employment levels, conditions of service, the management of social assets, and impacts on the wider community of current and proposed operations.

Principal abbreviations

AAC	Anglo American Corporation	KCM plc	Konkola Copper Miens plc
ADB	African Development Bank	LCMS	Living Conditions Monitoring Survey
Afronet	Inter-African Network for Human Rights and Development	MAI	Multilateral Agreement on Investment
AIDS	Acquired Immune Deficiency Syndrome	M&R	Memorandum and Recommendation to the Executive Directors
APL	Adaptable Program of Lending	MMD	Movement for Multiparty Democracy
ASIP	Agricultural Investment Programme	MMR	Maternal Mortality Ratio
BESSIP	Basic Education Sub-Sector Investment Programme	MUZ	Mineworkers Union of Zambia
BOP	Balance of Payments	NER	Net enrolment rate
CAR	Country Assistance Review	NGO	Non-Governmental Organisation
CAS	Country Assistance Strategy	NHP	National Housing Policy
CBH	Central Board of Health	NWASCO	National Water Supply and sanitation Council
CDC	Commonwealth Development Corporation	OECD	Organisation for Economic Development
CEACR	Committee of Experts on the Application of Conventions and Recommendations	PAD	Program Appraisal Document
CEDAW	Convention on the Elimination of Discrimination Against Women	PAR	Performance Audit Report
CFA	ILO Committee on Freedom of Association	PCR	Project Completion Report
CG	Consultative Group	PFP	Policy Framework Paper
CRC	Convention on the Rights of the Child	PID	Project Information Document
CSO	Central Statistical Office	PIRC	Privatization and Industrial Reform Credit
DAC	Declaration Against Corruption and Bribery in International Commercial Transactions	PIRTA	Privatization and Industrial Reform Technical Assistance
DHB	District Health Board	PRA	Privatisation Revenue Account
DHMT	District Health Management Team	PSHDZ	Prospects for Sustainable Human Development in Zambia (GoZ/UNICEF report)
DANIDA	Danish Association for International Cooperation	PSREPC	Public Sector Reform and Export Promotion Credit
DRD	Declaration on the Right to Development	PSRP	Public Sector Reform Programme
DTVET	Department of Technical Education Vocational Training	PWAS	Public Welfare Assistance Scheme
ECZ	Environmental Council of Zambia	R&R	Report and Recommendation to the Executive Directors
EDP	Enterprise Development Project	RAID	Rights and Accountability in Development
EIS	Environmental Impact Statement	RAMCZ	Roan Antelope Mining Company of Zambia
EISDU	Entrepreneurship and Informal Sector Development Unit	SACMEQ	Southern African Consortium for Measuring Educational Quality
ERC	Economic Recovery Credit	SAP	Structural Adjustment Programme
ERIP	Economic Recovery and Investment Promotion Credit	SAR	Staff Appraisal Report
ERIPTA	Economic Recovery and Investment Promotion Technical Assistance	SEPI	Statement on Education policy Implementation
ERP	Economic Recovery Programme	SIA	Sector Institutional Assessment
ESAC	Economic and Social Adjustment Credit	SRP	Social Recovery Project
ESAF	Enhanced Structural Adjustment Facility	STEP IN	Integrated Skills Training for Employment Promotion
ESIP	Education Sector Investment Programme	TEVETA	Technical Education, Vocational and Entrepreneurship Training Authority
FDI	Foreign Direct Investment	UDHR	Universal Declaration of Human Rights
FAO	Food and Agriculture Organisation	UN ACC	UN Administrative Committee on Co-ordination
GC	General Comment	UNAIDS	Joint United Nations Programme on HIV/AIDS
GDP	Gross Domestic Product	UNDP	United Nations Development Programme
GRZ	Government of the Republic of Zambia	UNECA	United Nations Economic Commission for Africa
GoZ	Government of Zambia	UNESCO	United Nations Educational, Scientific and Cultural Organisation
GTZ	Deutsche Gesellschaft fuer Technisje Zusammenarbeit	UNFPA	United Nations Population Fund
HCCS	Health Care Cost Scheme	UNICEF	United Nations Children's Fund
HIPC	Highly Indebted Poor Country	UNIP	United Party
HIV	Human Immunodeficiency Virus	URWSP	Urban Restructuring and Water Supply Project
HSSP	Health Sector Support Project	WHO	World Health Organisation
IBRD	International Bank for Reconstruction and Development	WSDG	Water Sector Development Group
ICC	International Criminal Court	WTO	World Trade Organisation
ICCPO	International Code of Conduct of Public Officials	ZACCI	Zambia Association of Chambers of Commerce and Industry
ICCPDR	International Covenant on Civil and Political Rights	ZCCM	Zambia Consolidated Copper Miens Ltd
ICESCR	International Covenant on Economic, Social and Cultural Rights	ZCI	Zambia Copper Investments Ltd
ICFTU	International Confederation of Free Trade Unions	ZCTU	Zambia Congress of Trade Unions
ICR	Implementation Completion Report	ZDHS	Zambia Demographic and Health Survey
IDA	International Development Association	ZHDR	Zambia Human Development Report (UNDP)
IFC	International Finance Corporation	ZIC	Zambia Investment Centre
ILC	International Law Commission	ZKCM	Zambia Konkola Copper Mines
ILO	International Labour Organisation	ZMTS	Zambia Mine Township Services Project
ILRA	Industrial and Labour Relations Act	ZPA	Zambia Privatisation Agency
IMR	Infant Mortality Rate		
IRC	Industrial Relations Court		

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Introduction

Deregulation, privatisation and the denial of economic and social rights in Zambia

This submission presents evidence to substantiate the allegation that economic and social rights are increasingly denied and actively violated in Zambia as a direct result of economic reform in general and privatisation in particular. At issue is not whether free market reform and privatisation constitute the best route to development and this submission is not intended as an ideological critique; rather the concern is that economic and social rights are respected, promoted and protected during the process. This parallels the Committee on Economic, Social and Cultural Rights' [hereafter, the Committee] own refusal to advocate one political or market system as more suited to the protection of economic and social rights, but instead to judge each solely on its achievements and failings in respect of the Covenant on Economic, Social and Cultural Rights [hereafter, the Covenant].¹

Some of the apologists for the worst excesses of free market reform have insisted that hardship and a reversal in social standards for many - that is, a denial of economic and social rights - is the price to be paid in the short-term for a longer-term advance in social well-being and an improvement in the standard of living. In the civil and political field, this is akin to saying that the sacrifice of parallel fundamental rights is a legitimate trade for stability. Such an argument would not be countenanced.

It is incumbent upon a State party to the Covenant to ensure the satisfaction of minimum, essential levels of each of the rights it contains.² The Covenant requires that all rights are exercised without discrimination - a State must see that this is done immediately and has absolutely no discretion in this - and the Committee has further determined that a number of rights are capable of judicial remedy and immediate application.³ Furthermore, any deliberately retrogressive measures in the realisation of economic and social rights must be fully justified in the context of the full use of maximum available resources.⁴

From a rights perspective, to defend the current failure of reform to deliver sustained growth, let alone equitable growth, on the grounds that the economic and social situation would have been worse without reform is profoundly misplaced. Irrespective of any counterfactual, it is sufficient to establish whether those realised policies and legislation that underpin economic reform have contributed to the realisation or denial of economic and social rights in Zambia, and to establish whether the Government of Zambia and other actors have fulfilled their obligations under the Covenant.

This introduction will begin (A) by summarising the main features of the economic reform programme in Zambia since the Movement for Multiparty Democracy (MMD) came to power in 1991. (B) The results of economic reform, and whether it has proved to be successful or unsuccessful in generating growth, does, of course, have a bearing on the realisation of economic and social rights in Zambia. The outcome of the reform programme will be reviewed in its own terms against basic economic indicators, but an immediate consideration of the obligations upon a State to deliver minimum essential levels of economic and social rights establishes (C) a parallel benchmark against which economic reform must ultimately be judged. In Zambia, the reform period has been characterised by a deterioration in economic and social rights, so much so that a prima facie violation of the Covenant is apparent. To confound this allegation, the onus is upon the MMD Government to demonstrate that every effort has been made to use all the resources at its disposal to satisfy, as a matter of priority, its minimum obligations. (D) By recapping the nature of these obligations in the Covenant, a datum is established for the review in the sections which follow of Government policy and legislative revision in the context of the economic reform programme. However, and in view of their profound influence on development and their own responsibilities to realise human rights, due consideration must be given to the obligations of international agencies and the private sector to respect, protect and fulfil economic and social rights in Zambia. (E) This introduction ends by outlining how the remainder of this report will be structured in order to examine when the policies, practice, action, and inaction of each actor has resulted in an apparent violation of the Covenant.

A. The economic reform programme

The MMD Government was elected to office in November 1991 on a platform of committed free market reform. With assistance from the international community, it cleared the arrears which had built up with the World Bank and negotiated a course of action - known as a Rights Accumulation Programme - to clear Zambia's existing debts with the IMF.⁵ The next step was to agree a new way forward with the two financial institutions. Hence the Government produced a Policy Framework Paper outlining how it intended to turn the economy around.⁶ The World Bank and IMF strongly influenced what policies the MMD Government proposed in this plan. It was only on this basis that they agreed to provide new money and resources to help finance economic recovery in Zambia.

The MMD Government embarked on what has been described as 'one of the most ambitious economic reform programs on the African continent.'⁷ It can be split into two phases. In a first phase, from 1991 to 1994, with the backing and approval of the World Bank and IMF, two major types of programmes concerned with structural adjustment and macroeconomic stabilisation were implemented. Structural adjustment sought to change the basis of the Zambian economy through expansion of agricultural production, the liberalisation of trade and industry, the privatisation of the loss making parastatal sector and the rationalisation of the public sector. The allied stabilisation programme was a set of policies designed to bring the Government's finances under control. In Zambia, stabilisation has sought to reduce inflation, balance the Government's accounts - to include the control of public expenditure - and to rationalise and consolidate the financial sector. In a second phase, from 1994/5 to the present, while the fundamental reforms which are already under way have continued, there is a new emphasis on supporting key economic sectors earmarked for growth, investing in infrastructure, and explicitly addressing the problem of poverty.⁸

In order to bring about structural adjustment, key institutions and underlying laws in Zambia have been reformed at a fast pace in two broad and overlapping phases of liberalisation and privatisation. In a drive to liberalise the economy, subsidies and price controls have been eliminated, controls on the quantity of imports allowed into the country have been removed and customs duties and tariffs have been reduced. Legislation has been introduced to protect privately-owned assets from expropriation as a necessary reassurance to foreign investors. A Securities and Exchange Commission and the Lusaka Stock Exchange have been established so that shares in private and privatised companies can be readily bought and sold. The reform of the banking system and the money markets has allowed for the free determination of interest and exchange rates. Foreign exchange regulations have been abolished so that companies are now free not only to bring in foreign money for investment, but also to take out foreign exchange made by their Zambian operations and send it to their corporate offices or shareholders in other countries. Individual and corporate taxes have been reduced while capital allowances have been increased to attract investment.

Liberalisation is the precursor to privatisation *per se*. Under the Second Republic of Kenneth Kaunda, Zambia became one of the most heavily nationalised economies in Africa. Hence some 152 state-owned enterprises are in the process of being privatised and sold off as 330 separate companies or units.⁹ To begin the process, a Privatisation Act was introduced in 1992 and the Zambian Privatisation Agency (ZPA) was established. In January 1995, the Government announced its decision to sell the parastatal conglomerate Zambia Consolidated Copper Mines (ZCCM) to private investors. In many minds, ZCCM is Zambia as the country has been built upon copper which still accounts for eighty per cent of export earnings.¹⁰ To June 1998, the Zambia Privatisation Agency lists 202 state owned enterprises as privatised, although there have been significant setbacks in the sale of major ZCCM operations.¹¹

B. The results of economic reform

The economic reform program has been less than successful in stimulating expansion while it has created untold hardship for the majority of Zambians. Between 1992 and 1998, and in real terms, the average percentage change in Zambia's gross domestic product has been negative at -0.2 per cent.¹² Government figures attest to a net loss of some 81,000 paid jobs in the formal sector over the period 1992 to 1998.¹³ The ZPA records eleven state owned enterprises as liquidated between 1994 and 1997 in preparation for privatisation and lists a further 28 companies, as of December 1997, as under liquidation or in the process of being wound up after the sale of their assets.¹⁴ Rationalisation of the civil service, if implemented to plan, will see 57,000 redundancies.¹⁵

Foreign direct investment remains at a low level. Investment pledges worth \$922 million were made between 1994 and 1997, but the actual investment realised in Zambia was only \$379 million.¹⁶ Based on the most optimistic assumption that all investment pledged between 1995 and 1997 will be forthcoming, and using job creation forecasts proportional to the Government's own figures, then approximately 3,400 jobs per year will be generated.¹⁷ This is set against job losses in formal paid employment of around 14,000 each year, averaged over the last five years to 1997. Already eighty-five per cent of economically active Zambians work in the informal sector.¹⁸

Imports are outstripping exports and copper revenues continue to fall. There are signs that non-traditional exports are on the increase, but it is too early to tell if the economy is inching away from its dependence on copper. What is certain is that the economy is massively reliant on foreign support. Zambia will continue to bear a huge burden of bilateral and multilateral debt of around \$7 billion or equivalent to twice the amount generated by the entire Zambian economy.¹⁹ Stabilisation measures have been partially successful in that the runaway inflation of 160 - 180 per cent in 1992/93 has been reduced, although it remains at a high level of around 25 per cent, significantly outstripping increases in income.²⁰ The Government's domestic budget has been in balance in recent years, but this has been achieved by massive cuts in public spending, including social spending, and by informal borrowing. Economic indicators attesting to the benefits and consequences of economic reform are reproduced in the box overleaf.

C. The benchmark of economic and social rights

The concern in this submission is to assess the extent to which economic reform, culminating in privatisation, has improved or diminished the realisation of economic and social rights for most Zambians. In its interpretation of the Covenant, the Committee has determined that:

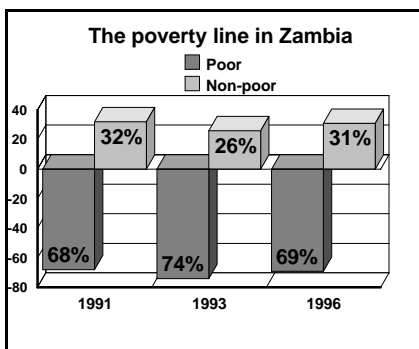
'...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.'²¹

If, for example, any significant number of people in a country are deprived of essential foodstuffs, essential primary health care, of basic housing, or the most basic education, then the government is *prima facie* failing to discharge its obligations under the Covenant. The words '*prima facie*' are of paramount importance: a violation is considered to have taken place - even in the poorest of countries during the most difficult of times - up until a government can demonstrate that every effort has been made to use all the resources at its disposition to satisfy, as a matter of priority, the minimum obligations.²² The assumption is that minimum rights are considered absolute; a violation has occurred when these are not met; and the onus is upon a government to plead exceptional, mitigating circumstances if the conclusion on the violation of the Covenant is to be reversed.²³

Rights within the Covenant can be juxtaposed to a reality in Zambia which attests to their *prima facie* denial.

'The State parties to the present Covenant recognize the right of everyone to an adequate standard of living...including adequate food...' [Article 11(1)]

One of the ways in which the World Bank reaches a definition of poverty is to calculate how much it costs to provide a person with food for a month based on the requirements of an average adult.²⁴ If someone cannot find an equivalent amount plus thirty per cent more for other essential items, they are considered to be poor. If expenditure cannot even meet the cost of this basic 'food basket', then a person does not even have enough to eat and is characterised as 'core poor'.



By this measure of poverty, a total of 68 per cent of Zambians fell below the poverty line in 1991. Four-fifths of those living in poverty in 1991 were very poor indeed and could be described as 'core poor'. By definition, people in this group are unable to afford the cost of basic foodstuffs. The poor are finding it more difficult to get good food and achieve a balanced diet. Evidence suggests that as many Zambians are living in poverty today as they were at the beginning of the decade. In 1993, an increased total of 74 per cent of the population fell below the national poverty line, although latest estimates again record a level of about 69 per cent.²⁵ By international standards, 85 per cent of the population was living on less than the equivalent of \$1 each day and 98 per cent on less than \$2 in 1993.²⁶

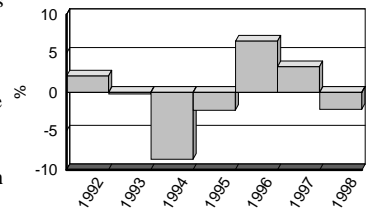
This situation has obvious repercussions for the realisation of basic rights. At a time when trends in nutritional status have been improving on a worldwide basis, they have remained static or have even deteriorated over the last twenty years in Zambia. In 1996, 50 per cent of children between 3 months and five years were stunted indicating chronic malnourishment and 5 per cent showed signs of wasting indicating acute malnourishment.²⁷ This circumstance must represent a *prima facie* violation under the Covenant.

Gross domestic product (GDP) measures the overall performance of an economy. Over the last seven years in Zambia, there have been three years of growth and four years of stagnation or decline. This means that, on average, and in real terms, the Zambian economy has been contracting by -0.2 per cent each year since 1992.

However, when you take into account that the population of Zambia is also rising by about 3 per cent each year, then the rate of economic decline on a per capita basis is worse still. On this basis, standards of living are declining.

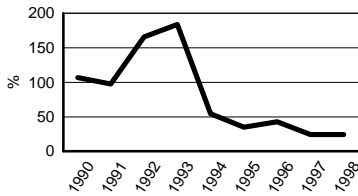
Of course, it is argued that it takes time for the results of economic reform and structural adjustment to be reflected in the GDP figures. Growth over the period 1999 - 2001 is expected to be around 5 per cent, although in the current climate of economic uncertainty, this projection appears over-optimistic.

Real GDP - percentage change



Source: IMF Staff Country Report

Inflation - retail prices [av. annual % change]



Source: IMF Staff Country Report

Significant progress has been made in lowering the rate of inflation which peaked at almost 200 per cent in 1992/1993 but which has since fallen dramatically. At the end of 1997 inflation was just under 19 per cent but has since risen to nearer 25 per cent.

Low inflation is obviously good for Zambians when it comes to buying food and other goods as the cost of living is kept down. Overall, however, inflation has taken its toll on the standard of living of the poor:

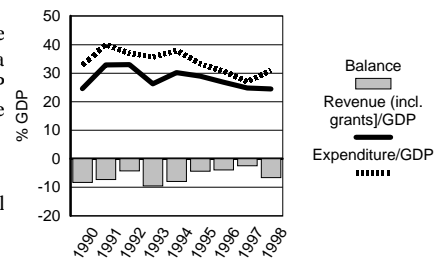
- The value of any savings which people might have had - for example, from redundancy payments - was hard hit by high inflation in 1992 /1993.
- Even with reduced inflation at a level of around 25 per cent, increases in the cost of living are still outstripping increases in income.
- Inflation continues to weaken the whole business sector.

Since 1991, the MMD Government has significantly reduced its domestic budget deficit. In 1997, its domestic account was almost balanced, although a significant deficit is estimated for 1998.

The graph shows how the deficit was reduced from 1993 - 1997. The solid line shows how the amount of Government revenue over the period has remained broadly the same when measured as a share of GDP. The dashed line shows expenditure. This has fallen sharply when measured against GDP and it is through these savings that the Government has been able to balance the books. However, there is both a positive and a negative side to this:

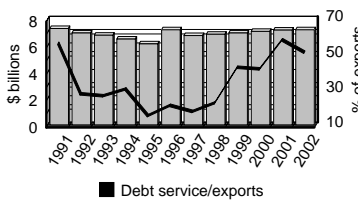
- Some of the cuts in expenditure represent real savings and improved efficiency.
- Yet a drastic cut in Government spending has also reduced the amount of money available for social spending to help the poor.

Domestic budget



Source: IMF Staff Country Report

External debt



Source: World Bank CAS, 1996 and 1999
1998 = estimate; 1999 onwards = projected

The amount which Zambia owes in debt to foreign banks and multilateral financial institutions such as the World Bank and IMF is enormous. In total, it owes almost twice the amount currently generated by the whole Zambian economy in any one year. However, because money must be paid back in dollars or other foreign exchange, it is more relevant to look at how much Zambia owes in relation to how much it exports.

By this measure, the net value of Zambia's total overseas debt in 1998 was over six and a half times the amount it earned through all exports in the same year. The amount which the Government has had to find to meet repayments and interest on these debts has, until recently, been the equivalent of almost one third of its entire export earnings each and every year. Although this ratio fell over the period 1996 -1999, it is set to rise sharply from 1999 onwards. Projections suggest that debt

servicing will be the equivalent of half the earnings from all exports by 2001.

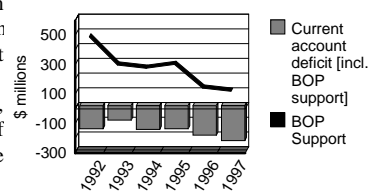
This level of debt is unsustainable. It places severe constraints on the amount of ready cash the Government has at present and the 'debt overhang' will be impossible to pay back in the future. Debt rescheduling - extending the amount of time over which repayments can be made - has helped Zambia reduce its repayments in the short term. However, it is the Heavily Indebted Poor Countries initiative which may, potentially, help the country to reduce its debt burden. Yet there are conditions attached and Zambia does not yet know whether it will qualify for full debt reduction. For further details, please see the supplement to Section 1.

Total amount owed by 1997:
\$7,143,000,000
Equivalent to
\$770
owed for every Zambian.

While the domestic budget has been brought into balance, Zambia's external account is heavily in deficit. This means more foreign exchange is going out of the economy in paying for imports and debt servicing than is coming back in through export sales and foreign assistance. As a consequence, there is a shortage of foreign exchange for Zambian business and a lack of funds with which either private companies or the Government can repay debt to foreign banks and institutions.

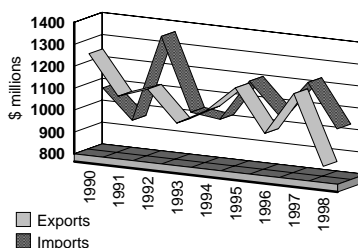
If it had not been for balance of payment support from donors, this deficit would be higher still. However, this assistance has itself fallen significantly in recent years because donors have withheld funds over issues of poor governance and because they have insisted on measurable progress towards the completion of the privatisation of ZCCM.

Balance of payments [support & current account deficit]



Source: GoZ, Economic Report 1997

Imports and exports



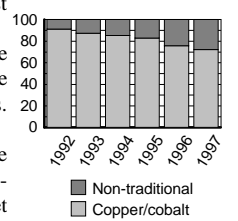
Source: IMF Staff Country Report

In five out of the last six years to 1998, Zambia has been importing more goods by value from overseas than it has been exporting. The trade balance was at its worst in 1992 because of the need to import food supplies after the drought.

In their own right, the value of goods sold overseas has not increased, despite the fact that the drive to push up exports remains a key aim of economic reform. The main reason for this is Zambia's continued and extensive reliance on copper exports. Both production by ZCCM and the price of copper has declined.

Overall export revenue would have fallen if it were not for the fact that the sale of non-traditional exports - textiles, processed foods, flowers, engineering products - has increased threefold over the period. This is encouraging and is a positive, if as yet modest, result of the policy to restructure the economy.

Type of exports



Source: GoZ, Economic Report 1997

‘The State parties to the present Covenant recognize the right of everyone to an adequate standard of living...including adequate...housing...’ [Article 11(1)]

Almost seventy per cent of Zambia’s housing stock is classed by the Government as ‘informal and poorly serviced or not serviced at all.’²⁸ To house homeless families and replace substandard dwellings would require the building of 846,000 new homes. The Committee has interpreted adequacy in housing to constitute, *inter alia*, facilities essential for health including access to safe drinking water and sanitation.²⁹ In the early 1970s, 86 per cent of city dwellers had access to safe water.³⁰ Government figures for 1996 suggest that 82 per cent of urban households had access to safe water.³¹ The proportion of households who depend on unprotected wells and boreholes in Copperbelt towns has more than doubled since the 1970s and around a quarter of people now draw their water from these unprotected sources.³² In an area like Chawama - a poor but legal residential area of Lusaka - 80 per cent of residents are dependent on public taps and 95 per cent use latrines or buckets.³³ In rural areas, a mere 28 per cent of households had access to safe water.³⁴ Whereas there were 2000 cholera cases back in 1978, there have been sudden flare-ups of the disease in the 1990s: 12,00 cases in 1991, 10,000 in 1992, 7,000 in 1993. In the latest outbreak, 11,327 cases were reported to June 1999.³⁵

‘The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’ [Article 12 (1)]

As poverty has increased, the health of many Zambians has deteriorated. The figures are stark. Life expectancy was 43 years in 1969, then 51 years in 1980, but has since fallen back to 45 years and 6 months in 1995.³⁶ The estimate for 1998 is just 40 years and six months.³⁷ Zambia is obliged under the Covenant to take steps necessary to reduce infant mortality.³⁸ The number of children dying before their first birthday has increased dramatically to 109 deaths per 1000 live births.³⁹ Infants in Zambia today are more likely to die than they were fifteen years ago when the mortality rate stood at 79 deaths per 1000 live births.⁴⁰ During 1997, immunisation coverage for the three main vaccinations against tuberculosis, polio, measles, diphtheria, pertussis, and tetanus had fallen to an average of just 54 per cent.⁴¹ In 1996, 78 per cent of children had been vaccinated by their second birthday.⁴² A fifth of Zambian adults are infected with HIV/AIDS.⁴³

‘The State Parties to the present Covenant recognize the right of everyone to education....with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education...shall be made generally available and accessible to all by every appropriate means...’ [Article 13 (1) and (2)]

Three out of ten children of primary school age in Zambia are not enrolled in primary school.⁴⁴ Overall primary level enrolment ratios have fallen by 14 percentage points since 1986. Recent survey data suggests that as many as 35 per cent of those who enrolled in Grade 1 will no longer be enrolled in primary school at Grade 7.⁴⁵ The rate of attendance among children of primary school age from poor households in 1996 was 69 per cent compared with a rate of 84 per cent among their non-poor counterparts.⁴⁶ Almost 98 per cent of Grade 6 pupils - the penultimate grade in primary school - did not reach the desirable level of reading ability set by the Ministry of Education’s own experts. Three-quarters of pupils at this grade can only be judged to be illiterate.⁴⁷ In the region of a half a million children in Zambia in 1996, representing 11 per cent of the population of those aged 14 and below, were orphans who had lost one or both parents.⁴⁸ It is reckoned that 68 per cent of orphans in rural areas do not go to school.

‘The State Parties to the present Covenant recognize that...Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.’ [Article 10 (3)]

It is estimated that there are at least 75,000 street children below the age of 18 in Zambia.⁴⁹ Over one third of street children are double orphans with both parents dead. It may be that as many as 70 per cent of children on the streets in Lusaka and the Copperbelt towns have lost both parents. The number of street children has doubled over the period 1991-1996. Most of these children have never been to school at all or else have dropped out in order to make what living they can for themselves. Due to urban poverty, the number of children at risk of being drawn into streetism has also from doubled 315,000 in 1991 to 700,000 in 1994.

These deprivations in respect of the right to an adequate standard of living, the right to food, the right to housing and the right to health are widespread and severe. There is evidence that the situation for many people is worsening. This must call into question whether a minimum, essential level of each right is being realised.

D. The obligations upon States and other actors to realise economic and social rights

The Covenant is a binding treaty in international law. The extent to which a State party is obliged to make the rights under the Covenant a reality is determined by four main clauses.⁵⁰ Each State party, including the Zambian Government, must ensure that the principle of *non-discrimination* is guaranteed; that rights are *achieved progressively*; and that it *takes steps* to see this is the case to the *maximum of its available resources*.⁵¹

The MMD Government must therefore be judged on its record in meeting these obligations, the nature of which will be considered in greater detail throughout the sections which follow. This submission seeks to highlight those instances when it has seemingly failed to meet its obligations under the Covenant. Where a government uses its resources in a way which reinforces inequality; or fails to target spending on vulnerable groups; or fails to meet its minimum obligations under the Covenant, then to declare non-compliance with the Covenant is fully warranted. Unless and until it can be demonstrated that every effort has been made by the Zambian Government to use all resources at disposal in an effort to satisfy its minimum obligations as a matter of priority, then a prima facie violation of the Covenant must be recorded. Whether a Government has striven to fulfil its obligations is, of course, decided by the Committee.

At the same time, an exclusive concentration on minimum core obligations which invariably focuses attention on domestic compliance in the poorest countries would cause profound disquiet. When the causes of poverty include, *inter alia*, skewed terms of trade and a crippling burden of bilateral and multilateral debt; and when poverty is exacerbated by the imposition of structural adjustment programs allied to austerity measures which hit the poorest hardest; then the denial of economic and social rights is not the inevitable result of the failure of a Southern government to meet its obligations. .

The Covenant specifies that the responsibility for achieving the rights it frames falls upon both State parties acting in their individual capacity at the national level and upon States acting collectively at the international level. The Zambian Government has been subject to the influence of powerful actors. International assistance measures and policies pursued by the World Bank⁵² and IMF in Zambia have been directly responsible for the violation of economic and social rights. Furthermore, at a time when foreign direct investment to the developing world is worth \$1044 billion compared with net official aid flows of \$52 billion worldwide, the actions of powerful private sector companies and investors must not escape scrutiny.⁵³

The Committee emphasises that the realisation of rights in the Covenant will remain an unfulfilled aspiration until all States meet their obligations to deliver an active programme of international cooperation for development under the Covenant, the Declaration on the Right to Development and articles 55 and 56 of the UN Charter itself.⁵⁴ Article 2 (1) of the Covenant is explicit on this point and obliges all State parties 'to take steps, individually and through international assistance and cooperation' to achieve progressively the full realisation of rights in the Covenant. Article 11 (1) obliges State parties to recognise 'the essential importance of international cooperation based on free consent' to realise the rights it contains. Article 22 may lead to recommendations from the Committee on the advisability of international measures - to include those advocated by the World Bank and IMF - in respect of the implementation of the Covenant.⁵⁵

E. Determining responsibility for violations: how the remainder of this report is structured

The argument will be made that the economic reform programme in Zambia, culminating in privatisation, encapsulates how a combination of excessive deregulation, a lack of balancing safeguards, Government incapacity, misguided donor support, and private sector exploitation has created the conditions in which many Zambians are being denied their economic and social rights. The analysis will be structured around three broad sections: Donor influence and Government ownership of the reform programme (Section 1); Privatisation, deregulation and the denial of human rights (Section 2); Austerity and the denial of social rights (Section 3).

Section 1: The advisability of international assistance and Government ownership of the reform programme - It is necessary to examine the degree to which donor agencies have influenced the reform programme and the extent to which it can be said to be owned by the Government of Zambia. This is seen as an important determinant of culpability for the negative impacts of reform.

The obligation on international actors to promote economic and social rights leads to an initial consideration of the level of external assistance, its nature and its suitability for poverty alleviation. Yet determining responsibility for the denial of economic and social rights in Zambia is not served by concentrating solely on what the international community provides without considering what it seeks to foster. The leadership role of the World Bank in Zambia is apparent. Alongside the IMF, it is the principal architect of reform in Zambia, providing economic assistance on the basis of the implementation of agreed policies which are often tied to the achievement of specific benchmarks. Without such assistance, Zambia would be unable to repay its huge international debt; yet the economic and political instability which would result should the Government default on its debt would shatter investor confidence and preclude significant private sector investment.

There is strong evidence that Zambia is 'locked-in' to a programme of reform designed and brokered by international financial institutions. Given this chain of influence, it is more than legitimate to map the chain of responsibility when specific rights in the Covenant are violated as either the direct or indirect result of inadvisable international assistance. Yet, the codicil remains that, although the influence of the Bank/IMF is considerable, this neither precludes the Government's active endorsement of the program; nor Government control over significant aspects of policy and legislation. The advantage of using a rights framework to explore this relationship is that it circumvents the usual evasion of responsibility and can be used map the denial of rights to specific actions by one or more actors.

This first section is supplemented by a summary of Zambia's debt situation and by a table of Bank lending, including details of the actions agreed under the Bank's adjustment loans.

Section 2: Privatisation, deregulation and the denial of human rights - The undifferentiated claim that economic reform and its sub-components - stabilisation, sectoral adjustment and restructuring, liberalisation, private sector development, privatisation *per se* - are by their nature antithetical to the realisation of economic and social rights must be avoided: it depends upon how reform is implemented. The purpose of the main section of this report is to record how laws and policies designed to bring about economic reform through deregulation have simultaneously denied many Zambians their basic human rights. As already alluded to, economic reform is multifaceted. A critique is therefore only likely to succeed if it engages with this complexity and carefully maps out why this law or that policy has caused a right to be denied. At the heart of this section - indeed, at the heart of this entire submission - are four key subsections.

- (I) *Privatisation in the public interest* - An account is given of the framework for regulating privatisation in Zambia. The Privatisation Act has failed to guarantee accountability and transparency in the sales process. Of itself, this is a denial of certain human rights. In practice, the independent operation of the implementing agency has been compromised. This has resulted in malpractice, the diversion of sale proceeds, allegations of corruption and the award of sales to buyers without an industry track-record. There has been no popular participation. The public flotation of the most lucrative businesses has resulted in a concentration of share ownership in the hands of elite investors. To attract foreign buyers, not only have tax and other incentives been offered into the long-term, but environmental and social safeguards have been relaxed. Overall, a number of economic and social rights are jeopardised as a result.
- (II) *Employment, unemployment and work-based rights* - The employment situation in Zambia is characterised by rising formal sector redundancies as a result of business closure, rationalisation and cuts in the civil service. There is a simultaneous growth of the unregulated informal sector. Against this backdrop, there has been a failure by parastatals to pay redundancy entitlements and terminal benefits. Of equal concern is the protection of favourable working conditions and trade union rights in the context of free market reform and the need to attract investment. A raft of legislation has deregulated employment without due safeguards and has sought to curtail not only the power, but also the rights, of unionised workers.
- (III) *Access to land and the right to housing* - Establishing a free market in land in Zambia is seen as essential. Land law has been reformed to allow foreign investors to freely purchase land on secure leases. Furthermore, the illegality of squatting has been reinforced. In the sphere of housing policy, the entire stock of State housing - council, parastatal, government - is being sold to the public. The process has been characterised by discrimination and inequity. It has culminated in the intimidation of sitting tenants, service disconnections, and forced evictions. Local council revenue from rents and rates has been decimated amidst the chaos, resulting in a virtual collapse of essential services.
- (IV) *The conduct of parastatal and private companies* - The actions of certain parastatal and private companies in the privatisation process are examined. The argument is advanced that such companies have a direct responsibility to uphold basic human rights. For many decades, ZCCM has been the provider of extensive social facilities and services, not only to employees, but also to the wider community and local councils. It has also allowed extensive squatter settlements to develop on mine land. Yet ZCCM is being privatised according

to a plan which neglects to secure the future of social provision under new ownership or to plan for its take-over. Furthermore, development agreements for each sale not only guarantee a highly favourable tax and investment regime for years to come, but also fail to safeguard working conditions and actively postpone legislation designed to protect the environment. The consequence has been worker unrest at the recently privatised Luanshya Mine. Threatened and actual evictions have also been carried out by ZCCM and the new mine proprietors.

Section 3: Austerity and the denial of social rights - Market liberalisation and privatisation were implemented with prescience of the immediate social cost in terms of business closure, rationalisation, and unemployment. A final section considers the wider impact of structural adjustment and stabilisation upon the realisation or denial of social rights. The three sectors of social welfare, education and health are examined in detail. The right to social security is not realised even by the most disadvantaged in Zambia. Only two per cent of the population receive social welfare despite the fact that over half of the population live in extreme poverty. Neither has the World Bank taken concerted action to support social safety net provision to mitigate the adverse consequences of structural adjustment. Moreover, indicators record not only a prima facie denial of minimum essential levels of the rights to health and education, but also a reversal in progress towards their realisation. Belated efforts to protect social budgets and switch resources to primary services have had only a limited impact in the context of World Bank/IMF imposed austerity measures which have decimated public spending in real terms. The introduction of user fees and cost-sharing has further eroded access of the poor to low quality services.

The responsibilities of different actors and their failure to promote, protect, or respect social and economic rights will be brought to the fore. Certain sections have a particular emphasis. Hence, a consideration of donor influence and Government ownership of the reform programme focuses attention on the actions of the World Bank and the advisability of its international assistance measures in respect of the Covenant. In examining the conduct of private and parastatal companies, at issue is the extent to which they can be said to be directly responsible under the Covenant for the violation of economic and social rights in Zambia, although this does not negate the Zambian Government's obligation to protect against the violation of human rights by third parties. The core of the submission, in analysing the privatisation programme, employment, and land reform, seeks to highlight instances when the Zambian Government by action or omission, in law or policy, fails to comply with its obligations to realise economic and social rights. The same emphasis on State responsibilities characterises the section on the rights to health and education. This notwithstanding, a consistent attempt is made, whenever it is appropriate, to link particular legislative reforms or policy measures to specific loan agreements or wider economic conditionality, thereby implicating the World Bank in instances of non-compliance.

To complete this introduction, it remains only to draw attention to the inclusion in this submission of a final chapter which summarises both the content of each of the preceding sections and presents concluding observations. Where appropriate, recommendations are made to assist the Committee in its work. To aid quick reference, this summary chapter is printed with tabs at the edge of each page.

Notes

¹ 'The Committee notes that the undertaking 'to take steps...by all appropriate means including particularly the adoption of legislative measures' neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or laissez-faire economy, or upon any other particular approach.' (GC 3, para.8).

² GC 3, para. 10.

³ See, respectively, ICESCR article 2(2); and GC 3, para. 5. Provisions which are capable of immediate judicial application are article 3 on non-discrimination and the equal rights of men and women; article 7(a)(i) on equal pay; article 8 on trade union rights; article 10(3) on the protection of children; article 13(2)(a) on the right to primary education; article 13(3) on parental choice in education; article 13(4) on non-interference with the liberty of educators; and article 15(3) on freedom for scientific research and creative activity. This does not imply that other rights under the Covenant cannot be secured through legal remedy.

⁴ GC 3, para. 9.

⁵ CAR, para. 3.13 ff.

⁶ The *Policy Framework Paper, 1992 - 1994*, was approved by the Bank and IMF Boards in February 1992

⁷ CAS (1996), para. 1.

⁸ CAR, para. 2.16.

⁹ ZPA (undated), 'Privatisation: a whole new philosophy'; also ZPA (1998a), 'Summary: Privatisation Status Report - total working portfolio as of January 1998'. Both available at <www.zamnet.zm/zamnet/zambus/zpa>.

- ¹⁰ Economist Intelligence Unit (1999), *Country Briefing*, 4 June.
- ¹¹ The sale of the Nkana and Nchanga Mines - accounting for 54 per cent of ZCCM's copper reserves - collapsed when the Kafue Consortium (Phelps Dodge of the USA, Avmin of South Africa, Noranda of Canada, and the UK's Commonwealth Development Corporation) withdrew from the deal in April 1998. By mid-1999, agreements with Anglo American of South Africa over both the management of Nkana/Nchanga and the development of key deposits at Konkola Deep had still not been finalised.
- ¹² SCR (1999), Statistical Appendix, table 3.
- ¹³ Ibid., Statistical Appendix, table 8. The data is provided by the Government of Zambia's Central Statistical Office.
- ¹⁴ ZPA (1997a), *Status Report*, 31 December 1997.
- ¹⁵ PSREPC R&R, Letter of Development Policy, Annex J, para. 25.
- ¹⁶ Pledges summarised in ER 1995 and ER 1997. Figures for actual foreign direct investment from PSREPC R&R, Zambia - Key Economic Indicators, Annex B.
- ¹⁷ Calculated from job creation figures cited in ER 1997, table 3.23.
- ¹⁸ ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Convention No. 122, Employment Policy, Zambia, 1999, para. 1.
- ¹⁹ The total outstanding debt owed by Zambia at the end of 1998 was \$6.86 billion, although this figure remains to be adjusted. In contrast, the entire Zambian economy in 1998 generated in the region of \$3.4 billion. Estimates cited in the CAS (1999), Annex B7.
- ²⁰ SCR (1999), Statistical Appendix, table 9.
- ²¹ GC 3, para. 10.
- ²² The Committee's strongest condemnations have been reserved for those States whose economic prosperity is not matched by minimum rights for large sections of their populations. The Committee has, on occasion, used the precept of *prima facie* non-compliance in the context of developing countries; for example, by reminding the government of The Gambia - whose poverty was reflected in 1993 by a ranking of 167 out of 173 in the UNDP's Human Development Index - of its basic obligation to ensure that compulsory primary education is available free to all and to adopt a detailed plan where this right is not assured. (See E/C.12/1994/20, para. 203). The explicit language of violation is avoided.
- ²³ The interpretation in GC 3, para.10, is significant in opening the way for the Committee to declare that the Covenant has been violated. In the past, clear and widespread denial of the most basic of rights protected under the Covenant was not deemed a sufficient basis for saying a State had violated its obligation. The assumption was that rights were contingent on resources. In effect, a government was given the benefit of the doubt and could maintain that it did not have the necessary means while the veracity of its argument was ascertained. This burden of proof has been reversed.
- ²⁴ In the second approach, people themselves are asked how they would characterise being poor.
- ²⁵ Central Statistical Office (1997), *The Evolution of Poverty in Zambia*.
- ²⁶ World Bank (1997), *1997 World Development Indicators*, table 2.5.
- ²⁷ LCMS (1996), table 16.12.
- ²⁸ Ministry of Local Government and Housing (1996), *National Housing Policy*, para. 3.1.
- ²⁹ GC 3, para.8(b).
- ³⁰ PSREPC R&R, Zambia Social Indicators, Annex A.
- ³¹ LCMS (1996), table. 14.7.
- ³² *Idem*.
- ³³ PA, para. 6.30.
- ³⁴ LCMS (1996), table. 14.7.
- ³⁵ WHO (1998), *Global Cholera Update 1998*; WHO (1999a), *Outbreak News*.
- ³⁶ The figures for 1969 and 1980, averaged for men and women, are from census results summarised in ZDHS (1996), table 1.1, p.3. The figure for 1995 is cited in ZHDR 1997, p.16.
- ³⁷ WHO (1999b), *World Health Report*, Statistical Appendix, Table 1.
- ³⁸ ICESCR article 12 (2)(a).
- ³⁹ The IMR is for the period 1992 - 1996. See ZDHS (1996), table 7.1.
- ⁴⁰ The IMR of 79 deaths per 1000 live births for the period 1977 - 81 is cited in the PA, Chapter 2, p.18 which itself draws on data from the Zambia *Demographic and Health Survey*.
- ⁴¹ BCG coverage declined from 100 per cent in 1996 to 59 per cent in 1997; DPT coverage fell from 83 per cent to 52 per cent; immunisation coverage against measles was 50 per cent in 1997 compared with 92 per cent in 1996. See ER 1997, 'Immunisation,' para. 212.
- ⁴² ZDHS (1996), table 8.7.
- ⁴³ UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.
- ⁴⁴ Based on the net enrolment ratio (NER) which compares the number of those enrolled of the correct age for primary education compared with the number of children in the population at large who should be enrolled at that level. See Kelly (1998), 'Primary Education in a Heavily Indebted Poor Country: The Case of Zambia in the 1990s,' p.2.
- ⁴⁵ The figures derive from analysis of the LCMS (1996) data on attendance by grade by the Study Fund, as cited in Kelly (1998), p.3.
- ⁴⁶ LCMS (1996), table 7.3. The school attendance rates are for children aged 7 - 13 and do not take into consideration whether a child is attending the appropriate grade for their age.
- ⁴⁷ Figures are from the SACMEQ Report 1997. See this submission, Section 3(II), fn. 63.
- ⁴⁸ The official estimate is 492,000. See LCMS (1996), p.12. Taking the age range from 0-18, the number of estimated orphans rises to 670,000.
- ⁴⁹ Children of the street and children on the street both included: the latter have a home to go to, the former do not. The data on streetism is from Lungwanwa & Macwan'gi (1996), *Street children In Zambia: a situation analysis* (as cited in Kelly (1998), pp.22 ff.).
- ⁵⁰ ICESCR, article 2
- ⁵¹ The initial impression is that some of these clauses introduce an element of discretion or even uncertainty into what a state party must do and when it must do it to see that the Covenant is implemented. In fact, the degree of latitude in interpreting a State party's obligations is determined by the Committee.
- ⁵² The World Bank Group comprises public and private sector arms. In the former category are the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). IDA provides concessional finance to qualifying countries of which Zambia is one. Unless otherwise indicated in the text, references to the Bank or World Bank in this submission refer to IDA. The private sector arm of the Bank encompasses the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).
- ⁵³ The destination of FDI is, however, massively skewed. Five developing countries - Argentina, Brazil, China, Mexico and Poland - accounted for half of the total in 1997. See World Bank (2000), *Entering the 21st Century: World Development Report 1999/2000*, table 1.1 and box 3.1.
- ⁵⁴ GC 3, paras. 13 and 14.
- ⁵⁵ ICESCR article 23 identifies the furnishing of technical assistance and other activities as the means of international action for the achievement of the rights recognised in the Covenant.

Section 1

The advisability of international assistance and Government ownership of the reform programme

Introduction

The obligation to realise human rights is often perceived as falling upon the State. However, the Covenant provides an irrefutable basis for bringing the actions of the donors and multilateral agencies within the framework of human rights. Article 22 enables the Committee to bring to the attention of other organs of the United Nations and specialised agencies matters which may assist them in deciding on the advisability of international measures likely to contribute to the effective implementation of the Covenant. The appropriateness of addressing recommendations in accordance with article 22 to, *inter alia*, the World Bank and IMF is confirmed.¹ Such recommendations can be of either a general policy nature or else relate to a specific situation. The policies pursued by the World Bank and other donor institutions, as these impinge upon economic and social rights, are therefore a central concern of the Committee.² Recommendations of the second type appear to open the way for the Committee to address specific violations; for example, those relating to individual projects or programmes.

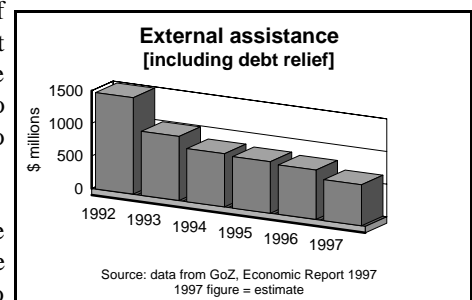
This section assesses whether the international measures adopted by bilateral and multilateral donors in Zambia have contributed to the effective implementation of the Covenant or whether, in fact, they have diminished the realisation of economic and social rights. It begins (A) with a general consideration of donor assistance to Zambia. The initial focus is upon the overall level of resources which the international community has committed to Zambia during the 1990s and the degree to which this assistance has been suited to fighting poverty and improving access to basic services. The assumption that all assistance contributes towards the realisation of economic and social rights must be rejected. (B) The World Bank, alongside the IMF, has played a central role in influencing and coordinating the actions of other donors in Zambia. The principal way in which it has given assistance has been through adjustment loans: money is lent at concessional rates of interest to the Zambian Government which has agreed to implement a program of economic reform. The loan agreements which have been concluded under a succession of Bank adjustment credits impinge upon areas of law and policy of crucial importance to the enjoyment or denial of a range of fundamental human rights. (C) Before proceeding to a detailed analysis in the main sections of this submission of how the steps taken by the MMD Government during the reform program have diminished or enhanced the enjoyment of rights in Zambia, it is necessary to broach an underlying question: is the influence of the Bank/IMF on domestic laws and policy so great as to shift culpability for the denial of economic and social rights away from the Government towards the multilateral agencies?

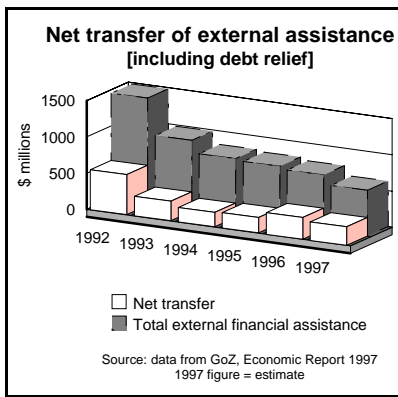
A. External assistance to Zambia in the 1990s

1. Absolute levels of assistance

Aid or external assistance is often perceived as money or resources which are donated to a country in order that it can promote its own development. However, it is necessary to guard against two assumptions. The first of these is that development - in essence, economic development - is of itself *directly* linked to poverty reduction and equitable growth. Economic reform in Zambia has been shown to have made the problem of poverty more acutely felt. The second assumption to be guarded against is that most external assistance goes towards poverty alleviation and is spent on the improvement of living conditions. In reality, most recent external assistance to Zambia has been spent on supporting the economy to enable the country to repay its debts.

The total level of external assistance to Zambia rose significantly with the election to power of the MMD Government. Total external financial assistance in 1992 came to \$1479 million, although this was an exceptional year for aid to Zambia, not least because of the drought which prompted donors to provide extra emergency assistance.³ Nevertheless, in 1993, total external financial assistance remained high at \$982 million. In





comparison, over the period 1987-89, it had averaged \$460 million. In recent years, external assistance has fallen-off sharply. The Government of Zambia's estimate for 1997 puts the figure at \$630 million.⁴

The total level of assistance is not a reliable indicator of committed support for development. Of greater relevance are net transfers which take into consideration that while assistance comes in, debt repayments flow out. In Zambia's case, excluding the exceptional year of 1992, the average amount of additional money received each year from donors up to 1997 was worth \$250 million. Hence most assistance returns to the donors and little, in comparison, represents a real transfer of resources to Zambia.

That there is an obligation upon State parties and UN multilateral agencies to provide assistance in order to achieve progressively the full realisation of rights in the Covenant is apparent:

'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant...' [Article 2 (1) - emphasis added]

The degree to which there is a strict obligation upon rich States to transfer resources to their poorer counterparts is more problematic. However, it is most certainly legitimate for the Committee to ask questions of donor states about the extent of their international cooperation.⁵ In rare instances, the Committee has drawn attention to the need for international assistance in specific countries and has addressed a recommendation to the international community.⁶ Furthermore, attention is drawn 'to the important opportunity provided to State parties, in accordance with article 22 of the Covenant, to identify in their reports any particular needs they might have for technical assistance or development cooperation.'⁷

The Government of Zambia has made its views known on the inequity of a situation in which debt servicing drastically reduces the net assistance which Zambia receives. The stated need is for debt relief and debt write-off in the context of otherwise sustained levels of assistance. This accords with the Committee's own interpretation of article 22 that international measures should deal with the debt crisis and should 'take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation.'⁸ Furthermore, it is recognised within the Charter of Economic Rights and Duties of States that '[a]ll States should respond to the generally recognized or mutually agreed development needs and objectives of developing countries by promoting increased net flows of real resources to the developing countries from all sources....'⁹ The degree to which low net transfers to Zambia contribute an acceptable flow of resources must be questionable.

It is not, however, only the overall amount of external assistance which is important, but also the form this assistance takes and the conditions which are attached to it. Focusing on the level of external assistance to Zambia must not deflect attention away from the very nature of such assistance and its suitability for poverty alleviation.

2. The suitability of the type of assistance for poverty alleviation

'...development cooperation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights.'¹⁰

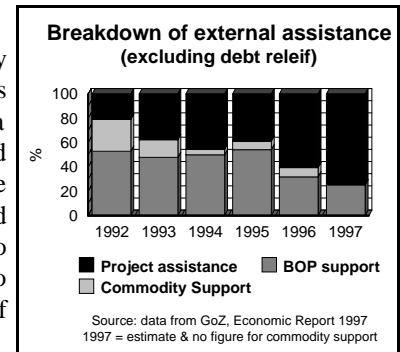
External financial assistance is made up of two main components: balance of payments support and project assistance. The former constitutes foreign exchange which is donated or lent to the Zambian Government to enable the country to pay for essential imports or to repay foreign loans. The purpose of balance of payments support is therefore to provide the hard currency needed to plug the gap in Zambia's external finances. It does not, of itself, constitute direct investment in the country although a message is sent to potential investors that the Government is regarded as stable and creditworthy by the international community.

Project assistance, from the outset, is provided to fund a specific initiative, for example, the building of a road or the setting up of a micro-credit scheme. There is a current trend, especially evident in Zambia, towards sector investment programs (SIPs) which aim to coordinate donor and Government action across a whole sector such as health or agriculture.¹¹ Whether spent on individual projects or through sector programs, project assistance is characterised by direct investment. For every \$2.00 of external assistance which actually came into Zambia in 1997, 92 cents or almost

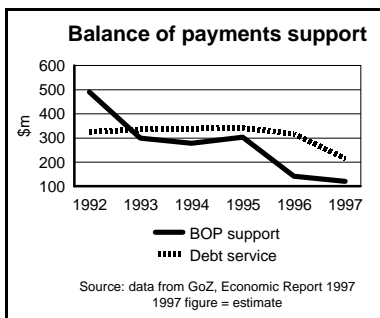
half went straight back out again to service foreign debt. For each dollar remaining, about 40 cents was spent on social sector projects and sector investment programs.

a. Balance of payments support

In determining the likely impact of both components of assistance on poverty alleviation and the realisation of economic and social rights, a number of implications follow from the very nature of each type of aid. Balance of payments support serves a dual purpose. First, by providing assistance in this form, donors ensure, first and foremost, that Zambia pays them back the money it owes. In a discussion by the Commission on Human Rights on structural adjustment and economic, social and cultural rights, clarification was sought from IMF and Bank representatives as to 'whether the restructuring of developing country economies was, in fact, intended to extract as much debt repayment as possible so as to avoid the equitable sharing of loan losses between the creditors and borrowers.'¹²



Second, assistance in the form of balance of payments support is the principal way through which economic reform has been pushed through in Zambia. Foreign exchange is donated on condition that an agreed set of economic policies of structural adjustment and stabilisation are implemented, even though this creates considerable hardship for the poor.



Balance of payment support to Zambia has plummeted in both absolute as well as relative terms in recent years. From 1992 until 1995, balance of payments support accounted for between 48 per cent and 54 per cent of external assistance to Zambia (excluding debt relief). In recent years, this has fallen back to less than 30 per cent and accounts for the overall fall in external assistance noted earlier. The decline in balance of payments support reflects a fall in Zambia's required level of debt servicing. There are, however, two further points of significance. First, in every year out of the last six - with the exception of 1992 - the amount of assistance which Zambia has received in balance of payment support has been less than the amount needed for debt repayment, substantially so in recent years. This is on account of donors withholding support, ostensibly because of the MMD's poor governance record. This creates significant

difficulty for the Government which is forced to take money out of its own foreign reserves to meet debt servicing. Second, the argument that balance of payments support frees up the Government's own resources to be spent as part of the domestic budget, for example on improving social provision, is not valid in Zambia's case.

i. Conditionality and the withholding of balance of payments support

Despite the decidedly mixed performance of the Zambian economy, many commentators, at least up until the middle of 1997, believed that the financial mainstays and conditions for growth were in place. Growth, even if it was not orientated towards the poor, was on the horizon. By mid-1998, many pointed to a startling reversal in Zambia's economic position and the need for drastic action to avoid virtual collapse of the economy.¹³ Commentators have identified two principle factors which precipitated this crisis. The first of these surrounds the issue of governance: an absence of due democratic process within Zambia and the failure to uphold civil and political rights. Bilateral donors would argue that the way in which the MMD Government has violated civil and political freedoms has precluded them from maintaining a high level of assistance. Even so, the withholding of balance of payments support undoubtedly has as much to do with economic conditionality. The second factor is the failure of the MMD Government to complete the privatisation of ZCCM. Donor support has always been implicitly linked to the sale of the mines.

Both pledges and the actual delivery of donor funds have fallen sharply throughout the period since the MMD Government came to power because of concerns over human rights and political freedoms within Zambia. Bilateral donors initially suspended balance of payments support in June 1996 and again in 1997 and 1998 because of concern over governance. Balance of payments support of \$141 million in 1996 was less than half the amount originally pledged. In 1997, the support received amounted to \$120 million. In 1998, the Bank describes balance of payments support to Zambia as negligible.¹⁴ After an initial honeymoon period, the major donors, at their Consultative Group meeting in December 1995, expressed their disquiet over clauses in the redrafted Constitution. In 1996, the national elections were criticised for irregularities in monitoring and voter registration. During 1997, police roundups of alleged agitators, including UNIP officials, were condemned as political persecution.¹⁵ Then, in October 1997, the abortive coup attempt prompted the MMD Government to impose a state of emergency. In November 1997, Kenneth Kaunda, Zambia's former president, was arrested. The manner of Kaunda's arrest; his initial detention without charge; the subsequent trial

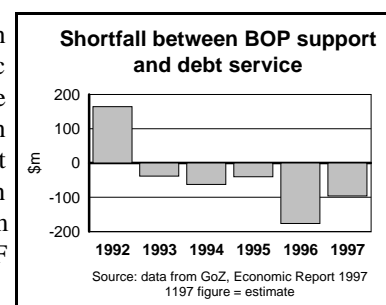
on the basis of flimsy evidence; the torture of the perpetrators of the coup; and wider concern over the MMD's involvement in attempts to use the police to intimidate and smear its political opponents, all of these matters prompted the donor community to stop assistance to the Zambian Government.¹⁶ The Consultative Group meeting of donors scheduled for December 1997 was postponed and only took place in May 1998 after the state of emergency was lifted.¹⁷

In the sphere of the economy, donors have become increasingly reticent to provide funds while the bulk of ZCCM remains under Government ownership. In April 1998, the collapse of negotiations to sell the core Nkana/Nchanga mines to an international consortium caused considerable disquiet.¹⁸ The multilaterals withheld balance of payments support in 1998 due to the failure to progress on the privatisation of ZCCM. In the past, the donor community has been reluctant to tie assistance to the final sale of ZCCM on the grounds that potential buyers could exploit such conditionality for their own ends in negotiations.¹⁹ However, it is now a condition of new IMF ESAC lending approved in March 1999 that 'substantial progress' must be made in the privatisation of ZCCM.²⁰ Ratification of a memorandum of understanding between the Government and Anglo American, originally signed in November 1998 and reconfirmed in January 1999, to purchase or manage the core assets of ZCCM is viewed as an important step to fulfil this requirement. Release of the second tranche of the Bank's latest adjustment credit is similarly tied to the transfer of ownership and control of ZCCM's remaining core assets.²¹ It is also understood that the same condition applies to the release of bilateral funds from certain donors.²² However, in October 1999, Anglo American once again renegotiated the terms of its agreement with the Government/ZCCM, dropping the high-cost Nkana mine from its purchase, while proceeding to buy Nchanga, Konkola and Nampundwe mines and to run Nkana smelter on a management contract. Once again, the deal will not be finalised until certain preconditions are met, although Heads of Agreement were signed in December 1999: please refer to Section 2(IV) for more details.

The consequences of both the Government's poor record on governance and the failure to conclude the sell-off of ZCCM have been painfully apparent. As a result of the May 1998 Consultative Group meeting, Zambia received conditional donor pledges totalling \$530 million, \$80 million less than it has asked for.²³ As of November 1998, the Bank of Zambia estimated that just \$1.9 million had been disbursed in balance of payment support and only \$1.8 million in project assistance.²⁴ Combined, this amount represents less than one per cent of the total pledged; yet the MMD Government's 1998 budget was heavily dependent for over one third of its revenue on donor funding. In early 1998, when compared with the same period in the previous year, manufacturing sector output fell by 15 per cent, non-traditional exports remained static, the export of agricultural commodities dropped by almost a quarter, and overseas sales of both fresh flowers and horticultural products declined by 10 per cent and 19 per cent respectively.²⁵ In conjunction with this marked reduction in foreign earnings from exports, the donor aid freeze and the suspension of balance of payments support caused an almost complete lack of foreign exchange. By May 1998, the Government had been forced to release \$80 million of its reserve in a futile attempt to make up for the shortage of foreign exchange in the economy.²⁶ In the first quarter of 1998, half of the money the Government was obliged to take out of its foreign reserves went to meet debt servicing.²⁷ Lack of foreign exchange meant that each dollar was worth almost twenty per cent more at the end of the first quarter of 1998 than it had been at the beginning of the year.²⁸ By the end of the year, the Kwacha has depreciated by fifty per cent. As a result, there has been an upward trend in inflation, although interest rates have remained low for Zambia.

ii. *The use of domestic resources to compensate for a shortfall in balance of payments support*

The World Bank concedes in a report on the prospects for sustainable growth in Zambia that balance of payments support 'has not permitted an excess of domestic spending over domestic revenue as it has in many countries, however, because of the heavy debt burden.'²⁹ In a stark reversal, because the amount given by donors in balance of payment support fell short even of the amount needed to service debt repayments by some \$176 million in 1996 and by \$96 million in 1997, the Zambian Government has had to release foreign exchange reserves and transfer resources from a domestic budget already under considerable strain given the Bank and IMF insistence on stabilisation and austerity.



In 1996, for example, K200 billion was transferred from the domestic budget to help pay the interest on foreign debt. Even when this is offset against domestic revenue in the form of assistance grants worth K128 billion, then it is apparent that K72 billion was transferred to multilateral banks and donor Governments. This represents eight per cent more than the total amount of K66.4 billion which the Government spent on the entire health sector during the same year.³⁰

Overall, the Government still spends almost twice as much servicing overseas debt than it does on all the social sectors combined, despite welcome initiatives by the World Bank, IMF and foreign countries to reduce this burden of debt.³¹ Zambia is still to qualify for full debt relief under the HIPC debt relief initiative: please see the supplement on debt which reviews the issue of debt sustainability in greater detail. At this juncture, it is hard to escape the conclusion that

cutting public expenditure - even expenditure on social provision - ensures that bilateral and multilateral creditors are paid their dues.

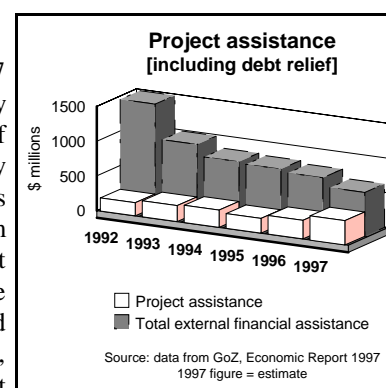
By not providing sufficient balance of payment support to eliminate the need for domestic transfers, but by insisting that debt service payments are made, multilateral and bilateral donors reduce the resources available to a domestic Government to meet its obligation to fulfil rights under the Covenant. The Commission on Human Rights has determined that debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health services and a healthy environment.³²

b. Project assistance

i. Levels of project assistance

Throughout this crisis in the Zambian economy and interruptions to the flow of foreign exchange, one test of the donors' commitment to the majority of poor Zambians is whether money originally earmarked for balance of payments support is instead being redirected towards targeted project assistance.

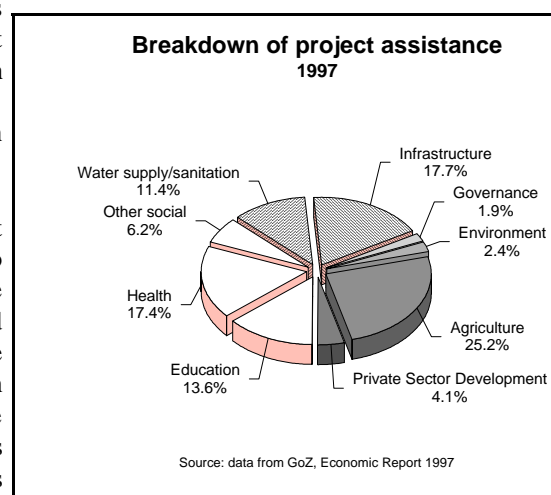
The average amount spent each year on project assistance over the period 1992-1997 was \$252 million. In 1996 and 1997, both the level and proportion of aid money which was directed to project assistance has increased, but this is in the context of overall falls in total assistance levels. Put another way, project assistance increased by \$136 million between 1995 and 1997; yet, at the same time, balance of payments support has fallen by \$184 million. While the donors may have withheld money from balance of payments support on grounds of poor governance, a corresponding amount has not been channelled into project assistance. Of course, assistance cannot be reallocated without ensuring that the capacity exists to ensure that it is well spent and it would not, in any case, necessarily be desirable to effect a major switch.³³ However, neither can it be assumed that project assistance is of automatic benefit to the poor. It all depends upon how it is targeted.



ii. The degree to which project assistance is targeted at poverty alleviation and social provision

Donor money which is spent directly on projects and programmes aimed at improving social provision or addressing poverty comes out of the overall total of funds earmarked for project assistance each year. In 1997, project and programme assistance was worth \$351 million. Of this amount, forty per cent or \$143 million was spent on the social sectors, to include education and health.

Ultimately, the only way of determining the degree to which project assistance, even within the social sectors, is targeted at the poor is to look more closely at how the money is actually used. It is beyond the scope of this submission to consider the full range of bilateral and multilateral project assistance in this way. However, in the substantive sections which follow, further attention is focused throughout upon the impact of World Bank funded projects and sector programs on the realisation of economic and social rights. Towards the end of this section, an assessment is made as to whether Bank interventions targeted at poverty alleviation offer mitigation commensurate with the sheer scale of hardship caused by the adjustment and stabilisation programme.



B. The role of the World Bank in Zambia

Introduction

The initial critique of the level and nature of external assistance to Zambia establishes only so much as to the advisability of international measures likely to contribute to the effective implementation of the Covenant: a preoccupation with balance of payments support tied to debt repayment; the withdrawal of bilateral assistance based upon a subset of human rights concerned with civil and political freedoms and economic conditionality; the relative neglect of targeted project assistance aimed at poverty alleviation; and, in Zambia's case, the total failure of external assistance to free up domestic resources which the Government could use, if so minded, to improve social provision and social safety nets. Yet progress towards the achievement of economic and social rights in Zambia has not been merely curtailed by insufficient or inappropriate international assistance; rather, it has been actively eroded - even reversed - by aspects of the economic reform agenda which are integral to the concept of adjustment lending. A concern over the detrimental impact of all manner of reforms on the realisation of economic and social rights lies at the heart of the next main sections of this report.

However, before proceeding with this substantive analysis, it is essential to seek to understand the nature of the relationships between those actors - principally the World Bank, the IMF, bilateral donors and the Government of Zambia itself - who are simultaneously responsible for the economic reform program. This is necessary in order to reach meaningful conclusions about the culpability of each of them in respect of the erosion of economic and social rights.

Two relationships are of particular interest. First, the interaction of the World Bank with the IMF and bilateral donors. In the Zambian context, throughout the 1990s, the Bank has taken on a leadership role. Subsections will explore the influence of the Bank, its preoccupation with adjustment lending, recent shifts in its priorities in Zambia, and end with a summary of the threefold nature of Bank action in relation to the realisation or denial of economic and social rights. Second, the relationship of the Bank to the Government of Zambia in the design of, and influence over, the economic reform program is of paramount importance and will be examined in its own right in a final subsection. Yet, ultimately, the role of each actor is not judged relative to the actions of others, but in respect of the Covenant.

1. The interaction of the World Bank, the IMF and bilateral donors

a. The influence of the World Bank on bilateral support

The Bank's assistance to Zambia has increased in relative terms as bilateral donor support has declined. Over the three years from 1995-1997, the Bank has been providing, on average, 37 per cent of all external assistance (excluding debt relief).

Of greater significance when it comes to considering donor influence on the economic reform program is the increasing proportion of balance of payments support contributed by the Bank. It is assistance of this kind - the provision of foreign exchange to enable Zambia to service its existing debts and pay for imports - which is linked to adherence to an agreed economic program. Between 1993 and 1995, the Bank's share of balance of payments support to Zambia amounted to half the amount provided. In 1996 and 1997, the Bank was contributing over four-fifths of such support.

The influence of the Bank is apparent in ways which go beyond the size of the assistance it provides. In relation to shaping the policies and coordinating the assistance of bilateral donors, the World Bank has played a pivotal role.³⁴ It is the Bank which chairs the crucial Consultative Group meetings of donors, as well as ad hoc meetings of the key donors in the 'Paris Club' during which both the level and priorities of donor assistance are agreed. The Bank has steered donor policy in at least four key ways. First, it has played an advocacy role by convincing donors of both the perceived merits of structural adjustment in Zambia and the MMD Government's commitment to the program. Whereas, in the mid-1980s, some bilateral donors expressed reservations about reform programs of the type carried forward in Zambia and have been cited by the Bank as a 'countervailing influence', the Bank has worked hard to achieve a broad consensus.³⁵ Second, the Bank has provided the analysis, through its economic and sector work, which donors have then drawn upon in negotiating debt relief and designing assistance programs. Third, it has pioneered sector investment programs (SIPs) which aim to coordinate all donor assistance and Government policy across an entire sector such as agriculture, health or education. Finally, by registering bilateral aid, it has acted as the 'lender of last resort' by plugging gaps in donor funding.

b. The relationship between the World Bank and IMF in Zambia

The relationship of the Bank to the IMF in Zambia is characterised by very close integration. Both organisations remain the principal architects of economic reform in Zambia. Bank structural policy benchmarks relating to trade, taxation, spending allocations, privatisation, and public sector reform are coordinated with the IMF's fiscal targets and macroeconomic benchmarks.³⁶ Policy Framework Papers mapping out the overall reform program are drawn up by the Bank, IMF and Government.³⁷ Furthermore, balance of payments needs are agreed jointly between all three parties at each Consultative Group meeting.

The close coordination of operations in Zambia is underlined by the fact that the Bank has taken forward measures to stabilise the economy, action more usually associated with the IMF.³⁸ This is due to the recent history of relations between both multilateral agencies and Zambia. Throughout the 1980s, Zambia periodically defaulted on debt repayments before reaching the next short-lived understanding with the Bank and IMF.³⁹ The World Bank suspended payments to Zambia for a period in 1983, from 1987 to 1991, then again for a short period from September 1991 to January 1992.⁴⁰ The IMF considered Zambia to be ineligible for support for an extended period which officially began in September 1987 and which lasted until the end of 1995. The MMD Government, on election to power in 1991, was not in a position to clear Zambia's unpaid arrears to the IMF without considerable assistance from the Fund itself. This support was forthcoming in principle, but put on hold until the MMD Government had first proved its commitment to economic reform and earned the right to access new funds. In the interim, the World Bank stepped in to fulfil the role of the IMF and tied its adjustment loans to the achievement of IMF-type fiscal and monetary targets based on the Fund's own 'standby agreements' with the Zambian Government.

The IMF's 'Rights Accumulation Program' was successfully completed by Zambia in December 1995 and the block on IMF resources lifted. This enabled the IMF to provide new loans to Zambia totalling \$1043 million which were then used by Zambia as the major contribution towards the clearance of its existing \$1234 million arrears with the IMF. This arrangement seems to be entirely circular in nature; however, whereas the original money borrowed by Zambia came from the IMF's general funds and thereby was lent on strict and costly terms, this was replaced by new, and relatively inexpensive, concessional loans from the Fund's Enhanced Structural Adjustment Facility. This switch reduced Zambia's repayments to the IMF by \$45 million in 1996 and this is reflected in the overall drop in Zambia's debt service.⁴¹ Between 1995 and 1996, debt servicing fell to the equivalent of 21.5 per cent of Zambia's exports.⁴² In the previous year, this ratio had stood at 27 per cent. In return, the MMD Government agreed to adhere to economic benchmarks and targets set in conjunction with the IMF. A release of further IMF funds - known as ESAF II - will be linked to the continuation of a similar economic reform program. Ultimately, Zambia's qualification for an IMF and World Bank backed package of measures to reduce the amount owed by Highly Indebted Poor Countries (HPIC) will be dependent on the successful completion of this program. For more details on the HPIC initiative, please refer to the *Supplement* on debt.

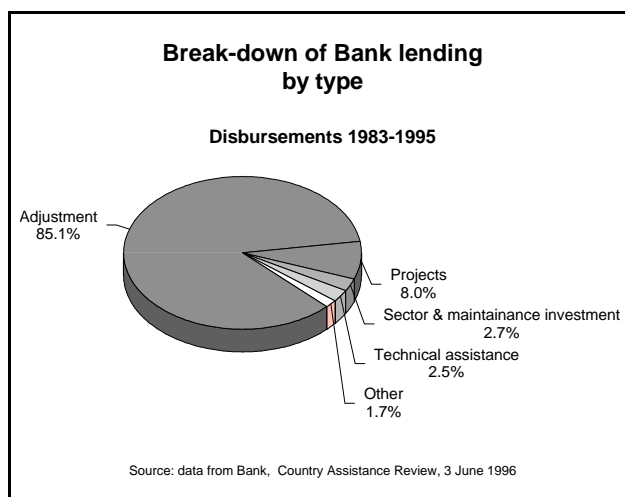
2. The three elements of World Bank support: adjustment credits, project assistance and technical assistance

a. An overall breakdown of Bank lending

Overall, given the dynamics of the internal relationships between the donor agencies, it is most instructive to pay the closest attention to the structural adjustment and stabilisation program brokered between the IMF/World Bank and the MMD Government.

i. Bank lending 1983 - 1995

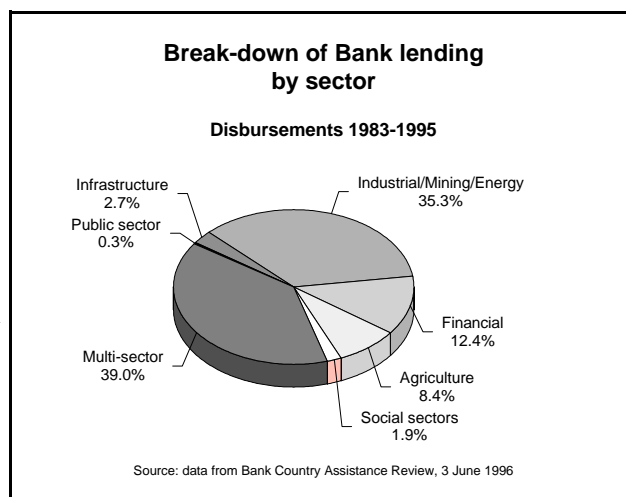
A massive eighty six per cent of the Bank's disbursed lending over the period 1983-1995 has been geared towards achieving economic adjustment in Zambia.⁴³ This preoccupation with adjustment lending is reflected in the distribution of disbursements among different sectors in Zambia. Just over one third of disbursements went in support of broad, 'multi-sector' economic reform. Another third underpinned reform in industry, mining and energy. While the amount of



money spent on technical assistance - for example, financing the recruitment of key staff and commissioning expert studies - may be relatively small, in the Zambian context it has been a significant influence in shaping the legislative and policy framework for privatisation and reform of the mining sector.

In stark contrast to adjustment lending, actual investment in projects or in sector and maintenance programs has totalled little more than ten per cent of total disbursements over the period 1983 - 1995. Furthermore, only three per cent of total disbursements were linked to improving transport and water provision combined, and less than two per cent of funds went to support the social sectors of education and health.⁴⁴

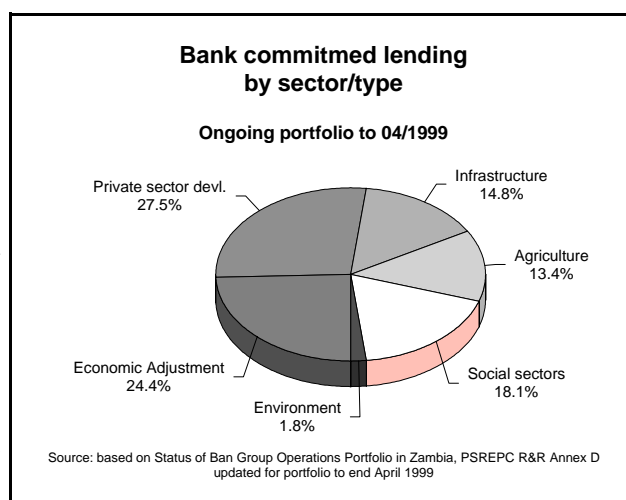
This longer-term breakdown of Bank lending is revealing, especially in highlighting the very high priority given to economic adjustment in comparison to the extremely low level of funds earmarked for social provision or investment in infrastructure. By the Bank's own reckoning, over the period 1980 to 1995, only eight per cent of its disbursed loans and credits to Zambia were going towards poverty alleviation and human resource development as opposed to eighty per cent towards management of the economy and private sector development.⁴⁵ It is no wonder, in the absence of consistent growth in the Zambian economy, that the harshness of reform has been so keenly felt by the majority of poor Zambians. However, the figures span a decade and a half and do not shed much light on the changes in Bank policy. It is therefore necessary to examine the Bank's recent lending strategy in more detail to assess whether enough is being done to promote pro-poor growth or to establish an adequate safety net in order to mitigate the harsh consequences of the economic reform program.



ii. *The Bank's ongoing portfolio*

The World Bank calculates that its ongoing portfolio of support to Zambia to fiscal year 1998 was worth \$495.8 million.⁴⁶ This is not the amount of money lent by the Bank in a single year. Rather, it represents the Bank's commitments over several years - some of the active loans in the portfolio date back to the early 1990s - as money is paid out in instalments until it is either used up or the loan facility reaches its pre-set closure date. The picture of Bank lending has been updated to April 1999 by adding in the latest adjustment credit and an education sector project, both approved in 1999.⁴⁷

While adjustment commitments account for \$170 million or just under a twenty-five per cent of the total, and a further \$191 million or twenty-eight per cent is earmarked for private sector development, funds committed towards social sector investment in education, health and social projects amount to \$126 million or eighteen per cent of the total.



Sector investment programs (SIPs) figure strongly in the Bank's recent operations portfolio. These have centred upon agriculture, health, education and transport.⁴⁸ Each SIP works as a framework in order to coordinate both Government and donor action in the same sector.⁴⁹ A key feature is that SIPs are derived, then implemented, and therefore 'owned' by the recipient Government. The Bank has tended to finance the drawing-up of SIPs and consequent institutional reform. It then acts as the lender of last resort to plug gaps when funds are not available from other donors or the Government itself.

Ostensibly, Bank allocations to the social sectors appear to have increased; however, two qualifiers apply. First, the figures cited are for ongoing commitments rather than actual disbursements. At the beginning of January 1999, the Bank's ongoing operations portfolio stood at \$496 million of which \$346 million remained undisbursed.⁵⁰ If disbursements had occurred to schedule, \$270 million would have been paid out by that point in time.⁵¹ The actual figure was \$149 million or fifty-five per cent of expected disbursements. Two-thirds of intended disbursements went to the social sectors of health and education.⁵² Second, and conversely, the proportion of bank social sector commitments

rises when overall Bank support is withheld. In its 1996 *Country Assistance Strategy*, the Bank outlines a low and a high case lending scenario for financial years 1997 - 1999, depending on the Zambian Government's commitment to reform.⁵³ In the low case scenario, the Bank's entire new adjustment lending of \$270 million is to be withheld should the Government fail to meet loan conditions while the allocation of \$30 million to the social sectors is to be paid regardless. In such a circumstance, Bank social sector commitments would represent forty-two per cent of new lending. However, should the Government adhere to the agreed reform program, thereby ensuring the release of all planned adjustment loans in the high case scenario, then the relative allocation to the social sectors falls to just six per cent of new lending. In reality, the Bank suspended balance of payments support in 1998 and no new adjustment credits were approved between the end of 1996 and the beginning of 1999.⁵⁴

b. The twofold nature of Bank action in the realisation or denial of economic and social rights

A first general principle in General Comment 2 concerning article 22 on the advisability of international assistance measures determines that the two sets of human rights are indivisible and interdependent.⁵⁵ Hence the World Bank and IMF must promote not only all economic and social rights, but do so through actions which are fully consistent with civil and political rights. The reverse must also apply. In positive terms, 'the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.'⁵⁶ In negative terms, the implication is that such agencies must avoid actions which are contrary to either Covenant. A second general principle therefore recognises that 'many activities undertaken in the name of "development" have subsequently been recognized as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.'⁵⁷

Particular concern is expressed by the Committee over 'the adverse impact of debt burden and the relevant adjustment measures on the enjoyment of economic, social and cultural rights.'⁵⁸ While there is a recognition that 'adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity' the Committee has determined that 'under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent.'⁵⁹ Both State parties to the Covenant and the World Bank and IMF have an obligation 'to make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to such programmes and policies designed to promote adjustment.' This requires 'that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment.'⁶⁰

The UN's Special Rapporteur on Economic, Social and Cultural Rights has recognised the need for the World Bank to consider human rights in its pursuit of structural adjustment:

'The World Bank should be encouraged to strengthen and further develop its policies relating to poverty reduction and policies intended to address the social aspects of adjustment. In this context, the World Bank should be sensitive to the pronouncements of the human rights bodies of the United Nations and should gradually incorporate human rights criteria in its work at all stages, including in project and policy lending, preparation of policy guidelines, as well as in project and policy appraisal, monitoring and assessment.'⁶¹

The Committee itself recommends that, *inter alia*, 'every effort should be made, at each phase of a development project to ensure that the rights contained in the Covenants are duly taken into account.'⁶² This consideration should therefore apply in the assessment of priority needs, project identification, design, implementation and evaluation.

The Bank itself has made this high-profile claim:

'The World Bank believes that creating the conditions for the attainment of human rights is a central and irreducible goal of development. By placing the dignity of every human being - especially the poorest - at the very foundation of its approach to development, the Bank helps people in every part of the world build lives of purpose and hope. And while the Bank has always taken measures to ensure that human rights are fully respected in connection with the projects it supports, it has been less forthcoming about articulating its role in promoting human rights within the countries in which it operates.'⁶³

This claim amounts to hyperbole. In respect of Bank action in Zambia, it soon becomes apparent why the Committee is at pains to spell out the need to take explicit and specific measures to truly integrate human rights concerns into development activities.⁶⁴ In particular, its concern that all human rights should be given consideration in the initial

assessment of the priority needs of a particular country is borne out by the Bank's blind pursuit of stabilisation measures antithetical to the rights of the poor. No explicit attempt has ever been made by the Bank's at the strategic level to build protection for economic and social rights into planned adjustment operations in Zambia. The Bank has singularly failed to apply a rights framework in subsequent project and program design, implementation and evaluation. The result has been many programmes and projects which are ill-conceived and counter-productive in relation to the realisation of economic and social rights.

There are two aspects to an assessment of the Bank's action in Zambia which correspond to the Committee's two general principles on the advisability of international assistance. First, and guided by the principle that many development activities are counter-productive in human rights terms, the question of the negative repercussions of adjustment lending upon economic and social rights must be addressed. Second, and in relation to the determination that agencies should make a positive contribution to the enjoyment of the full range of human rights, it is necessary to examine the use of adjustment conditionality to improve social provision. In the same arena of positive action, consideration must also be given to the Bank's use of project assistance to alleviate poverty.

C. The negative impact of adjustment conditionality upon the enjoyment of economic and social rights

The Bank's indirect cultivation of laws and policies designed to achieve economic stabilisation or adjustment often has negative repercussions for the realisation of economic and social rights. Reform is based upon adjustment lending, backed up by technical assistance, wherein the Government agrees to a program of specified actions. The degree of latitude which the Government has in the final decisions over the nature or implementation of these actions depends, to a degree, upon the importance attached to each by the Bank. Certain actions are the subject of legal covenants which tie the tranching of funds to their fulfilment.

Technical assistance, although accounting for only a small proportion of expenditure, has been instrumental in supporting adjustment operations by providing the necessary expertise needed to develop laws, detailed policies and institutional capacity on matters such as the regulation of privatisation, the privatisation of the mining sector, protection of the environment and land reform. The Bank also exerts an influence through 'economic and sector work'. This constitutes a variety of research and analysis which helps to inform Bank and Government policy. In the case of Zambia it has included regular economic reviews, sector studies and a comprehensive Poverty Assessment. It is Bank-backed public expenditure reviews which underpin the Economic and Financial Policy Framework Papers and Public Investment Programs which the Zambian Government puts forward.

By turning to the Bank's own analysis of its loan conditionality, it is apparent that agreements in the areas of macro-economic, fiscal, parastatal, public sector and private sector reform are all implicated in a denial of economic and social rights.⁶⁵ A full summary of the Bank's loan/credit portfolio, including details of commitments and disbursements, is given in a supplement to this section.

1. Macro-economic and fiscal reform

The UN's Special Rapporteur on Economic, Social and Cultural Rights, stated in his second progress report in 1991:⁶⁶

Many countries that have undergone Bank and IMF funded structural adjustment programmes have experienced, in addition to macro-economic stability and increased growth rates, declining standards of human welfare, and deteriorating environments.

By citing statements from the IMF and Bank in support of social development, the Special Rapporteur highlighted a key contradiction: the modalities of structural adjustment, particularly evident in Africa, required a drastic reduction in domestic investment and Government consumption which resulted in the neglect of infrastructure, health services, schools and welfare schemes.⁶⁷

Notwithstanding the recent poor performance of the economy, this pattern of welfare decline is apparent in Zambia. After an initial preoccupation with debt management during the first two years of its program with the MMD Government, Bank documents note a shift in priority during 1993 towards the use of adjustment lending to encourage macro-economic stabilisation and the control of inflation⁶⁸. Lending was made conditional on the achievement of

IMF-type fiscal and monetary targets. The short-term goals of lower inflation and stable prices were achieved, but action taken to balance the Government's domestic budget hit the poor hard. Stabilisation measures resulted in massive cuts in public expenditure on health and education, the introduction of user-fees, and an increase in taxation on the poor through an extension of value-added tax. This regime was underpinned by adjustment lending and balance of payments support.

The second report of the Special Rapporteur on Economic, Social and Cultural Rights prompted key UN human rights bodies to adopt resolutions in which the adjustment lending activities of the multilateral lending institutions were censured. The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, in expressing its concern over the issue, urges '...the international and financial institutions, in particular the World Bank and International Monetary Fund, to take greater account of the adverse impacts of their policies and programmes of structural adjustment on the realization of economic, social and cultural rights.'⁶⁹ A similar resolution was adopted by the Commission on Human Rights.⁷⁰

It must be emphasised that while the reformers argue that there remains no viable alternative to stabilisation, and while they point out that such reform in Zambia is in accordance with the MMD Government's own free-market agenda, very little was done on the part of the World Bank during this first phase to redress the harm done by targeting project and sector program assistance at poverty alleviation. Furthermore, the Special Rapporteur firmly rejects the argument that there is no alternative to the 'bitter medicine' of adjustment which results in the denial of economic and social rights. On the issue of conditionality, the position of the Rapporteur is unequivocal.⁷¹

As a general principle, conditionalities should never result in the outright infringement of economic, social and cultural rights, nor threaten the satisfaction of the basic needs of subsistence.

a. The decimation of public expenditure

Policy reform agreements centred on general fiscal and monetary performance span all six of the Bank's adjustment credits between 1991 and 1997.⁷² A key objective of the Second Economic Recovery Credit (ERC) was to support economic reforms aimed as 'macroeconomic stabilisation implemented with IMF monitoring'.⁷³ A reduction in the budget deficit was sought, requiring the Government to desist from borrowing money from the banks to pay for public services.⁷⁴ Under PIRC I, the Zambian Government was required to reduce the budget deficit to not more than 2 per cent of GDP and to decrease inflation to 45 per cent by the end of 1992.⁷⁵ Evidence was required under PIRC II that the Government was adhering to fiscal and monetary targets agreed with the IMF.⁷⁶ Measures were agreed under ERIP and ESAC to improve budget management and restrict public sector wage increases in order to avoid arrears and unplanned spending.⁷⁷

An initial move to cash budgeting was made in mid 1993.⁷⁸ Under this system, the Government must have the cash in its coffers in order to pay out funds rather than being able to borrow to finance public expenditure. Hence, with the exception of salaries, money is allocated on a monthly basis. This has made it extremely difficult to plan services such as health or education as it is not known from one month to the next how much money will be released.⁷⁹ Furthermore, it is inevitable that those Ministries with greater clout will corner funds. It was noted in the Bank's own Poverty Assessment that the 'cash budgeting system has caused a further decline in social spending, as it was difficult for the Government to protect core social expenditures that benefit the poor.'⁸⁰ Yet ESAC II imposed conditionality to reiterate the requirement of strict cash budgeting to eliminate domestic spending in excess of actual revenue.⁸¹

The main achievements of these agreements are cited as the elimination of a fiscal deficit in the Government's domestic accounts and a reduction in annual inflation from an average of over 100 per cent during 1991-1994 to 26 per cent in November 1998.⁸² Even at this reduced level, the cost of living is outstripping any increase in household income for the poor. At the same time, bringing the Government's domestic account into balance has been achieved at considerable cost. Government domestic expenditure has been decimated, falling by almost a half in real terms from K1019 billion to K586 billion over the period 1991 - 1997.⁸³ Social spending has plummeted. Between 1981 - 1985 almost two and a half times as much was spent on the social sectors in real terms than during the period 1991 to 1993.⁸⁴ Belated Bank conditionality to protect the relative allocation to the social sectors introduced in 1994 must be viewed in the context of this massive reduction in public expenditure, itself a requirement of Bank lending predicated on stabilisation. The realisation for the majority of poor Zambians of their rights to health, education, housing and social security has been diminished at precisely the time when their capacity for self-help centred around productive employment has been undercut by economic reform.

b. Shifting taxation away from investment and towards the poor

On the revenue side, ESAC required the drawing up of an action plan for VAT, the introduction of which was made a condition for the release of funds under ERIP.⁸⁵ The collection of VAT in Zambia began in July 1995. VAT is a tax on poverty as it is paid at the same rate by rich and poor alike. Two years after its introduction, VAT accounted for 19 per cent of tax revenue whereas the system has been engineered to reduce the contribution from company tax.⁸⁶ Under PIRC I, measures were pursued to reduce corporate and income tax and improve tax harmonisation.⁸⁷ In 1996, company tax contributed just 7 per cent of tax revenue in comparison to 32 per cent in 1990.⁸⁸ Whereas in 1991 taxes on international trade contributed 36 per cent of domestic revenue, by 1997 this had been reduced to 28 per cent.⁸⁹ In the 1998 budget, tax concessions to mining companies worth K18 billion in their first year, the scrapping of the import declaration fee, an increase in the personal allowance, and a tax amnesty called for by the business community were all announced.⁹⁰ All of these measures are of little or no direct benefit to the poor.

c. Inflation and the move to a market-based exchange mechanism

As part of fiscal reform under PIRC I, the Government was required to complete the move to a fully market-based foreign exchange mechanism begun under the earlier Economic Recovery Program credit.⁹¹ PIRC I also stipulated that the setting of interest rates was to be taken out of Government control to be determined by commercial banks. In the absence of macro-economic stability, and because of already high inflation, the move to a market-determined exchange rate in 1992 has been criticised.⁹² It caused inevitable inflation as the Kwacha fell to its real value against other hard currencies. Similarly, the decontrol of interest rates, while protecting the value of the Kwacha and reducing inflation, made it prohibitively expensive for those in business to borrow money. This has suppressed growth - and hence job creation as a way out of poverty - in medium and small sized enterprises in both the formal and informal sectors.

d. The elimination of maize subsidies

The Bank refused in July 1991 to waive the condition under its Economic Recovery Credit requiring the Kaunda Government to reduce of maize meal subsidies and increase prices.⁹³ Bank lending was suspended as a result in September 1991, but the second tranche of the credit was released in January 1992 when the new MMD Government moved to implement the required measures.⁹⁴ The phasing out of maize and fertiliser subsidies, which had commenced under the ERC, was completed as a condition of PIRC I.⁹⁵

The objective was to shift agricultural production in Zambia away from maize towards more lucrative cash crops.⁹⁶ However, the elimination of maize subsidies and the abolition of fixed pricing has had an adverse impact upon both the urban and rural poor. The World Bank and Government of Zambia initially failed to take into account that the 'elite' of employees in the urban formal sector was being replaced by an urban poor of retrenchees and informal sector employees. It is acknowledged in the Bank's own *Poverty Assessment* that the real consumer price of maize meal more than doubled following the liberalisation of the market in 1992 and the elimination of consumer subsidies in 1993, at the same time as the purchasing power of the population fell.⁹⁷ The decline in demand for maize reflected the inability of the urban poor to buy food. The decline in demand has prompted some diversification away from maize but has simultaneously increased food insecurity. For example, by December 1997, Zambia had an overall food deficit of maize, rice, and wheat when measured against food requirements.⁹⁸ Hence the importation of these staples was inevitable.

The rural poor were adversely affected for two reasons.⁹⁹ First, the poorest farmers in isolated areas used to benefit from an effective transport subsidy and were able to sell their maize at a profit to the Government marketing boards. ESAC pursued the curtailment of State involvement in crop marketing.¹⁰⁰ With the abolition of this marketing system, private marketers either failed to serve these outlying areas or else offered only a low price for the crop due to the real cost of transporting it to market. Second, the removal of subsidies on fertiliser, in order to create a level playing field for imports, meant that the cost of farm inputs increased. The Bank concedes that 'the removal of transport and other subsidies and services has adversely affected the poor in remote rural areas, at least during the transition period.'¹⁰¹ At the same time, the end of favourable Government loans to buy seed coincided with a sharp decline in access to commercial credit as interest rates soared in the 1990s. Hence farmers, already suffering from the impact of successive droughts, were unable to purchase seed, fertiliser and other inputs necessary to plant out new crops.

2. Parastatal and Public Sector Reform

a. Rationalisation of the public sector and redundancies

Rationalisation of the parastatal sector preceded privatisation. Release of funds under the initial Economic Recovery Program credit was made conditional on parastatal restructuring and the elimination of subsidies to the parastatal sector.¹⁰² The ERC advanced this agenda.¹⁰³ Under PIRC I, loan agreements required the granting of managerial autonomy to all parastatals and the abolition of ZIMCO, the State holding company.¹⁰⁴ Under its PIRC loans, the Bank has required the liquidation of nonviable businesses. It cites as an achievement the closure of the United Bus Company of Zambia in 1995.¹⁰⁵ ESAC sought the introduction of measures to limit price setting by parastatals and to control indirect subsidies to parastatals, including the ailing Zambia Airways.¹⁰⁶ In the absence of an acceptable financial plan, Zambia Airways was liquidated amid much controversy in 1994. Such conditionality has contributed, by the Bank's own admission, towards the loss of 30,000 jobs from the parastatal sector between the last quarter of 1993 and mid-1995.¹⁰⁷

PIRC II sought to introduce a mechanism to adjust prices and tariffs in the utilities - that is, to increase the cost borne by already impoverished Zambians - to move them towards financial viability and avoid the need for indirect Government subsidies which jeopardised the stabilisation program.¹⁰⁸ In the public sphere, loan agreements under ERC and PIRC I have required the rationalisation of the civil service with the planned abolition of some 80,000 posts through a mixture of redundancies, natural attrition and a hiring freeze.¹⁰⁹ A principal aim of the PSREPC is to address the continuing issue of public service reform, to include drastic cuts in staff levels. Release of part of the credit is conditional on the agreement of an action plan to implement the Government's revamped Public Sector Reform Program.¹¹⁰

Section 2(II) examines the current wave of formal sector redundancies, the insecurity of the informal sector, and the lack of assistance for the unemployed. This analysis will not be repeated here. It is sufficient to note that economic reform, liberalisation and privatisation have precipitated a massive increase in redundancies and therefore an increase in urban poverty. In contrast, Bank support for measures to mitigate the negative impact of widespread retrenchments has been inadequate or even counter-productive. As a consequence, the National Social Safety Net for retrenchees has proved to be totally ineffective, thereby failing to realise the right to social security: please refer to Section 3. ESAC sought a reduction in the cash consideration of redundancy packages through the introduction of in-kind payments - such as land, cars, houses.¹¹¹ This has resulted in widespread discrimination and inequity in the payment of terminal benefits and has violated the right to equal remuneration: please see Section 2(II).

b. Privatisation

Building on requirements for a privatisation policy under its earlier Economic Recovery Program credit, PIRC I made the adoption of a privatisation plan and legislation the subject of loan agreements.¹¹² The Privatisation Act has failed to prevent asset-stripping and corruption; the role of the Zambian Privatisation Agency has been usurped; there has been an absence of transparency and accountability in respect of the sales; privatisation proceeds have either been diverted from the authorised account or else have not been used for the purposes intended, to include the funding of social projects; and the public flotation of retained shares has further concentrated wealth in the hands of an elite. Section 2(I) gives full consideration to the inadequacy of this regulatory framework.

Under its ERIP loan facility, the Bank required the Government to adopt and begin implementation of a plan to privatise ZCCM.¹¹³ Bank technical assistance paid for the necessary international legal and business expertise. The result has been a calculated decision to concentrate on the sale of the core mining business and to effectively suspend consideration of the future of the social assets and services provided by ZCCM. A principal aim of the PSREPC is to accomplish the completion of the privatisation of ZCCM.¹¹⁴ Second tranche release of the credit is conditional on the transfer of ownership of key remaining ZCCM mines to the new proprietors, principally Anglo American of South Africa. The Bank has agreed for funds it provides to be on-lent to pay for the latest wave of redundancies in ZCCM: prior rationalisation is a crucial element of the sale. However, no explicit conditionality relates to the take-over of social assets associated with the mines. The social fabric of many Copperbelt towns lies in commercially orientated development agreements modelled on those drawn up by the consultants. The new owners are expected to run 'social assets' for no more than two years. As these commitments come to an end, the future management of shared mine and municipal services is uncertain. Anglo American, negotiating from a position of strength, has refused to run social services, even in the interim.

The Bank has a responsibility for the threatened diminution of social rights because of its role in setting the parameters for the original consultancy study and because of its drive for rapid privatisation of the mining sector while never

earmarking adequate resources to assess and plan for the take-over of social provision. Once more, this issue is examined in greater depth: please see Section 2(IV).

3. Reforms to encourage the private sector

a. Investment and deregulation

Both PIRC I and PIRC II required the development of a policy and institutional framework to encourage the private sector.¹¹⁵ The Investment Act offers tax breaks as general incentives to all investors and special, additional incentives for exporters of non-traditional products, those producing products for use in agriculture at home or for export, the tourism industry, the import substitution industry, and investors in rural areas.¹¹⁶ In contrast to the bureaucratic barriers faced by most Zambians in seeking title, expert assistance is accorded to investors wishing to purchase land.¹¹⁷ PSREPC seeks to streamline the operation of the Investment Centre, established under the Investment Act, to make it easier for investors to be granted Investment Certificates.¹¹⁸

Investors are protected from the compulsory acquisition of property by the State and are accorded the right to transfer out of Zambia foreign currency in respect of, *inter alia*, dividends or after-tax income, management fees, royalties, and the net proceeds from the sale or liquidation of a business.¹¹⁹ The subsequent incorporation, when a business is privatised, of guarantees into development agreements that the Government will not increase or adversely change the tax, royalty or duty rates paid for periods of up to fifteen years raises the question as to whether investment will generate revenue for public expenditure in the social sectors of benefit to the poor. The fact that Bank technical assistance has underpinned the drafting of such development agreements must intensify debate over the advisability of its support. Please see Section 2(IV) for further details.

b. Labour market deregulation

i. The formal sector

Agreements were reached under ESAC II to amend the Employment Act and reform the Industrial and Labour Relations Act (ILRA).¹²⁰ In respect of the former, employers are no longer required by law to provide worker housing or medical services. Under the latter ILRA, the undue regulation of aspects of a union's constitution, financial reporting, external affiliation, and the selection of representatives appears to contravene the right of trade unions to function freely. Ministerial prescription of the form which a union's application to register must take, the Commissioner of Labour's assessment of a union's constitution, and the required membership threshold prior to union recognition may all impinge upon the right to form trade unions.

Provision within the ILRA for enterprise-level union recognition and collective agreements may undermine the effectiveness of industry-wide negotiations over pay and working conditions. The ending of single union agreements and compulsory union membership under the ILRA accords with the principle that an employee must be free both to join a union of their choosing and to reject union representation. However, in the absence of strong unions, the protection of working conditions becomes increasingly dependent upon legally enforceable standards. In this context, the development agreements concluded with mining companies - agreements which derive from Bank funded technical assistance - are a cause for concern due to their failure to guarantee minimum standards in working conditions, their framing of windows to delay compliance with environmental legislation, and the lack of supervisory machinery to ensure that private companies honour their undertakings.

The legal requirements under the ILRA for negotiation and conciliation between employees and employers are so exhaustive and open to Ministerial intervention as to impinge upon the right to strike. Of great concern is the power of the Minister to apply to the Industrial Relations Court to declare a strike or lockout not in the public interest. All strikes in Zambia in 1998 were, in fact, declared illegal by the Government.¹²¹ There is a prohibition on sympathy strikes and industrial action in essential services is so widely defined and closely policed as to deny many workers the right to strike.

The Employment Act and the Industrial and Labour Relations Act are given further consideration *vis-à-vis* the right to just and favourable conditions of work and the rights of trade unions in Section 2(II).

ii. *The informal sector*

The informal sector has been promoted as one road out of poverty. In other terms, this is no more than a tacit recognition that this is where eighty-five per cent of the economically active workforce in Zambia already strives to earn a living. In a typical contradiction, the World Bank concludes on the basis of its own *Poverty Assessment* that informal sector employment is insecure, amounts to little more than petty trading for the majority, and is most often a means to survival rather than self-improvement;¹²² yet the licensing and operation of small-scale businesses have been deregulated as a requirement of both ERC and PIRC II.¹²³ This coincides with increased concern expressed by the ILO over deregulation.

In 1997, the ILO Governing Body's Committee on Employment and Social Policy considered a report of the UN ACC Task Force on Full Employment and Sustainable Livelihoods which examined the labour situation in Zambia and six other countries.¹²⁴ It was noted that the vast majority of the labour force worked in the informal sector and fell outside of any regulatory framework. The Committee recognized the poor quality of employment and working conditions:¹²⁵ job insecurity, inadequate worker protection, and health and safety were all issues of concern following labour market deregulation.¹²⁶ In comparison, Commitment 3 of the Copenhagen Declaration and Programme of Action requires the pursuit of the goal of creating quality jobs that safeguard the basic rights and interests of workers.¹²⁷ There is recognition that any employment generated should be of high quality, be adequately remunerated and carry a minimum of social protection.¹²⁸ In order to overcome these constraints in Zambia and the other review countries, the Committee has recommended increased support and cooperation from organisations within the UN system, to include the Bretton Woods Institutions. In this respect, it must be emphasised that the Bank has fully endorsed the Copenhagen Declaration and therefore must seek its implementation. For further analysis of work in the informal sector, please see Section 2(II).

c. **Land deregulation**

PIRC II, ESAC and ESAC II have all contained loan conditions pertaining to the creation of a free market for commercial land in Zambia. The resulting Lands Act has undermined many aspects of the right to adequate housing for the poor. Access to land and housing is now determined solely by market position and the poor are discriminated against in the allocation of plots with secure tenure. At the same time, the insecurity of squatters has been increased by a clause in the Act which reinforces their illegality.

ESAC II also sought the adoption of the National Housing Policy.¹²⁹ This has proved highly detrimental to the enjoyment of a corpus of economic and social rights. All State-owned housing stock is being sold to tenants against a backdrop of rising formal sector unemployment, massive job insecurity in the wake of economic reform, and increasing poverty. Those wishing to buy have no access to home loans because of the utter failure to foster housing finance. Renting in the public sector is no longer an option, rentals in the private sector remain prohibitively high, and sitting tenants are faced with a situation in which they must either buy or lose their home.

Most former council tenants cannot afford market prices. They have made initial downpayments and committed themselves to paying the full purchase price when there is no prospect of them finding the balance required. Local councils, in an effort to recover debts, have cut essential services, sent in bailiffs and even evicted people from their homes. Parastatal employees and civil servants have traded their pensions and entitlements - in short, their future livelihood - for properties they once rented at subsidised prices. The capacity of local councils to provide services has been seriously diminished. They are unable to fund the existing low level of provision, let alone expand site and service areas. This situation has been exacerbated both by the erosion of local authority income due to a new stipulation within the Lands Act which has diverted money to central Government and because of the very sale of council housing which has deprived local authorities of rental income. Furthermore, the municipal services which the former parastatals used to provide in council areas as well as in company compounds can no longer be taken for granted as the new private sector owners seek to reduce any such responsibilities.

The degree to which rights to housing and land is realised or denied in Zambia against this backdrop of market reform and the withdrawal of the State is reviewed in Section 2(III).

D. The extent of Bank action contributing to the enjoyment of economic and social rights

The Bank acknowledges that economic reform and structural adjustment programmes have raised concerns about human rights, while emphasising that the difficulty of such policies should not be mistaken for their necessity:

It is not, therefore, economic reform lending that should raise concerns about human rights, but rather, how those programs are implemented, and what measures are taken to ensure that the needs of the poor are not neglected. The Bank has learned a great deal during the past 15 years about how to design social safety nets and other programs to ease the transition into reforms. Those who design sound economic policies must pay particularly close attention to social spending in countries dealing with high external debt obligations.¹³⁰

Each contention of the Bank is contradicted by the experience of the poor in Zambia. First, concern is precisely centred on the way in which the economic reform program has been implemented: the extensive use of adjustment conditionality to sponsor structural reform and stabilisation, even at the expense of fundamental economic and social rights, has already been documented. Second, turning to the issue of mitigation, the argument is made in this subsection that neither the use of loan agreements to foster a program of social reform nor the targeting of the poor through project assistance has been effectively pursued by the Bank in Zambia.

1. Structural adjustment and Commitment 8 of the Copenhagen Declaration

Commitment 8 of the Copenhagen Declaration and Programme of Action commits governments, and enlists the cooperation of international organisations and the UN system, in particular the Bretton Woods Institutions, to ensure ‘that when structural adjustment programs are agreed to they include social development goals, in particular eradicating poverty, promoting full productive employment, and enhancing social integration.’¹³¹ The Bank states that it is ‘committed to act on the principles embodied in the Copenhagen Declaration and to join with the full development community to ensure that all programs, including those designed to address macroeconomic concerns, meet these agreed goals.’¹³² The Declaration is seen as ‘increasingly central to the way in which the World Bank establishes its mandate and priorities’ and has been described by the Bank’s President as reading ‘like a manifesto of the organization I lead.’¹³³

The Bank has set out its agenda for action on Commitment 8 based around five policy objectives, three of which have a particular resonance in the context of adjustment in Zambia.¹³⁴ First and foremost, policy must foster public expenditures and services which reach the poor, to include the protection of spending upon health, education and other public investments, such as rural infrastructure and micro-finance. Second, programs for safety nets capable of providing effective insurance must be set up before a crisis hits and scaled up during crisis. Third, an emphasis must be placed upon stabilisation policies which are least cost to the most vulnerable.

Any defence of the Bank’s conduct premised on the recent nature of these policy objectives would be misconceived. Instruments such as the Covenant, recognised within the Copenhagen Declaration, were fully in force throughout the renewed program of economic reform in Zambia beginning in 1991.¹³⁵ The Committee’s interpretation of article 22 on the advisability of international assistance measures, to include structural adjustment, was adopted as General Comment 2 in 1990. The Copenhagen Declaration itself was adopted in March 1995, prior to the Bank’s 1996 *Zambia Country Assistance Strategy*. Furthermore, it is within this strategy that the Bank articulates a renewed emphasis upon poverty alleviation in terms of striking equivalence to its Commitment 8 policy principles. In other words, it is legitimate to judge the Bank’s action to mitigate the adverse impact of economic reform on its own terms as stipulated in the *Country Assistance Strategy* and in respect of Commitment 8.

2. A shift in Bank policy towards the development of ‘human capital’

While the Bank, in a first phase of reform, remained preoccupied with short-term stabilisation of the Zambian economy, deep-rooted structural adjustment, viewed as essential for the long-term development of Zambia, was delayed. In particular, as is noted in the Bank’s own *Country Assistance Review* of its policy in Zambia, it lacked a program of core investment: insufficient resources were committed to the improvement of infrastructure and the creation of the conditions necessary for private sector-led economic growth.¹³⁶ Investment in the social sectors was neglected too with the result that levels of skills and education, even the health of the people, continued to be eroded. The Bank belatedly recognised that investment in this ‘human capital’ is essential for sustained economic growth.

In order to tackle the problems which occurred after the first phase of economic reform, and in order to push for the growth which has eluded the economy, a second and continuing phase in Bank policy after 1994 is therefore characterised by a shift in focus to investment to promote pro-poor growth and support poverty alleviation.¹³⁷ On the one hand, the Bank and MMD Government agreed that there should be policy continuity. Structural adjustment and macroeconomic stabilisation was to be deepened rather than moderated.¹³⁸ On the other hand, and because of the hardship caused by economic reform itself, there was recognition that direct measures were required to tackle poverty. This changed emphasis in Zambia is itself a reflection of a Bank-wide shift in policy towards poverty reduction.¹³⁹

When the World Bank held discussions with the Zambian Government in 1996 over its Country Assistance Strategy (CAS) for Zambia, it recognised that continued support for economic reform had to be supplemented by direct measures to tackle the issue of poverty and to deliver social support: 'The Bank's 1994 Poverty Assessment (PA), prepared with significant donor and Government involvement, provides the focus for Zambia's development objectives and frames the CAS's priorities.'¹⁴⁰

A key purpose of the *Poverty Assessment* was to highlight areas where social provision was failing the poor in order that the World Bank and donors could better target aid and assistance. In order to accelerate poverty reduction in Zambia, consistent action was recommended in three main areas.¹⁴¹ First, 'human capital' development in Zambia must be improved. This means enabling all Zambians to be productive by helping to make sure they have greater access to better education and training, to improved health care and family planning, and are not worn down by malnutrition as a result of food insecurity. Second, the promotion of pro-poor economic development to ensure the conditions are right for fostering growth among small-scale farmers and urban entrepreneurs, particularly those in the informal sector. Finally, social safety net support should be stepped up for those who need it. Where people are incapacitated - perhaps through illness or disability - or else are especially vulnerable to the effects of poverty and are not in a position to help themselves, then community-based help should be forthcoming.

The degree to which the Bank has taken positive action which contributes to the enjoyment of economic and social rights is analysed using this agenda.¹⁴² A first subsection considers 'human capital development' or measures designed to improve education, health and social services. This encompasses, in line with the Bank's policy to implement Commitment 8, both project assistance aimed at extending services to the poor and the use of adjustment conditionality to further social reform and protect social spending. A second subsection examines the use of project assistance and sector investment programs to promote pro-poor economic growth. A final subsection assesses the extent of Bank action aimed at the provision of social safety nets, as outlined in Bank policy documents and in accordance with the policy objective under Commitment 8 to provide effective social insurance. The Bank's own pro-poor policy shift is not articulated in rights terms. Nevertheless, its threefold objectives appear to coincide, respectively, with the rights to education and health, the right to development, the right to work, and the right to social assistance. Once more, it becomes apparent why the Committee, in its desire to discourage generality *via-a-vis* human rights in development activities, is of the view that agencies ought to move to an explicit consideration of rights.¹⁴³

a. Investing in 'human capital': Bank action on social infrastructure, health and education

In the first phase of reform to 1994, dominated by a preoccupation with stabilisation and adjustment, the Bank's corresponding adjustment credits do not include conditionality on social expenditure. Those credits approved after 1994, and which correspond with the second phase of reform and the Bank's emphasis on growth and poverty alleviation alongside stabilisation and adjustment, do include agreements on the protection of budget allocations to the social sectors. Loan conditions in both ESAC I (FY 1994) and ERIP (FY 1995) stipulated minimum budget and spending targets for key social services in 1994 and 1995 respectively.¹⁴⁴ Furthermore, a stated requirement of ESAC I was the strengthening and decentralisation of social service delivery, and health and education provision.¹⁴⁵ Likewise, ESAC II (FY 1996) sought the maintenance of social spending in 1996 at thirty-five per cent of noninterest domestic expenditure and the preparation of a strategy for education and a policy on drug procurement.¹⁴⁶ Under the PSREPC (FY 1999), the Government has agreed to put into practice its national policy on nutrition and to begin implementation of its revamped public welfare scheme.¹⁴⁷ Non-personnel spending in priority social areas is to be maintained.¹⁴⁸ However, protection appears to apply to relative rather than absolute allocations and fewer priority areas are monitored than previously.¹⁴⁹

Overall, the limited nature of these social agreements, and their secondary importance in relation to macro-economic stabilisation, is readily apparent. As a result of Bank and IMF agreements designed to reduce public expenditure, on average over the period 1992 - 1998 social expenditure in real terms has been K26 billion less each year than the K138 billion spent in 1991.¹⁵⁰ Yet real per capita social spending in Zambia in 1991 was already at a third of 1980 levels.¹⁵¹

Beyond the sphere of adjustment lending, the Bank has launched six projects and sector investment programs in the three areas of social infrastructure, health and education since 1991.

i. Social infrastructure

Social infrastructure has been improved under the Urban Restructuring and Water Supply Project and two Social Recovery Projects.¹⁵²

1) The Urban Restructuring and Water Supply Project (URWSP)

The URWSP was initially funded by the Bank in response to several cholera outbreaks in Zambian towns in the early 1990s.¹⁵³ Its immediate aim was to rehabilitate water systems in Ndola and Kitwe and other affected towns. Limited finance is also provided for demonstration projects based on community-level rehabilitation of services in both formal and peri-urban areas. The project has supported the reform of urban policy and capacity building in both central and local government. Overall, Bank finance amounts to \$33 million of which \$24 million had been disbursed by mid 1998. This represents annual expenditure of about \$2.00 for each person living in urban areas since the project was approved.¹⁵⁴

Given the level of funding in relation to the magnitude of the problem faced, the actions proposed under the URWSP are inadequate. Over a third of urban residents do not have access to safe water; sanitation for fifty per cent of city dwellers is a pit latrine or 'the bush'; in poor areas the situation is far worse, with four-fifths of residents in some compounds dependent on public taps and nine out of ten using pit latrines or buckets. It should be recalled that the incidence of water borne diseases in Zambia has been described as one of the 'most glaring outcomes of the decay in urban infrastructure.'¹⁵⁵ There have been repeated, serious outbreaks of cholera in Zambian cities in 1991, 1992, 1993, 1996 and 1999.

People are not only unwilling to pay rates for contaminated, inconsistent water supplies: many are unable to do so because of their poverty. Councils are grossly under-funded and dependent upon local rates and charges to fund water provision, yet it is proving increasingly difficult to collect arrears in low cost urban areas. Desperate for revenue, councils have even resorted to disconnections in violation of the right to health and even the right to life given the essential nature of safe drinking water.

If the level of assistance from the URWSP was in any way commensurate with the problem, then such draconian measures would never be formulated, let alone implemented. If the Bank's self-declared mandate to alleviate poverty is at all meaningful, then the issue of urban water supply surely should rank in importance alongside any single economic reform measure. Yet it is the Bank which paid for a study for the privatisation of ZCCM which recommended leaving aside the complex issue of social provision until after the mines were sold.¹⁵⁶ This decision to delay planning for the transition of essential services such as water and sanitation has left chaos in its wake while the formation of local utility companies to supply water has further negative implications for the poor: please refer to Section 2(IV) for further details.

2) Social recovery projects

Two Social Recovery Projects (SRPs), together worth \$50 million, have funded community-level microprojects, most of which have focused on the rehabilitation of primary schools and rural health centres.¹⁵⁷ By mid 1998, disbursements amounted to \$35 million, equivalent to expenditure of \$0.5 on an annual per capita basis since approval of the first SRP in 1991.¹⁵⁸ At this juncture, it is sufficient to note the low level of funding of the SRPs. The rehabilitation of several hundred primary schools is put in perspective by the reality of a sharp decline in public expenditure on education in real terms and by the fact of falling school enrolment and attendance as poorer parents judge the benefits and savings of keeping their children out of school to outweigh the gains. Likewise, the refurbishment of rural health centres will not, by itself, advance realisation of the right to health. The wider requirement is an affordable package of health care available to all Zambians. In this respect, not only have key indicators of health continued to decline, but aspects of Government and donor action on health reform have discriminated against the poor. Overall, the objective of these Social Recovery Projects - 'to help mitigate the negative effects on the poor of the economic crisis' - is vastly overstated by the Bank.¹⁵⁹

ii. Health

The Health Sector Support Project (HSSP) aims to improve access to, and the quality of, a national package of essential health care services.¹⁶⁰ As such, it should be of direct benefit to the poor who suffer disproportionately from ill-health.

Support from the Bank and other donors is carried forward as an integral part of the Government's health program. Bank funding initially backed work by the Zambian Government to produce a National Strategic Health Plan in late 1993 as the basis for coordinating Government and donor action on health.¹⁶¹ Under the HSSP itself, approved by the Bank board in late 1994, this plan is updated annually and support for the development of workable health care strategies continues.¹⁶² In addition, the Bank acts as a lender of last resort in order to plug gaps in the financing of the district level health reforms not covered by the Government or other donors. Bank finance for the HSSP amounts to \$56 million, of which \$35 million had been disbursed by mid 1998. This represents Bank expenditure of approximately \$1 on an annual per capita basis. Most Bank money has been used to rehabilitate basic infrastructure and to fund drugs and medical supplies.¹⁶³

Unfortunately, within the life of the project to date, there are indicators which suggest a deterioration in primary health care, one of the areas which the HSSP is designed to promote. The under five mortality rate remains shockingly high; major setbacks in immunisation programmes were recorded in 1997; and the number of nurses has fallen sharply. Counter to the stark condemnation of inappropriate or unaffordable user fees in the *Poverty Assessment*, the Bank justifies its support for a plan which has introduced 'nominal fees' on the grounds that such costs 'foster ownership at the community level' and discourage people from by-passing primary care facilities.¹⁶⁴ Evidence for the counter-view - that user fees deny health care to the poor - is presented in Section 3.

iii. Education

The Bank has financed two recent education initiatives. The first was the \$32 million Education Rehabilitation Project, the funds for which have been entirely disbursed.¹⁶⁵ This has sought mainly to assist in halting the decline in the primary school system by financing the repair and expansion of primary schools, the provision of basic learning materials, and the strengthening of administrative and managerial support. Average disbursements each year have been equivalent to \$3 for each child of primary school age for the duration of the project.¹⁶⁶ This money is in addition to the amount provided by the Bank under its two Social Recovery Projects for the rehabilitation of schools.

The second initiative is an ambitious \$40 million Basic Education Sub-Sector Integrated Program (BESSIP) recently approved by the Bank's board.¹⁶⁷ Once more, support from the Bank and other donors will dovetail with the Government's own sector-wide basic education program of the same name. The initial objectives of the joint program are to increase enrolment at the primary and lower secondary levels and improve the quality of education as measured by learning achievements. Planned action includes increasing the number of trained teachers, improving learning by providing books and revising the curriculum, the refurbishment of classrooms, targeting disadvantaged groups and addressing the problem of pupil malnutrition and ill-health.¹⁶⁸

The extent to which the right to education is realised or denied in Zambia is given full consideration in Section 3. While Bank and donor support is essential and, to a large extent, underpins the provision of primary education, there are two issues which cause considerable disquiet. First, the way in which assistance is delivered engenders a dependency relationship. Donor support for BESSIP is based upon joint reviews and the future of the program is jeopardised if pledges do not materialise because Zambia fails to deliver on wider economic conditionality. Second, the Bank has been instrumental in developing, and now endorses, an education policy which has failed to plan for the progressive implementation of primary education *free to all* as required under the Covenant. Instead, BESSIP is predicated upon cost-sharing and school fees which the poor simply cannot afford.

b. The adequacy of action by the Bank to promote pro-poor economic growth

The Bank has renewed the emphasis within its structural adjustment lending upon the promotion of private-sector-led economic growth and maintains, often in the face of contrary evidence, that such growth is pro-poor in nature. At the same time, there is a discernible shift in Bank policy in Zambia towards the use of sector investment programmes to encourage economic expansion. Two initiatives to rehabilitate the petroleum and energy industries in Zambia, have helped make these sectors more attractive for foreign firms but must be viewed as irrelevant to poverty reduction:¹⁶⁹ indeed, the affect on the poor of this shift to private sector provision in terms of energy/fuel pricing, as well as the impact on local communities, needs to be examined, but is beyond the scope of this submission. Non-industry-specific investments in transport infrastructure are potentially of greater relevance, but cannot be characterised as specifically

geared towards pro-poor growth. The final two growth-orientated Bank projects, reviewed here in brief, are focused on the agricultural sector and upon promoting small and medium enterprises in all areas of business. Neither is proving to be relevant to promoting pro-poor economic growth.

i. The Agricultural Sector Investment Program

The Agricultural Sector Investment Program (ASIP) was one of the first sector program of this type attempted by the Bank anywhere in the world.¹⁷⁰ ASIP was prepared by a Zambian task force.¹⁷¹ It is being implemented through the Ministry of Agriculture, Food and Fisheries. It brings together Government and donor funding for the entire agricultural sector under one program, while activity plans and budgets are the responsibility of decentralised District Agricultural Committees.

ASIP has four main components:¹⁷² first, the promotion of policy and institutional improvements in marketing, trade and pricing, food security, land use, and land tenure; second, reform of public investment; third, the expansion of private sector development through creation of an enabling environment and incentives; and, finally, the launching of pilot investment schemes to support, for example, small-scale capital investment in rural communities on a matching grant basis or to promote the privatisation of government farms.

ASIP, now in its third and penultimate year, has delivered little. The promised level of funding, a total of \$350 million over four years from both donors and the Government of Zambia, has not been forthcoming.¹⁷³ Out of the Bank's principal commitment of \$60 million to ASIP, its disbursements by the end of March 1998 stood at only \$15 million. Hence components of the program of potential benefit to poor farmers and consumers alike - for example, the improvement of food security - have not been significantly advanced.

In a preliminary assessment of the programme, the Bank's Operations Evaluation Department concluded that the needs of subsistence and emergent farmers were neglected in the planning process and that little attention was paid to ASIP's impact upon poverty.¹⁷⁴ The conclusion reached was that ASIP's concern to alleviate poverty and provide food security for vulnerable groups has not been supported with specifics. A mid-term evaluation commissioned by the Ministry of Agriculture, Food and Fisheries reveals the 'disappointing performance of ASIP and [a] loss of confidence of key stakeholders.'¹⁷⁵ Key performance indicators for the sector describe a picture of 'stagnation and reversing trends.'¹⁷⁶ Agricultural production has fluctuated, rising significantly by a third in 1995, but then declining again in 1996 and 1997. The area cultivated under maize has actually increased, contrary to the policy of diversification.¹⁷⁷ The number of farm households owning cattle fell by almost a third due to poor animal husbandry and animal losses through disease.¹⁷⁸

Certain realised components of ASIP are antithetical to poverty alleviation. First, Bank conditionality relating to land reform has been extended under ASIP, despite the fact that the resulting Lands Act has undermined the security of tenure of many Zambians. Second, and most significantly, the elimination of subsidies required by the Bank has seen a corresponding drop in expenditure on fertiliser and hybrid seeds by 51 per cent and 22 per cent respectively in 1994/95 and again in the following year.¹⁷⁹ '...the withdrawal of credit subsidies by Government and the sharp rise in interest rates led to the collapse of agricultural credit as it existed before 1992. This reduced farm inputs by small and medium scale farmers and made it difficult to raise yields.'¹⁸⁰ The Operations Evaluations Department of the Bank concluded that the move to the provision of finance and credit to farmers through commercial lending institutions, together with the abolition of subsidies, would have a severe short-term impact upon smallholders.¹⁸¹ Furthermore, the ending of subsidies to marketing parastatals has made it difficult for isolated smallholders to sell their produce.

As part of ASIP, a Rural Investment Fund (RIF) was established to provide matching grants to support small-scale capital and infrastructure projects - feeder roads, storage sheds, diptanks, bridges, small dams - as well as to support training services in rural communities. By mid-1998, 83 individual projects to the value of K1.6 billion (circa. \$1.2 million) had been supported through the fund.¹⁸² However, despite a general level of satisfaction with the operation of the fund, the Government commissioned mid-term evaluation concludes that farmers do not have the capacity to run and maintain the new infrastructure over the long-term.¹⁸³ Serious questions are also raised in relation to project selection, appraisal and supervision. However, from the perspective of the rights of the poor, the most telling criticism is a lack of participation by disadvantaged groups: '...of the 24 projects visited, most were evidently led by the better-off members of society whereas only a handful of women were represented on the farmer group executive committees.'¹⁸⁴ The RIF has been similarly criticised within the Bank for failing to encourage the participation of local people and supposed beneficiaries.¹⁸⁵

The ultimate development goals of ASIP are, *inter alia*, to improve food security, to promote better use of natural resources, and to increase farm incomes and employment.¹⁸⁶ The conclusion reached in the Government commissioned evaluation is that the prevalence of malnutrition 'remains unacceptably high showing that food security remains a major problem.'¹⁸⁷ This issue is discussed further in Section 3 which considers the right to health. In respect of natural resource

use, the amount of land cultivated by each farm household has declined by almost a fifth, probably reflecting that fewer smallholders now have oxen to provide draft power.¹⁸⁸ A gradual deterioration in agricultural land because of overgrazing, soil erosion and rising soil acidity is noted in Southern Province. A localised pressure on scarce land is recorded in heavily populated areas of Eastern Province.¹⁸⁹ Finally, farm incomes remain depressed under ASIP:

Due to droughts, uncertainties caused by the transition to a liberalized agricultural sector, unfavourable agricultural prices relative to manufactured prices and the low labour and land productivity, net farm incomes only ranged between 35% and 40% of GDP. Although data is scanty, farm incomes appeared to have improved in the 1980s as a result of subsidies and the significant increase in maize production that received favourable price support. Inevitably, farm incomes fell once these were withdrawn.¹⁹⁰

From this low level, farm income did improve by a marginal 8 per cent in 1995 and 1996, although it is not stated whether this is an increase in real terms. Inflation over the same period averaged 39 per cent.

One positive outcome has been the increased contribution of the food processing and textiles sectors to manufacturing output from 66 per cent in 1990 to 74 per cent in 1997 due to privatisation of agro-processing and the cotton industry. This has helped improve non-traditional exports.¹⁹¹ However, a caveat is the extent to which small outgrowers benefit from these schemes or else face insecurity and exploitation in the relationship with large private firms.

ii. The Enterprise Development Project

The \$45 million Enterprise Development Project, on one level, pays for technical assistance to assist Zambia in developing financial institutions suited to the needs of growing enterprises and to improving the way in which the Export Board of Zambia works.¹⁹² Such reform is not, and was never intended to be, of direct relevance in the promotion of pro-poor growth.

Two other components of the Enterprise Development Project - its Matching Grant Scheme to share the development costs of business plans and its Multipurpose Credit Facility delivered through commercial banks - are of greater relevance if they enable entrepreneurs in the urban informal sector or smallholder farmers to get the cash they need to invest in their businesses.¹⁹³ In reality, because these facilities require either that a person has ready cash of their own or can show they have collateral against which to secure a loan, they are not options for people with little or no means. Most informal sector business is to do with petty trading, a world away from enterprise development grants and commercial credit. The EDP was approved by the Bank in mid 1997.¹⁹⁴ By the last quarter of 1998, almost \$43 million remained undisbursed. For further analysis of the EDP *vis-à-vis* the right to work, please see Section 2(II).

c. The adequacy of support by the Bank for social safety nets

There are two facets to a consideration of Bank conditionality on social safety nets. Primarily, few stipulations on social action figure alongside economic requirements in each adjustment agreement. At the same time, adjustment lending, paid as balance of payments support, has failed to free up domestic resources to enable the Government to improve social support. Clearly agreements on the steps required to assist those impoverished by economic reform are only meaningful if married to international assistance which is explicitly designed to ensure such action is adequately resourced.

While the Bank's last four adjustment credits have all included the sanction that funds are not to be released unless the Government of Zambia protects core social spending - to include allocations on social safety nets - the Bank has done nothing to finance positive initiatives of lasting value in this area. This reflects an underlying view that safety nets are 'a short-term palliative' in the face of deep-seated and widespread poverty.¹⁹⁵ Yet, does not the fact that the Bank has insisted upon a program of harsh economic reform in Zambia warrant its immediate support to reduce the impact of this very reform on the most vulnerable? After all, if the Bank's argument that swift economic reform will yield equitable growth is to be believed, then any direct support it provides for social safety nets could only be but short-lived. The reality is that economic reform has increased inequality in Zambia; it has not delivered significant growth; and the need for social safety nets is more acute than ever as more and more Zambians find themselves in a position when they need support if they are to help themselves.

In a 1996 internal review of assistance to Zambia, the conclusion was that the Bank had 'failed to include compensation or a safety net in project design for those who would bear the brunt of the reforms.'¹⁹⁶ Adjustment lending has failed to foster Government action: the 1994 *Poverty Assessment*, in reviewing public spending in the period corresponding to the

ERC and the two PIRCS, concluded ‘[t]he one obvious item “missing” from the budget is a significant allocation for safety net activities.’¹⁹⁷ Indeed, the agreements under PIRC I on social support related solely to the situation of retrenched and not to the vast majority of other Zambians simultaneously impoverished by economic reform and denied assistance because of austerity measures. ESAC focused upon the decentralisation of social services, to include shifting the responsibility for the delivery of welfare assistance to community groups and NGOs. Overall, the Bank’s performance audit report concluded that social spending conditionality under ESAC was ‘a stop-gap measure’ and that ‘a more comprehensively and clearly articulated action program is needed...to ensure an improvement in the quality of life for the most vulnerable groups in Zambia.’¹⁹⁸ ESAC II adopted a similarly limited social agenda. In respect of social safety net provision *per se*, conditionality on second tranche release related solely to the adoption of policy recommendations by the Government on how to work with NGOs to provide and deliver welfare assistance.¹⁹⁹ The Government also confirmed its intention to introduce targeting guidelines to better implement the Public Welfare Assistance Scheme (PWAS), although this was not the subject of an explicit loan agreement.²⁰⁰ Indeed, the Bank’s most recent PSREPC, two and a half year on, renews the requirement for implementation of the revamped PWAS.²⁰¹

A full critique highlighting both the inadequacy of the social safety net for retrenched and the failings of the wider social welfare system in Zambia are examined in Section 3 under the right to social security. At this juncture, however, it is pertinent to note that less than 2 per cent of all Zambians receive State welfare payments.²⁰² The 1998 budget for the Public Welfare Assistance Scheme was the equivalent to just 13 US cents for each of the five million Zambians living in extreme poverty.²⁰³

3. *Résumé - Bank action in Zambia vis-à-vis Commitment 8*

The discrepancy between the experience of structural adjustment in Zambia and the Bank’s policy objectives around Commitment 8 can only be construed as tantamount to an acknowledgement that stabilisation in Zambia has caused unnecessary hardship for the poor. The Bank’s first stated objective is to seek public expenditures and services which reach the poor. In Zambia, stabilisation has been characterised by the decimation of social expenditure in real terms despite belated conditionality on relative allocations. The second objective is to ensure an effective social safety net. Such support in mitigation of the adverse impact of economic reform has been almost entirely lacking in Zambia. The third objective requires an emphasis upon stabilisation policies which are least cost to the most vulnerable: subsequently, in the context of the recent economic crisis in SE Asia, the Bank has acknowledged how the ‘relaxation of fiscal policies, with a diminished emphasis on reducing government deficit, emerged as the appropriate macroeconomic and poverty-alleviation response’. In contrast, stabilisation in Zambia has involved a relentless pursuit of fiscal policies to balance the Government’s domestic accounts.

E. The ambiguity of the World Bank/Government relationship

The determination of responsibility for the success, the adverse consequences, or the failure of economic reform is frequently obscured by the differing interpretation of events presented by each party, or even by the same party in changed circumstances or before a different audience.

The Government has alternatively portrayed the reform program, in part or in its totality, as its own, as a partnership or as an imposition. On occasion, the Bank and IMF have taken credit for positive aspects of reform and played-up their influence. When it suits the Bank’s purpose - for example, in refuting accusations of hegemony - it strives to emphasise ownership of the reform programme by the MMD Government. For example, in describing the Bank’s structural adjustment and investment programs in Zambia, the Operations Evaluation Department notes how strategy is built ‘around a participatory approach that relies on government ownership.’²⁰⁴ Adjustment credits are portrayed as representing the Government’s strategies and priorities within the reform program rather than as determining the shape of reform at the outset.

On other occasions, the Bank has distanced itself from controversial or failed aspects of reform. In its 1996 Country Assistance Strategy, the Bank, despite its portrayal of the reform program as a partnership, is critical of the relaxation of strict fiscal discipline, the prolonged attempt to rescue Zambia Airways, the failure to privatise ZCCM, and the slow pace of public sector reform.²⁰⁵ When a package of ESAC-backed land reforms ran into difficulty in the Zambian Parliament, the Bank was quick to characterise the Government’s measures as ‘overly ambitious and controversial’ in comparison to ‘the more modest proposal that had been expected during credit appraisal and negotiation.’²⁰⁶ A distinction is drawn between the design of, and support for, reform and the sovereign power of Zambia in implementation of the programme.

It is pertinent to note that, in a discussion held by the Commission on Human Rights on structural adjustment and human rights, the Bank representative is reported to have underlined the fact that ‘there was complementarity of action between Governments and the World Bank: while the Bank made proposals it remained the responsibility of States and of society to implement them.’²⁰⁷ The UN Special Rapporteur on Economic, Social and Cultural Rights has rejected parallel attempts by the IMF to pass off ultimate responsibility for the denial of rights to the State, noting that ‘the initiative in formulating economic policies has shifted from the national authorities to international sources, often with negative effects on the people of the developing world....As foreign investors and creditors have increased their power and influence within national policy-making structures[,] the power and reach of the State have declined, particularly in countries undertaking measures of adjustment.’²⁰⁸

The Operations Evaluations Department of the Bank - a unit with some critical distance from the Bank’s resident mission in Zambia or country specialists in Washington - notes the ambiguity in the Bank’s relationship to Government. The particular context was the presentation of a summary development strategy by the Minister of Finance to the Bank’s Board of Executive Directors:

‘This summary’s resemblance to recent statements of Bank strategy notwithstanding, Bank staff insist that Zambia’s strategy is its own; and reflects the work of its few but capable technocrats and the political directorate. Yet, the Zambian strategy addresses the concerns and reflects the views of the Bank, the IMF, and bilateral donors. It is impossible to determine how much of this strategy Zambia really owns, and how much the statement reflects Zambia’s deep awareness of its financial dependence on donors.’²⁰⁹

In determining the responsibility of the Bank or Government for aspects of the reform program which have proved detrimental to the realisation of economic and social rights, it is a distraction to dwell too long on the precise nature of their relationship. It is necessary only to eliminate the extremes and establish that both donor and beneficiary have taken steps antithetical to the realisation of economic and social rights. There are three scenarios, none of which are mutually exclusive. The upshot is a joint responsibility for the realisation of human rights, albeit to varying degrees in a given situation.

First, the fact that the Bank, in principle, has certain obligations to realise the rights under the Covenant has already been established. To deny its responsibilities in this regard in Zambia *per se*, it must be established, at one extreme, that the Bank’s concrete influence on those aspects of the Government’s reform program detrimental to economic and social rights is negligible. Any notion that the Zambian Government has total autonomy and the Bank little or no influence in the design and implementation of the reform program lacks credence and can be dismissed out of hand.

Second, at the other extreme, it cannot be argued that the reform program is imposed on the MMD Government by the Bank and IMF to the extent that it has no influence over the shape, timing or depth of reform. Resistance to the rapid privatisation of ZCCM, the delayed move to the abolition of all subsidies and an entirely free market in maize, the attempted bailout of the failing Meridian Bank, a reluctance to press ahead with civil service reform – all point to a degree of autonomy. It is the Government which adopts policies and legislation and, while it governs in the context of the conditionality placed upon it by the multilaterals, it has an obligation to ensure that all human rights are protected, respected, and fulfilled. The codicil remains that, although the influence of the Bank/IMF is considerable, this does not preclude Government control over aspects of policy nor active Government endorsement of the program.²¹⁰

The final scenario has already been alluded to. The possibility that the policy goals of the recipient Government and the agenda of the Bank/IMF actually coincide is neither precluded by the influence of the multilaterals nor by the retained autonomy of Government. There has been, and remains, broad areas of agreement over reform in Zambia.

At one level, it is therefore apparent that when agreed policies result in the denial of economic and social rights, the Bank and Government bear a joint responsibility. At another level, much more of detail needs to be established; that is, a specific action, policy or law which leads to the violation or denial of a right under the Covenant must be mapped. More often than not, in the case of Zambia, both the Government and the Bank are implicated. On other occasions, the Government may be seen to have acted of its own accord or else the violation may be traced to explicit conditionality in the loan agreement with the Bank. The central precept is this: neither party can successfully deny that it has a responsibility for human rights protection nor, overall, can it avoid responsibility for the deterioration of economic and social rights in Zambia by suggesting that it lacks autonomy to the degree that *all* detrimental actions are those which result from the insistence of the other party. While the remainder of this submission seeks to pinpoint responsibility for violations arising from specific policies, conditions, laws or omissions, this underlying precept holds.

Notes

¹ Article 22 covers ‘virtually all United Nations organs and agencies involved in any aspect of international development cooperation.’ (GC 2, para. 9). Reference is made to bodies such as UNDP, UNICEF, and CDP and agencies including the IMF, ILO, UNESCO, FAO, WHO and the World Bank Group (IDA, IBRD, IFC).

² The principal role of the Committee, in making recommendations of the first type, is ‘to encourage greater attention to efforts to promote economic, social and cultural rights within the framework of international development cooperation activities undertaken by, or with the assistance of, the United Nations and its agencies’. (GC 2, para. 3)

³ In 1992, bilateral and multilateral donors provided \$928 million in direct resources, but, to arrive at the total amount of external financial assistance to Zambia in any one year, it is necessary to add in debt relief measures. In 1992, for example, these were worth an extra \$551 million to the Zambian Government.

⁴ ER 1997, table 2.9, p.35.

⁵ Craven, in his analysis of the obligation upon wealthy States to fulfil economic and social rights in other countries by providing international assistance, cites four occasions when the Committee has questioned Sweden, Norway, the Netherlands and Czechoslovakia about the extent of their co-operation. See Craven (1998), *The Committee on Economic, Social and Cultural Rights: a perspective on its development*, p.149; also, respectively, E/C.12/1988/SR.10, para. 28; E/C.12/1988/SR.13, para. 69; E/C.12/1989/SR.14, para. 62; E/C.12/1987/SR.14, para. 38.

⁶ The Committee has drawn attention to the need for international assistance in supporting social welfare measures in Guatemala to secure a lasting peace. This recommendation was made in the Committee's observations on Guatemala as the recipient State: unusually, it is addressed directly at potential donor states. The basis for making such appeals must lie in the Committee's expectation that international assistance ought to be provided. See Report on the Fourteenth and Fifteenth Sessions, reproduced as E/1997/22, Guatemala, E. Suggestions and recommendations, para. 138.

⁷ GC 2, para. 10.

⁸ Ibid., para. 9.

⁹ Charter of Economic Rights and Duties of States, article 22 (1). (The Charter is to be found appended to in General Assembly Resolution 3281 (XXIX)). See also ‘Report of the open-ended working group on structural adjustment programmes and economic, social and cultural rights on its first session,’ E/CN.4/1997/20, Annex I, C. Policy guidelines for action at the international level, para. 69.

¹⁰ GC 2, para. 7.

¹¹ Although the ultimate aim of such programs is to move away from tying the assistance from one particular donor to one particular project, support of this sort is counted as ‘project assistance’.

¹² E/CN.4/1997/20, para. 16.

¹³ ‘The statistics show a trend in which the economic gains experienced throughout 1997 are now in reverse gear, and they reveal a plea for something drastic to be done to avoid virtual collapse of the economy.’ (‘How Zambia fared in the lean first quarter,’ *Times of Zambia*, 25 May 1998).

¹⁴ PSREPC R&R, para. 5.

¹⁵ In general, see Human Rights Watch (1998), ‘Zambia: no model for democracy,’ Report No. 2A, Vol. 10.

¹⁶ Ibid. On 17 September 1999, 59 perpetrators of the coup, all of them soldiers, were sentenced to death. See *The Monitor*, ‘Death row shocker,’ 1 - 7 October, Issue 74, 1999.

¹⁷ While the MMD Government was successful in securing donor assistance of \$530 million at the May 1998 Consultative Group meeting, it is important to note that the earmarked funds constituted pledges and final payment was conditional on the Zambian Government meeting a number of stipulations. The money was only to be disbursed if Zambia abided by its commitments in respect of good governance. These included reform of the police force, swift action to redress torture, and wide participation in local elections.

¹⁸ See *intra*, Section 2(IV).

¹⁹ Hence, although the ultimate objective of the Bank's ERIP credit was the privatisation of ZCCM, this was not made an explicit loan condition. In retrospect, the Bank considers its failure to insist upon the early privatisation of ZCCM as misjudged. See, respectively, ERIP ICR, para. 12; PIRC & ESAC PAR, paras. 17, 2.27, 3.9, 4.7, 5.2 and 6.4.

²⁰ See Government of Zambia (1999a), *Letter of Intent to the IMF*, 10 March 1999, Table 2 - Zambia: Prior Actions, Structural Performance Criteria, and Benchmarks During the First Annual Arrangement Under the Enhanced Structural Adjustment Facility, January 1, 1999 - December 31, 1999. See also the main text of the *Letter of Intent* itself, para. 34.

²¹ PSREPC R&R, para 39.

²² For example, German support of DM20 million is understood to be conditional on the prompt and timely privatisation of ZCCM and support from the UK, worth an extra £54 million, is similarly thought to be dependent upon the Zambian Government reaching agreement over a renewed IMF/Bank adjustment program.

²³ ‘Zambia wins \$500m aid,’ *Times of Zambia*, 14 May 1998.

²⁴ ‘Donor pledges still on hold,’ *Times of Zambia*, 13 November 1998.

²⁵ One positive statistic is the significant growth of non-copper mining exports such as silver, gold and cobalt slag. See Edwin Musaika, ‘How Zambia fared during the lean first quarter,’ *Times of Zambia*, 25 May 1998.

²⁶ ‘\$30 million released to stabilise forex market,’ *Times of Zambia*, 21 May 1998; see also ‘Forex flow still erratic,’ *The Post*, 21 April 1998.

²⁷ ‘How Zambia fared during the lean first quarter,’ *Times of Zambia*, 25 May 1998.

²⁸ K1403 to \$1 at the beginning of the first quarter of 1998, K1,664 to \$1 at the end.

²⁹ ZPSG, para. 6.23.

³⁰ The figure for health expenditure is from the SCR (1997), Selected Issues and Statistical Appendix, Section IV. Development sin Social Expenditures, table 15, p.44.

³¹ Over the period 1993-1996, average social sector expenditure (to include education and health) each year was \$172.5 million. In comparison, average debt servicing each year over the same period was \$335 million. See Kelly (1998), table 12, p.30.

³² Commission on Human Rights, Resolutions 1993/12, 1994/11 and 1995/13. See also E/CN.4/1997/20, Annex I, C. Policy guidelines for action at the international level, para. 73.

³³ Few would argue that it would be realistic, or even desirable, to switch assistance in its entirety from balance of payment support to project assistance. It is important that the Zambian Government continues to have access to international funds and is viewed as creditworthy by private sector investors. Equally, project assistance is undoubtedly much better suited to targeting assistance aimed at poverty alleviation. The success and suitability of both types of assistance must be viewed in terms of the achievement of their own objectives, their sustainability and whether the balance between them is appropriate. Balance of payments support, in conjunction with debt relief measures, has enabled Zambia to service its debt. However, donors do not believe that such assistance is sustainable. They view the amount of money required as simply too high, especially in the absence of the necessary growth in exports which was to have contributed increased foreign exchange and revenue for the Government. The gap in Zambia's external finances has not been closed and its burden of debt remains unsustainable. See ZPSG, para. 6.16 ff. and Annex B.

³⁴ CAR, para. 6.2.

³⁵ Ibid., para. 16.

³⁶ *PSREPC R&R*, 'Collaboration with the IMF,' para. 66.

³⁷ The Third Policy Framework Paper for 1992 - 1994 was approved by the Bank and IMF Boards in February 1992. A subsequent PFP for 1995 - 1998 was approved in December 1995. A new PFP for 1999 - 2001 was under negotiation at the beginning of 1999.

³⁸ *CAR*, para. 3.13.

³⁹ In the 1980s, structural adjustment loans were made available to the UNIP Government by the World Bank and the IMF. President Kaunda rapidly jettisoned aspects of adjustment when the extent of their unpopularity became apparent; yet the money had already been paid out by the Bank and IMF, even though the agreed reforms were not carried through. Furthermore, Zambia was unable to afford to pay back the money which it had borrowed in the first place. See *CAR*, paras. 1.12 ff.

⁴⁰ See *CAR*, paras. 22 ff.; also *ERC PCR*, paras. 17 - 19. The Bank used an innovative strategy in January 1991 to clear existing arrears to its IBRD arm (which lends at higher interest on stricter terms) by using a complex arrangement of bridging loans to pay of this debt and allow the Bank's Board to approve new concessional IDA lending through the ERC. In effect, 'hard' loans were replaced with 'soft' loans. See *ERC PCR*, para. 16.

⁴¹ *SCR* (1997), Box 1, p.14; also *ER 1996*, p. 44.

⁴² *Ibid.*

⁴³ Disbursements during FY83 - 95 amounted to \$977.5 million of which \$845.7 million was in the form of sector and structural adjustment lending. In terms of commitments, the proportion of adjustment lending drops to 67 per cent. Calculations are based on the information in the *CAR*, table 5.2.

⁴⁴ *CAR*, table 5.3.

⁴⁵ *Ibid.*, table 5.10.

⁴⁶ *PSREPC R&R*, Status of Bank Group Operations in Zambia: Operations Portfolio, Annex D.

⁴⁷ Respectively, the Public Sector Reform and Export Promotion Credit and the Basic Education Sub-Sector Investment Program.

⁴⁸ Respectively, the Agricultural Sector Investment Program, the Health Sector Support Project, the Roads Sector Investment Program and the Basic Education Sub-Sector Support Program.

⁴⁹ SIPs are ostensibly drawn-up by a task force in the recipient country made up of public officials as well as people with experience of the private sector. The Bank's operations are reviewed on a yearly basis and, if necessary, revised in the light of what people in the recipient country think of the program. In theory, poor people themselves might have the opportunity to influence the direction which they believe a program should go in, but only if they are among those consulted in the first place. In practice, such meaningful consultation has been weak.

⁵⁰ *PSREPC R&R*, Annex D, Status of Bank Group Operations in Zambia: Operations Portfolio.

⁵¹ Actual disbursements amounted to \$149.4 million to which must be added a further \$120.53 million intended disbursements.

⁵² Actual disbursements on the HSSP and SRP II amounted to \$61.82 million to which must be added a further \$33.02 million intended disbursements. Hence intended disbursements on the social sectors originally totalled \$94.84 million.

⁵³ *CAS* (1996), Box 7, para. 51.

⁵⁴ The second tranche of ESAC II was approved by the Board in November 1996 with a closing date of 9 January 1998. It was not until 26 January 1999 that the Public Sector Reform and Export Promotion credit was approved.

⁵⁵ *GC 2*, para. 6.

⁵⁶ *Idem.*

⁵⁷ *GC 2*, para. 7.

⁵⁸ *Ibid.*, para. 9.

⁵⁹ *Idem.*

⁶⁰ *Idem.*

⁶¹ 'The realization of economic, social and cultural rights,' Final Report, E/CN.4/Sub.2/1992/16, para. 231. See also E/CN.4/1997/20, Annex I, C. Policy guidelines for action at the international level, para. 104.

⁶² *GC 2*, para. 8(d).

⁶³ See World Bank (1998a), *Development and Human Rights: the role of the World Bank*, p. 2. This booklet was issued by the Bank to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights.

⁶⁴ *GC 2*, para. 8.

⁶⁵ The analysis which follows is based upon the Bank's summary of policy reform agreements under its major adjustment credits. See *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E; also *ESAC II R&R*, Annex G.

⁶⁶ 'The realization of economic, social and cultural rights,' Second Report, E/CN.4/Sub.2/1991/17. On the negative impacts of social adjustment, see especially paras. 129 - 147.

⁶⁷ E/CN.4/Sub.2/1992/16, paras. 52 - 58.

⁶⁸ *CAR*, para. 3.21 ff.; also paras. 2.14 ff. The Bank's first priority was to ensure that the Zambian Government was able to repay its debts. The Bank took action to replace its existing loans to Zambia with much cheaper credit; it coordinated moves to pay back commercial loans on Zambia's behalf; and it encouraged bilateral donors to take debt relief measures. Even so, the management of Zambia's debt required assistance in the form of high levels of balance of payments support from the Bank (provided as new loans) and from donor Governments (mainly as wholesale grants). As a greater relative share of Zambia's debt was owed to the Bank, by providing funds as balance of payments support it ensured, first and foremost, that it was repaid the money it was owed. In Zambia's case, despite concerted action to reduce or restructure the amount owed, or to reschedule repayments, and despite high initial levels of balance of payments support, the debt is of such magnitude to remain a serious drain on Government resources. (See *CAR*, paras. 6.25 ff.)

⁶⁹ Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Resolution 1991/27, para. 2.

⁷⁰ Commission on Human Rights, Resolution 1992/9.

⁷¹ E/CN.4/Sub.2/1992/16, para. 50.

⁷² Respectively, the Second Economic Recovery Credit (FY91), the Privatisation and Industrial Reform Credit - PIRC I (FY92), PIRC II (FY93), the Economic and Social Adjustment Credit - ESAC I (FY94), the Economic Reform Investment Promotion Credit - ERIP (FY95), and the ESAC II (FY96).

⁷³ *ERC PCR*, Evaluation Summary, para. 3.

⁷⁴ *CAR*, para. 5.37.

⁷⁵ To be implemented through reforms aimed at increasing interest rates, reducing corporate and income tax, tax harmonisation and the phased elimination of maize subsidies. (*PIRC & ESAC PAR*, para. 2.8).

⁷⁶ *PIRC & ESAC PAR*, para. 2.9.

⁷⁷ *Ibid.*, para. 2.22.

⁷⁸ *PA*, para. 4.11; also *PIRC & ESAC PAR*, para. 3.3.

⁷⁹ In respect of education, see Kelly (1998), p.38. On the problems of budget management in the social sectors, see the Bank's *PA*, paras. 4.76 ff.

⁸⁰ *Ibid.*, para. 4.16.

⁸¹ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table A.

⁸² *Ibid.*

⁸³ At 1994 constant prices.

⁸⁴ Calculated from Ministry of Community Development and Social Services (1998), *National Poverty Reduction Strategy Framework* [draft report],

Table 3.6.1, p.31.

⁸⁵ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table A.

⁸⁶ *ER 1997*, table 2.6.

⁸⁷ *PIRC & ESAC PAR*, para. 2.8.

⁸⁸ *SCR (1997)*, Statistical Appendix, table 10.

⁸⁹ *Ibid.*

⁹⁰ *Budget Address*, 30 January 1998.

⁹¹ *PIRC & ESAC PAR*, para. 2.8; also *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table D.

⁹² See, for example, Nokkala (1998), 'Structural adjustment programmes and poverty alleviation in sub-Saharan Africa - a country report: the economy of Zambia,' pp. 17 - 18.

⁹³ *ERC PCR*, para. 18. Requirements under the Bank's original Economic Recovery Program credit (FY86) had caused riots in the Copperbelt in December 1986 due to the withdrawal of the subsidy on breakfast meal and the disappearance of cheap roller meal from the market place because of mismanagement. Ultimately, this public unrest caused the reform program to unravel in its entirety. See *ERP PCR*, para. 29.

⁹⁴ *ERC PCR*, para. 19.

⁹⁵ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table A.

⁹⁶ Prior to reform, maize had become the predominant cash crop grown in Zambia. This was because farmers were given subsidies and guaranteed a pan-territorial purchase price for their grain through Government marketing boards. At the same time, Government control over milling and the setting of an affordable price for mealie meal allowed urban consumers to buy sufficient supplies. The arguments behind the need for reform were based on a number of intractable problems. First, fixed and guaranteed prices removed the necessity to diversify into other crops or to innovate and increase productivity. The reforms were designed to allow efficient farmers to receive good market prices for their produce; to reward those who acted on demand for other crops and moved away from growing only maize; and to encourage exports of lucrative cash crops. The growth in agricultural output averaged just above 2 per cent per year throughout the 1970s and 1980s, failing even to keep pace with the growth in Zambia's population. Second, rural farmers, reliant on the Government maize market, did not improve their standard of living, although neither did levels of rural poverty increase significantly. The IMF and World Bank were persuaded by the argument that it was a relatively well-off core of urban consumers who gained most by not paying market prices for their food. Urban consumers were to benefit from increased choice and lower prices brought about by increased competition. Third, the whole subsidy system was no longer perceived to be affordable. While proceeds from copper sales had been used to support the maize marketing system, falls in copper output and the price of copper meant that maize subsidies were increasingly met by Government borrowing. Overall, subsidies did not meet with the approval of the donors whose policies were driven by free market ideology. See *PA*, paras. 4.28 ff.

⁹⁷ *PA*.

⁹⁸ *ER 1997*, table 3.4.

⁹⁹ While conceding that agricultural reform has created hardship for the poor in the short term, the Bank argues that producers will become more efficient and realise good profits from increased productivity or by diversifying away from maize into other lucrative crops. Large-scale commercial operations in cotton, sugar, horticulture, soya beans, coffee and tobacco have been revitalised under new ownership following privatisation. While large transnationals have been behind much of this resurgence, only detailed studies will establish whether those small farmers who they are sourced as outgrowers will benefit as a result of the relationship. It is difficult to see how poor farmers away from the line of rail will be able to make the leap to growing high value export crops without massive improvements in the road and transport system or without better access to markets.

¹⁰⁰ *PIRC & ESAC PAR*, para. 2.22.

¹⁰¹ *ZPSG*. The response of the MMD Government to these difficulties was, initially, to announce floor prices for maize and appoint 'primary buying agents'. In the World Bank's view, this delayed the move to a fully fledged free market in maize until 1994/5 and set back the emergence of private traders and diversification. In 1997, the Government continued to play a role in the marketing of inputs such as fertiliser through its Agricultural Credit Management Programme, although it admits that problems in its delivery to farmers has suppressed the output of maize.

¹⁰² *ERP PCR*, para. 17.

¹⁰³ *Ibid.*, paras. 6 and 26.

¹⁰⁴ *PIRC & ESAC PAR*, paras. 2.17 and 2.18; also paras. 3.6 and 3.7.

¹⁰⁵ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table G.

¹⁰⁶ *PIRC & ESAC PAR*, para. 2.22.

¹⁰⁷ *Ibid.*, para. 2.19.

¹⁰⁸ *Ibid.*, para. 2.18.

¹⁰⁹ *Ibid.*, para. 2.10; *ERC PCR* para. 27; *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table E.

¹¹⁰ *PSREPC R&R*, para. 43.

¹¹¹ *PIRC & ESAC PAR*, para. 3.19.

¹¹² *Ibid.*, para. 2.14.

¹¹³ *ERIP ICR*, para. 1 and paras. 10 ff. The actual privatisation of ZCCM was not made a loan condition; however, the adoption of a plan to move towards the privatisation of ZCCM was required.

¹¹⁴ *PSREPC R&R*, paras. 38 ff.

¹¹⁵ This action was taken further by *PIRC II* which sought to develop financing arrangements to assist local investors participate in the ownership of newly privatised companies and to improve local capital markets to encourage private sector development. (*PIRC & ESAC PAR*, para. 2.6 (a) and (b)).

¹¹⁶ See, respectively, Investment Act (1993), Part IV, General Incentives; and Part V, Special Incentives.

¹¹⁷ Investment Act (1993), section 32.

¹¹⁸ *PSREPC R&R*, para. 48.

¹¹⁹ Investment Act (1993), sections 35 and 36.

¹²⁰ *ESAC II R&R*, para. 49; also 'Matrix of Policy Agreement,' Annex E.

¹²¹ International Confederation of Free Trade Unions (1999a), 'Trade Union Rights Violations in Southern Africa: The Current Situation,' p.9.

¹²² *PA*, para. 3.85.

¹²³ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table C.

¹²⁴ Committee on Employment and Social Policy, 'Preliminary report on a synthesis of ACC Task Force country employment policy reviews,' ILO Governing Body GB.268/ESP/2, 268th Session, Geneva, March 1997. The other countries reviewed by the ACC task force were Chile, Hungary, Indonesia, Morocco, Mozambique and Nepal.

¹²⁵ *Ibid.*, para. 30.

¹²⁶ *Ibid.*, para. 35.

¹²⁷ Copenhagen Declaration and Programme of Action, Commitment 3(i).

¹²⁸ UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, para. 1.1. Also, GB.268/ESP/2, op. cit., paras. 41 ff.

¹²⁹ *ESAC II R&R*, para. 46; also *idem*, 'Matrix of Policy Agreement,' Annex E.

¹³⁰World Bank (1998a), *Development and Human Rights*, p. 8.

¹³¹Copenhagen Declaration on Social Development, Commitment 8; see also paras. (f) - (h).

¹³²See Edstrom (1999a), 'Macroeconomic Crises and Social Policy Responses: An Agenda for Action'. As part of the international community's follow-up and review of the Copenhagen Declaration, to take place in June 2000, the Bank is cooperating with the UN to develop principles and good practices in social policy. The Bank has interpreted its role as acting to draw up policies to implement those social principles which are drawn up in the UN forum. For an account of this work in progress, follow the link to the Draft Social Summit Page at

<www.worldbank.org/socialdevelopment>. See also World Bank (1999a), 'Principles And Good Practice In Social Policy: A Note for Discussion by the Development Committee'; and Johnson (1999), 'Fulfilment of the Copenhagen Commitments: laying the ground for public action'.

¹³³James D. Wolfensohn, World Bank President, April 1999 World Bank/International Monetary Fund Development Committee meeting. For a review of Bank action on social development post the Copenhagen Declaration, see Edstrom (1999b) 'Addressing Social Development by the World Bank'.

¹³⁴See Edstrom (1999a). The fourth policy objective is outlined as interventions to help preserve the social fabric of societies in crisis and to build social capital. The Bank advocates the use of social funds and community-level partnerships. The fifth relates to mechanisms to provide information for monitoring the impact of crises and evaluating responses.

¹³⁵Copenhagen Declaration on Social Development, Commitment 1, para. (f).

¹³⁶CAR, para. 7.69.

¹³⁷Ibid., para. 2.16 ff.

¹³⁸This shift in emphasis has three objectives. The first objective is to actively promote certain sectors of the economy - agriculture, tourism, light manufacturing - in order to increase the supply of produce and goods to diversify away from a dependence on the copper industry. However, copper will remain of the utmost importance to Zambia. Hence, in the mining sector, by far the most important goal is to achieve the complete privatisation of ZCCM to prevent both a drain on Government resources necessary to keep the parastatal afloat and also to attract investment to increase copper production and help restore the basis for copper revenue. The second objective is to provide infrastructure - transport, energy and a managed natural environment - to help industry grow. The third objective is to deepen public sector reform to contain wages, but increase service provision. At the same time, improvements are being sought in the way in which Zambia is governed in order to increase democracy, raise accountability and further transparency. See CAS (1996), paras. 22 ff.

¹³⁹In late 1991, the Bank adopted Operational Directive 4.15 on Poverty Reduction (since revised in 1993) and introduced an element of social safety net support into its adjustment operations. In his final report, the UN Special Rapporteur on Economic, Social and Cultural Rights, while cautiously welcoming the Bank's shift in focus towards poverty reduction, was of the view that the weight of evidence continued to point to the negative impact of structural adjustment in respect of the realisation of economic and social rights. (See E/CN.4/Sub.2/1992/16, paras. 139 ff.; for a detailed consideration of the impact of structural adjustment, see E/CN.4/Sub.2/1991/17, paras. 129 - 147). The Bank is currently piloting a Comprehensive Development Framework in which macro-economic and social concerns are to be integrated. Principles of Good Practice in Social Policy have also been adopted by the World Bank/IMF Development Committee. The aim is to consider universal access to social services in order to develop social capital in an integrated strategy when planning economic reform.

¹⁴⁰CAS (1996), para. 32.

¹⁴¹PA, para. 10.2 ff.

¹⁴²The Bank's pro-poor objectives were not explicitly articulated until the 1994 *Poverty Assessment*. However, a number of previous Bank projects in Zambia post-1991 already framed poverty alleviation as an objective. All such project assistance is considered here using the Bank's 1994 formulation.

¹⁴³GC 2, para. 8.

¹⁴⁴PSREPC R&R, Evolution of Policy Reform Agreements, Annex E, table H.

¹⁴⁵PIRC & ESAC PAR, para. 2.25; also PSREPC R&R, Evolution of Policy Reform Agreements, Annex E, table H.

¹⁴⁶ESAC II R&R, paras. 50 ff; also *idem* 'Matrix of Policy Agreement,' Annex E; also PSREPC R&R, Evolution of Policy Reform Agreements, Annex E, table H.

¹⁴⁷PSREPC R&R, para. 49.

¹⁴⁸See PSREPC R&R, Letter of Development Policy, para. 42 and Annex A, 'Social spending in 1999,' p.56.

¹⁴⁹PSREPC R&R, para. 51.

¹⁵⁰At 1994 constant prices. See *intra*, Section 3(I), p.223.

¹⁵¹PSHDZ, p.95.

¹⁵²In addition, components of the specific programs and projects in the education sector have also supported the rehabilitation of schools.

¹⁵³URWSP PID.

¹⁵⁴Board approval date was the 16 May 1995. The annual per capita figure is calculated on the basis that 44 per cent of Zambia's estimated population of 9.7 million (*World Bank Development Report 1999/2000*) live in urban areas. The purpose is to give a sense of the scale of funding. Clearly, as the project focuses on a subsection of this population, the targeted per capita spend will be higher.

¹⁵⁵PA, para. 3.80.

¹⁵⁶Under the Bank's ERIPTA credit; see also *intra* Section 2(IV).

¹⁵⁷In its *Economic Report 1997*, section 4.2 on Provincial Development Programs, the Government confirms that out 321 completed SRP projects, 221 concerned the rehabilitation of primary schools, 46 the refurbishment of rural health centres and 28 the improvement of water supplies. The remaining 11 projects spanned credit schemes, infrastructure and the environment. See also SRP II SAR, 'First Social Recovery Project: Lessons learned,' para. 1.32.

¹⁵⁸SRP I, worth \$20 million, was approved on 19 June 1991; SRP II, worth \$30 million, was approved on 28 June 1995.

¹⁵⁹SRP I SAR, May 1991, p. 11, para. (a).

¹⁶⁰HSSP PID, 11 October 1998.

¹⁶¹See Oxford Policy Management (1996), 'Zambia Health Reform Programme,' para. 9 ff.

¹⁶²The Board approval date was 15 November 1994.

¹⁶³HSSP PID, para. 5; also Oxford Policy Management (1996), para. 21.

¹⁶⁴'The major problem in the implementation of health reforms in Zambia is the Government's decision to press ahead with an uncoordinated implementation of user fees and pre-payment schemes across the country, prior to assuring visible quality improvements in health care service delivery....Inappropriate or unaffordable user fees, that encourage people to turn to traditional healers or postpone use of health services, are not conducive to poverty reduction.' (PA, paras. 8.72 - 8.73). Cf. 'The role of nominal fees which have been initiated throughout the public health care system is explicitly not to recover costs, but to regulate use (e.g. by-passing primary care facilities) and foster ownership at the community level.' (HSSP PID, para. 7).

¹⁶⁵The Board approval date was 27 October 1992 and the closure date for the credit line was 30 June 1998.

¹⁶⁶Calculation based on 1.84 million children of primary school age (7 - 13) in Zambia in 1996.

¹⁶⁷The Board approval date was 8 April 1999.

¹⁶⁸BESSIP PID, 7 April 1999.

¹⁶⁹Respectively, the \$30 million Petroleum Sector Rehabilitation Project and the \$75 million Power Rehabilitation Project.

¹⁷⁰Approved by the Board on 30 March 1995.

¹⁷¹See Oxford Policy Management (1996), paras. 8 ff.

¹⁷²Summarised in the CAR, para. 5.55.

¹⁷³'One ambitious programme still in the doldrums because donors have inexplicably grown cold feet is the Agricultural Sector Investment Programme (ASIP).' See 'Policy: What's MMD's biggest achievement?,' *Times of Zambia*, 19 January 1998.

¹⁷⁴CAR, paras. 5.59 and 5.61.

¹⁷⁵ASIP MTR, Executive Summary, para. 4. The report was prepared for the Ministry of Agriculture, Food and Fisheries.

¹⁷⁶Ibid., para. 2.11.

¹⁷⁷70.7 per cent of land was cultivated for maize in 1993 but this rose to 72.8 per cent in 1997. Ibid., para. 2.11.

¹⁷⁸19 per cent of households owned cattle in 1990/91 compared to 14 per cent in 1993/94.

¹⁷⁹ASIP MTR, para. 2.11.

¹⁸⁰Ibid., para. 2.12.

¹⁸¹CAR, para. 5.61.

¹⁸²ASIP MTR, para. 4.71.

¹⁸³Ibid., para. 4.73.

¹⁸⁴Ibid., para. 4.64.

¹⁸⁵CAR, para. 5.65. The original intention was to seek feedback merely by modifying a Central Statistical Office questionnaire on crop production. This has little, if anything, to do with genuine participation which must include finding out what all farmers think - and this must include poor farmers - and then involving them in initiatives to tackle the problems which are identified.

¹⁸⁶ASIP MTR, para. 2.2. Two additional development objectives at the macro level are to contribute towards sustainable industrial development and to contribute towards improving the balance of payments deficit by reducing the need for imports and by increasing exports.

¹⁸⁷Ibid., p. 9.

¹⁸⁸The average area cultivated per farm household in 1990/91 was 1.42 hectares compared to 1.17 hectares in 1995/96. Ibid., para. 2.11.

¹⁸⁹Ibid., para. 2.13.

¹⁹⁰Ibid., para. 2.14.

¹⁹¹Ibid., paras. 2.15 - 2.16.

¹⁹²EDP SAR, para. 5.5.

¹⁹³See *ibid.*, paras. 5.9 ff. and 5.14 ff. respectively.

¹⁹⁴Approved by the Board on 27 May 1997.

¹⁹⁵CAR, para. 7.19.

¹⁹⁶Ibid., para. 5.70.

¹⁹⁷PA, para. 4.82.

¹⁹⁸PIRC & ESAC PAR, para. 41. See also paras. 2.25 and 3.21.

¹⁹⁹ESAC II R&R, para. 51.

²⁰⁰See ESAC II R&R, Annex J, Letter of Development Policy, para. 73; also ESAC II R&R, para. 52.

²⁰¹PSREPC R&R, para. 49.

²⁰²*The Economist*, 'Orphans of the Virus,' 14 August 1999, p.47.

²⁰³Kelly (1999), 'The impact of IMF programmes on social sector budgets in Zambia, with special reference to education,' p.6. The number of Zambians living in extreme poverty in 1996 was calculated to be 5,068,000. Cited in *idem* using the Central Statistical Office's *The Evolution of Poverty in Zambia*, 1997.

²⁰⁴World Bank Operations Evaluation Department (1996), 'Turning an economy around: the challenge in Zambia.'

²⁰⁵CAS (1996), para. 31.

²⁰⁶PIRC & ESAC PAR, para. 3.2.

²⁰⁷E/CN.4/1997/20, para. 20.

²⁰⁸E/CN.4/Sub.2/1992/16, para. 44. The position of the IMF - that adjustment ought to proceed with the support of those whose economic and social rights are infringed - is rejected on the grounds of being both unrealistic and questionable in view of the obligations recognised in the ICESCR. See *idem*, paras. 53 - 55.

²⁰⁹CAR, para. 1.35

²¹⁰Indeed, there is a recognition in the human rights field that Governments have a responsibility to seek to alert international financial institutions to social goals: 'States should ensure that the World Bank, the International Monetary Fund, the regional and subregional development banks and funds, and other international finance organizations further integrate social development goals in their policies, programmes and operations, including by giving higher priority to social-sector lending, where applicable, in their lending programmes.' See E/CN.4/1997/20, Annex I, C. Policy guidelines for action at the international level, para. 96. Derived from the Copenhagen Declaration and Programme of Action, Part Two, para. 92.

Supplement 1 - the stabilisation programme

1. The need for macro-economic stabilisation

When the MMD came to power, it inherited a domestic budget which was in deficit, certainly because of high public expenditure, but especially because of the channelling of financial support to many loss making parastatals. The latter expenditure was not planned or budgeted for. It was therefore necessary for the Government to borrow large amounts of money from domestic banks to pay for the resulting budget deficit. Indeed, the Bank of Zambia could hardly keep pace with Government demand for cash and, eventually, the amount needed was actually greater than the amount of money the Bank could afford to lend.

This budget deficit was the main underlying cause of inflation in Zambia. Put simply, while the Government continued to borrow to meet its high expenditure, more money was going out into the economy than the Government was taking back out in revenue. This resulted in 'monetary expansion' - too many Kwacha in the economy. With so much money in circulation, the real value of the Kwacha fell and more notes were needed to pay for goods and services. Put another way, prices went up rapidly and what cost you K100 one month could cost K200 the next. A situation of high inflation prevailed.

The MMD Government took action in line with World Bank/IMF requirements to cut its budget deficit by first of all drastically reducing its public expenditure and hence the overall amount of money it was introducing into the economy. For example, its recurrent expenditure on the day to day running of Government departments and services was slashed by a third from 1991 to 1992. Such measures may, under normal circumstances, have gone a long way towards cutting the deficit, reducing money supply and hence lowering inflation. Indeed, the Government's tight fiscal control reduced inflation from a peak of 400 per cent to 50 per cent in the first half of 1992.

However, at the same time as the Government was trying to stabilise the economy by balancing its books, it was also pressing ahead with structural adjustment to change Zambia into a free market. In October 1992, the Government allowed the Kwacha to float on the free market for foreign exchange and went on to open up financial markets in Zambia. This liberalisation itself caused inflation because there was a sudden fall in the real value of the Kwacha against other currencies. This one-off depreciation as the Kwacha found its true level meant that, for a while, people did not want Kwacha as its real purchasing power, for example, against the US dollar, was much less than it had been before. If people were going to be paid in Kwacha, they wanted more of them to compensate for the fact that the currency was now worth less. Again, this caused prices and salaries to rise and fuelled inflation to a massive, if short-lived, peak of 500 per cent.

These circumstances threatened 'hyper-inflation'. This is caused when the expectation of inflation prompts suppliers to demand more and more for the goods they are selling and people to demand ever higher salary increases to meet the expected increase in cost. The MMD Government introduced a package of stabilisation measures in 1993 in an attempt to prevent this situation from developing.

2. The introduction of further stabilisation measures to tackle inflation

Overall, the stabilisation measures which were introduced were designed to reduce domestic money supply. The result of having less money in the system was to maintain the value of the Kwacha and thereby reduce inflation.

First, cash budgeting was implemented. This strict accounting measure means that a Government will only release funds - for example, to cover the day to day running of Government services and ministries or to meet civil service wages - when there is money in the coffers to cover the amount to be disbursed. In Zambia, cash budgeting had the effect of wiping out the expectation that more and more money would be forthcoming from the Government. Of course, it also resulted in further severe cuts in public expenditure and in the failure to pay for goods and services which the Government had bought on credit. Second, treasury bonds were issued. Such bonds are sold to investors by a government which then pays out interest on the money which it has borrowed from them. This direct borrowing helped the MMD Government reduce the budget deficit. Cash belonging to the general public and private investors which would otherwise have circulated in the economy was tied up in the bonds. Third, action was also taken to raise the reserve ratio. This means the Government increased the amount of money it held in savings relative to the amount it spent. Again, the result was less money in circulation. Finally, both the strict control of expenditure by Government

owned parastatals and the release of official currency prevented foreign exchange shortages with the result that the real value of the Kwacha increased.

All of these measures combined, resulted in a fall in inflation from 200 per cent in the first half of 1993 to 20 per cent by the year end. However, the period of chronic inflation had caused further problems. The real value of the Government's revenue had itself been hit hard. For example, the revenue it collected in, mainly from taxes, collapsed by over a quarter in real terms between 1992 and 1993. The fact that less money was coming in itself contributed to the budget deficit. The Government responded by further drastic cuts in expenditure - excluding drought relief, it again fell by almost a third in 1992/93 - and by setting up the *Zambian Revenue Authority* in 1994 to improve the efficiency of tax collection and reduce corruption, thereby increasing the amount of money it drew back in taxes. The backers of free market policies praised the MMD Government for moving away from a tax system based on international trade to one based on VAT. In the meantime, the Government remained heavily dependent on grants from the World Bank and donor governments to keep its budget deficit in check, although the level of support progressively decreased.

3. The effectiveness of economic stabilisation

Even with these stabilisation measures in place, it has taken the Government a while to balance its domestic accounts. In the first three years of reform, the public sector wage bill received a disproportionate amount of Government funds at the same time as strict cash budgeting was introduced. As a result, capital investment in infrastructure, buildings, and equipment fell sharply and money was not available to meet the day to day running of Government departments and services. Donor disquiet over political developments in Zambia caused interruptions in the flow of aid money, requiring the MMD Government to purchase foreign exchange to meet its obligation to service its external debt. At the same time, it had to find additional money to pay high levels of interest on the debts it had built up with domestic banks. In 1994 and 1995, there was overspending on defence as a result of powerful pressure from the Ministry of Defence. The Government's finances were also upset by its unwise and unsuccessful attempt to bail one of the largest commercial banks in Zambia, *Meridien BIAO Ltd.*

In retrospect, many commentators believe the decision to allow the Kwacha to float on the foreign exchange markets should have been delayed until economic stabilisation and tight fiscal control had brought inflation down. As it was, the devaluation in the Kwacha fuelled further inflation. Likewise, the decision to eliminate controls on Zambian commercial banks should, perhaps, have been delayed. For the first time, they were allowed to set their own interest rates on loans rather than keeping them artificially low. This meant that interest rates soared alongside inflation and were to increase further still with the release of treasury bonds designed to attract investors. On the positive side, high interest rates helped to stabilise the position of the Kwacha on the foreign exchange markets. Indeed, after the initial depreciation, the Kwacha held and, to some degree, increased its value to the extent that it made Zambian goods too expensive in export markets and hence put a brake on economic growth. High interest rates also helped fight hyper-inflation by tying up money in savings, although this was counteracted to an extent by the fact that the interest paid on savings was itself inflationary. The most negative aspect of the high interest rate, however, was that it made it prohibitively expensive for businesses to borrow money to invest.

Until very recently, there is evidence that the MMD Government has kept tight control of its domestic finances. It has not spent too much beyond its means and has stayed within a predetermined cash budget since 1994. Increased efficiencies in the way in which money is disbursed - for example, by making payments direct to District Health Boards and Provincial Education officers - has been a positive development. Acceleration of the Public Sector Reform Programme has reduced the size of the civil service, capped pay increases and cut wage bills. By 1997, the domestic budget deficit had been turned into a slight surplus, albeit with support in the form of grant aid. However, and despite the human cost, the first half of 1998 may have seen a reversal of this progress.

Supplement 2 - Zambia's External Debt

1. External debt and relief measures to 1995

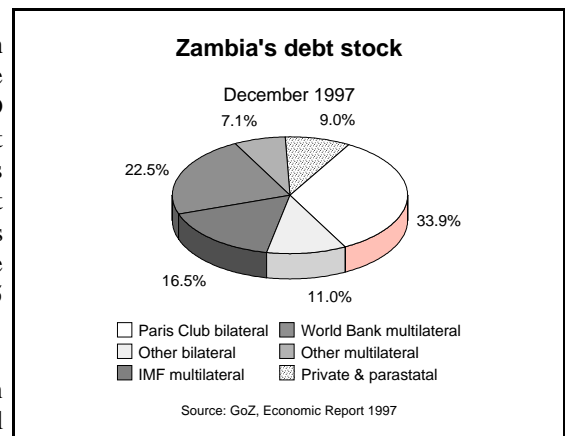
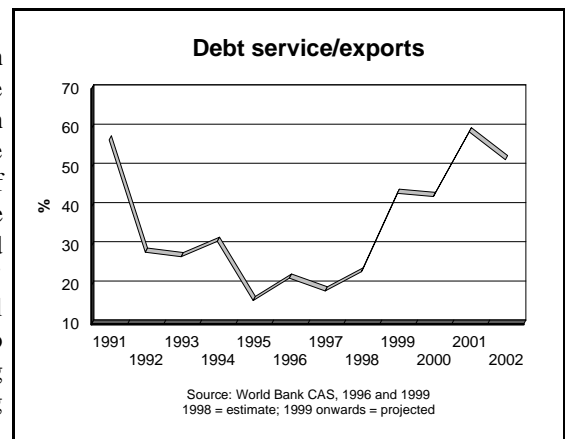
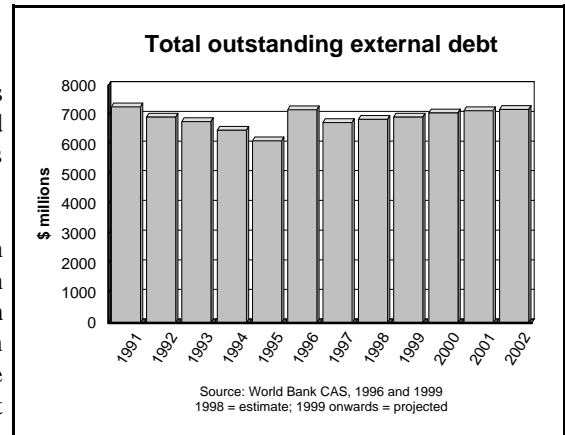
When the MMD Government came to power in 1991, Zambia's external debt stood at a colossal \$7.3 billion. This debt is owed mainly to foreign governments and multilateral financial institutions such as the World Bank and IMF.

The debt must be paid back in dollars or other foreign exchange. In order to determine whether Zambia can afford to repay its debts, both now and in the future, it is therefore necessary to look at how much Zambia owes and must repay in relation to how much it exports. In 1991, the equivalent of over half of all Zambia's earnings from the export of goods and services was required to meet the cost of debt servicing.

Given this crippling level of debt, the World Bank placed a high priority on making the burden more manageable. The key measure taken in the first half of the 1990s was to replace expensive loans with cheaper loans. In the past, while Zambia was considered to be more credit worthy, it only qualified for short-term loans at a higher rate of interest. 'Hard' loans of this type were provided by the arm of the World Bank known as the International Bank for Reconstruction and Development. Since 1988, Zambia has been eligible only for 'soft' loans from the part of the Bank known as the International Development Agency. Larger IDA commitments have helped to reduce the amount of money Zambia must find to meet debt servicing because maturing IBRD debt has been replaced by new IDA lending on highly concessional terms.

Most of Zambia's outstanding debt is owed to bilateral creditors, in particular the 'Paris Club' of important creditor governments.¹ The Paris Club agreed a number of debt relief measures with the MMD Government on its accession to power. These included debt rescheduling, by which the amount of time for repayments is extended. This has helped Zambia reduce its repayments in the short term. A relatively small amount of debt, arising from loans made as official development assistance, was also cancelled entirely. These measures combined had the effect of reducing Zambia's debt by \$1.5 billion by August 1992.²

The Bank has also pursued other actions. In 1994, it coordinated an initiative to buy-back \$181 million of debts owed to commercial banks. Although Zambia's overall stock of debt was not significantly reduced, the action was important in reducing debt servicing on such high interest loans. By 1995, the servicing on Zambia's debt had fallen to the equivalent of 16 per cent of export earnings.



2. The current situation: an unsustainable burden of debt

As a result of this first round of action, Zambia's creditworthiness was improved, its arrears were reduced, and the country was granted access to IMF and new World Bank resources. These sources of funds are crucial at a time when the Government's credit rating is such that it cannot borrow from commercial banks. Yet, at this juncture, and despite limited successes, the measures adopted to manage Zambia's debt burden have proved to be inadequate and sometimes inappropriate.

It is the inability of Zambia to generate sufficient foreign exchange to meet debt servicing costs and to pay for imports which has resulted in donors providing external assistance to Zambia in the form of balance of payments support. Such support meets the most immediate objective of keeping the Zambian Government solvent and thereby shores-up the confidence of private-sector investors buying into Zambia's industry and agriculture. However, criticism centres both on the self-serving nature of the support on offer and the rapid decline in its overall level.

The foreign exchange provided as balance of payments support by bilateral and multilateral creditors is aimed at ensuring that the Zambian Government has the necessary resources to meet the servicing on the debt which is owed to them in the first place. Furthermore, the level of BOP support which donors are willing to provide has declined sharply in recent years. When considered in isolation from other external assistance, it has precluded any net transfer of resources to Zambia and, increasingly, has fallen short of the cost of debt servicing. Hence resources, both from the Government's own reserves and from the donors, which could have been invested in the Zambian people and economy to promote long-term growth, have been diverted to meet debt servicing. The World Bank argues that, had this not been the case, even the moderate growth generated by private sector investment would not have occurred as investors would have perceived the risks of investing in Zambia as too great.

Zambia's level of debt is already unsustainable and the situation will grow more acute. Total outstanding debt at the end of 1997 had been reduced somewhat to around \$7 billion. By 1998, the total owed decreased further to \$6.86 billion, although the figure cited remains to be adjusted.³ Yet, to place Zambia's debt in perspective, the entire Zambian economy in 1998 generated in the region of \$3.4 billion, or only half the amount owed.⁴ Zambia's total overseas debt in 1998 was estimated at six and a half times the amount it earned through all exports of goods and services in the same year. The same total debt to exports ratio was predicted to peak at 730 per cent in 1999.⁵ In respect of debt servicing, the amount which the Zambian Government was required to find in 1998 to meet repayments and interest on this debt rose to the equivalent of almost a quarter of the country's entire export earnings.⁶ This debt service to exports ratio is predicted to increase further to around 43 per cent in 1999 and 2000, before rising markedly to almost 60 per cent in 2002.⁷ The debt burden places severe constraints on the amount of ready cash the Government has at present, and it will prove impossible to pay back in the future. This 'debt overhang' is caused by a number of factors:

- As has been noted, the foreign exchange generated from overseas sales must also pay for imports into Zambia. In five out of the last six years to 1998, Zambia has been importing more goods by value from overseas than it has been exporting. This means that the Zambian Government has simply not had the foreign exchange to service its debt. The 'financing gap', brought about by the necessity to repay debt and to pay for a relatively high level of imports, will not be closed by increasing exports - the assumptions made are already proving to be too optimistic; neither, as is apparent from recent donor policy, will it be closed by a continuing high level of balance of payments support.
- While rescheduling debt does give the Zambian Government longer to repay, the day of reckoning is postponed rather than removed altogether. Repayments on debt which have been rescheduled in the past are now becoming due making Zambia's debt situation increasingly unsustainable.
- Money lent by the IMF under its first Enhanced Structural Adjustment Facility becomes due for repayment from 2001 to 2003 and will mean that scheduled debt repayment will rise to above \$600 million per year, although the expectation is that new loans from the IMF will offset a substantial proportion of this sum.
- Although external assistance from bilateral donors is provided as grants and debt relief, an increasing amount of balance of payments support comes from the World Bank in the form of new loans. This new money is indeed lent on highly concessional terms at low interest over an extended period; nevertheless, it does add to the total amount Zambia owes. Debt service on such loans does not fall due until 2010-2020 but, over that period, there is concern that debt repayments will rise sharply once more.

3. Debt reduction to sustainable levels: the HIPC debt relief initiative

The *de facto* situation is that more fundamental action in the medium to long-term, as well as in the short-term, is required to tackle Zambia's debt burden. Of the greatest potential significance in this regard is the Heavily Indebted Poor Countries (HIPC) debt relief initiative, launched by the World Bank and IMF in 1996, with the support of bilateral and other creditors. The two stage HIPC initiative aims to reduce the overall debt in each case to sustainable levels.⁸

To be eligible for consideration under the initiative in the first place, a country must qualify for concessional IDA loans and be faced with an unsustainable debt situation. Zambia meets these criteria. Furthermore, it is an entry requirement that the country in question must agree to pursue or adopt World Bank/IMF adjustment programmes. In practice, this has meant agreeing an ESAF arrangement with the IMF. The Zambian Government completed a Rights Accumulation

Programme with the IMF in December 1995 and became eligible for ESAF funding. The first ESAF to Zambia, based on an agreed programme of adjustment, was approved by the IMF board on 6 December 1995.

In the first stage of the HIPC initiative, the 'Paris Club' of nine bilateral creditors provide debt relief on special terms, as agreed in Naples in 1996. Each creditor is to write-off or reschedule up to 67 per cent of the net present value of interest and principal repayments falling due on eligible debt during a consolidation period of three years. Other bilateral and commercial creditors are expected to provide comparable treatment. The Paris Club agreement on debt relief to Zambia was scheduled to enter into force in March 1997, after the completion of the midterm review of Zambia's adherence to economic reform under the ESAF.⁹ Zambia signed the necessary bilateral agreements under the Naples terms with all nine Paris Club creditors in the latter half of 1997.¹⁰ Yet before debt relief to Zambia is delivered, it must successfully complete the agreed program of reform.

In Zambia's case, the importance of these measures is diminished by the fact that only 15 per cent of Zambia's debt is owed to the Paris Club in the first place and significantly less qualifies for renegotiation under the Naples terms because it falls outside the qualifying period. The Naples terms only apply to debts incurred on non-concessional loans made after 1983. Furthermore, the delay in signing individual agreements with each bilateral creditor has resulted in the accumulation of arrears. While it is assumed that Zambia's bilateral non-Paris Club creditors will adopt similar debt relief measures, this is by no means certain in all cases.

4. Zambia's qualification for full debt relief under HIPC

In the case of countries such as Zambia, it is apparent that there is an urgent need to introduce additional, far-reaching debt-reduction measures. In this respect, it is the second stage of the HIPC initiative which is of vital importance. This provides greater Paris Club debt reduction - up to 80 per cent in net present value terms. Once more, the expectation is that other bilateral and commercial creditors will provide relief on comparable terms. Multilateral institutions will act to reduce the present value of their claims either by using funds from the HIPC Trust Fund or through parallel action measures. Special interim measures may also be employed by the multilaterals to assist countries with a good performance record of reform.

Zambia must first of all qualify to receive full relief under these terms. At the decision point, a joint analysis by the World Bank, IMF and officials from the debtor country provides the basis to determine whether a country's debt burden is unsustainable even after the application of current debt relief mechanisms. A country exits from the HIPC initiative if debt reduction and relief under traditional measures and the Naples terms will enable it to achieve sustainability. The level of sustainable debt is defined on a country-by country basis, but within a set range. This used to be 200 to 250 per cent for the debt-to-export ratio and 20 to 25 per cent for the debt service-to-exports ratio. However, a recent revision of the HIPC initiative is set to reduce the former ratio to 150 per cent and lower other sustainability thresholds.¹¹

A recent, updated debt sustainability analysis (DSA) suggests that the relevant debt ratios in Zambia meet these criteria. The country's external public debt burden will not be reduced to sustainable levels before the middle of the next decade, irrespective of adherence to strong financial policies, the avoidance of non-concessional borrowing, and existing debt-relief mechanisms:

'The baseline scenario indicates that the ratio of the net present value of debt to exports, which was estimated at 510 percent at end-1998, would remain above 250 percent until 2005 and would not fall below 200 percent until 2010. Debt service after rescheduling would not fall below 25 percent of exports of goods and services until 2004, and it would then still be equivalent to about 35 percent of government revenue and about 30 percent of expenditure.'¹²

This analysis is not yet confirmed. Qualification is also dependant upon the Zambian Government's continued commitment to sound economic management. In this respect, the approval by the IMF in March 1999 of ESAF II to support an economic reform programme over the period 1999 - 2001 is an important step. If Zambia's qualification is approved, and provided it adheres to this second IMF/World Bank adjustment programme, then debt will be unconditionally written-off in 2002. If, at this completion point, Zambia's debt remains unsustainable, creditors will be asked to adjust the amount of debt relief accordingly to achieve sustainability.

5. Recent developments

Proposals of longer-lasting effect, such as the HIPC initiative to reduce Zambia's debt stock, are conditional on the Government of Zambia's adherence to policies in the social and economic realms which can all too readily be perceived as conflicting. Hence qualification for HIPC requires, on the one hand, the continuation of austerity measures, the tight control of public finances, adjustment and progress towards privatisation. On the other hand, the Zambian Government must demonstrate its commitment to social reform and the improvement of basic health care and education. The issue is one of balance. The danger is that economic imperatives will predominate, the Government itself will not be able to find the necessary finance to deliver real improvements in health and education unless it is underpinned by aid money, and the cost of debt reduction tomorrow will be met by Zambia's poor today. If this does prove to be the case, the error of harsh economic reform at the expense of social development will be repeated when, ultimately, sustained growth of benefit to the majority in Zambia depends precisely upon improving the basic health, education, and skills of all of the Zambian people.

At the beginning of 1999, the World Bank and IMF consulted NGOs, churches, and governments over how HIPC could be enhanced to deliver (i) more effective debt relief suited to (ii) achieving poverty reduction. The Bank/IMF produced a paper, approved by both boards in April 1999, outlining options for an Enhanced HIPC Framework.¹³ This in turn received the support of the G-7 countries meeting at the Cologne Summit in June 1999. A commitment is made to provide HIPC countries such as Zambia with a permanent exit from the debt crisis. An unambiguous emphasis is placed on poverty reduction and the release of resources for investment in health, education and social services.

In order to deliver deeper, broader and faster debt relief, the enhanced framework, as has been noted, proposes lower debt sustainability thresholds. This will result in further reductions in the net present value of debt stock owed by many countries, although reducing the absolute level of money owed will not necessarily translate into manageable debt servicing for all. International financial institutions are to provide interim debt relief to reduce cash flow problems in meeting debt service payments. Debt relief is to be 'front-loaded' in the early years, representing a substantial increase in positive resource flows to highly indebted countries.¹⁴ Zambia stands to gain from these revised terms, provided its qualification is approved.

A number of measures are proposed to strengthen the link between debt relief and poverty reduction: Poverty Reduction Strategy Papers are to be agreed between the Bank/IMF and Government and would normally be in place prior to approval at the decision point; estimates of the cost of achieving poverty reduction, measured by appropriate indicators, are to be provided to ensure consistency with macroeconomic targets; funding for the overall strategy is to consider debt relief and other assistance as a whole; and each Country Assistance Strategy is to be used to update progress.

The Enhanced HIPC Framework and the Cologne initiative have been widely welcomed. However, concrete proposals to finance debt relief have not been finalised. Key development agencies have warned against switching development assistance from non-HIPC countries or converting aid into debt relief.¹⁵ There are fears that debt relief under the revised HIPC may be used to impose more stringent economic conditionalities, despite the emphasis on poverty reduction at Cologne and recent moves by the World Bank and IMF to integrate macro-economic and social planning.¹⁶

Notes

¹ The 'Paris Club' is an ad hoc grouping of creditors, comprising the original OECD member countries and Russia. It includes member governments of the powerful G8 (Canada, France, Germany, Italy, Japan, the UK, the USA, and Russia).

² *CAR*, para. 6.26.

³ Estimate cited in *CAS* (1999), Annex B7.

⁴ Estimate cited in *ibid.*, Annex B6.

⁵ Estimate cited in *ibid.*, Annex B7.

⁶ The total debt service/export of goods and services ratio in 1998 is estimated to be 23.4 per cent. See *ibid.*, Annex B7.

⁷ *Idem.*

⁸ See World Bank (1998c), *External Debt and the HIPC Debt Initiative*.

⁹ *SCR* (1997), para. 16.

¹⁰ *ER* 1997, para. 59.

¹¹ Other key elements of the revised Enhanced HIPC Framework include a lowering of the net present value debt-to-revenue target from 280 per cent to 250 per cent; and a reduction of the export/GDP and revenue/GDP thresholds to 30 per cent and 15 per cent respectively.

¹² *PPF* (1999 - 2001), para. 50.

¹³ See World Bank (1999c), 'Progress Through September 1999'.

¹⁴ Under the Enhanced HIPC Framework, debt relief will now be fixed at the decision point rather than at the completion point, as is currently the case. Furthermore, debt relief will be determined on the basis of actual instead of projected figures. The use of 'floating completion points' introduces flexibility by tying the completion point to the fulfilment of a set of reform commitments rather than fixing it at the end of a three year track record.

¹⁵ See, for example, Oxfam International & UNICEF (1999), *Debt Relief and Poverty Reduction: Meeting the Challenge*.

¹⁶ The World Bank is piloting a Comprehensive Development Framework in order to integrate macro-economic and financial reforms in a shared matrix alongside social and human development planning. Principles of Good Practice in Social Policy have also been adopted by the World Bank/IMF Development Committee.

Supplement 3 - a summary of World Bank assistance measures employed in Zambia 1991 - 04/1999*

Throughout the review of privatisation *vis-à-vis* the realisation, erosion or denial of basic human rights which follows, reference will be made to those specific aspects of Bank assistance which are pertinent to the policy or law under consideration. The continual reference to the Bank's action and responsibilities, alongside those of the Government of Zambia, serves to highlight culpability, whether sole or shared. As it will prove necessary to concentrate only upon relevant components of particular Bank credits or projects, the table seeks to provide a matrix within which each can be situated. With one exception, IFC-backed projects are not listed.

<i>Type of support</i>	<i>Used for</i>	<i>Approval date loan/tranches</i>	<i>Closing date</i>	<i>Amount \$US (m)</i>	<i>Undisb. \$US (m)</i>
Adjustment lending					
Economic Recovery Credit (FY91)	Objectives/components: (1) Macro-economic stabilisation; (2) agricultural market liberalisation; (3) private sector expansion; and (4) civil service and parastatal reform.	05 March 1991 19 May 1992	30 June 1992 01 June 1993	235.9 10.9 246.8	0 0
Privatization and Industrialisation Reform Credit (PIRC I FY92)	Objectives/components: The specific objectives of PIRC I were to promote competition and efficiency, encourage the private sector, and to improve the Government's ability to manage the reform program. PIRC II was to build on the same objectives. The objectives were to be achieved (1) through a macroeconomic stabilisation programme; (2) by developing a policy and institutional framework to encourage the private sector; (3) by privatising the vast majority of parastatals and by improving the efficiency of the few that remained; and by (4) continuing civil service reform. In addition, (5) a specific element of PIRC II was to encourage the Government to develop social support for those made redundant by restructuring. Most of these actions were ongoing and had themselves been initiated under prior Bank programs.	30 June 1992 23 December 1992 14 January 1994	24 February 1995 23 March 1994 26 April 1995	200.0 20.9 16.8	0 0 0
Privatization and Industrialisation Reform Credit (PIRC II FY93)		24 June 1993 09 August 1993	30 June 1997 30 June 1995	100.0 10.0 347.7	0 0
Economic and Social Adjustment Credit (ESAC I FY94)	Objectives/components: ESAC I had three aims. (1) The first was to further macroeconomic stability through the control of unplanned spending. It sought the introduction of measures to limit price setting by parastatals; to control indirect subsidies to parastatals, including the ailing Zambia Airways; to restrict public sector wage increases; and to curtail State involvement in crop marketing. (2) The second objective was to revise legislation and policy to develop a market for land and to promote non-traditional exports. The latter was to be achieved largely through actions designed to remove the protection of producers and expose them to free market forces to encourage a shift to export goods in which Zambia had a competitive advantage. Measures required were the reduction of import tariffs, the improvement of duty drawback, the minimisation of exemptions on imported capital goods, and shifting the onus in taxation towards VAT. (3) The third component required the Government to strengthen and decentralise social service delivery and improve budget allocations to and within the social sectors.	10 March 1994 08 December 1994	31 December 1995 31 December 1995	150.0 13.7	0 0
Economic and Social Adjustment Credit (ESAC II FY96)		ESAC II had four objectives. (1) The first was to establish a stable macroeconomic environment through the continuation of balance of payments support for structural and stabilisation measures. (2) The second aim was to improve the competitive position of exporters and revise the tariff structure to limit protectionism. Institutional and policy reform was to be implemented to encourage export diversification. Under the rubric of encouraging private sector growth, the credit sought to tackle institutional and regulatory constraints on the growth of employment, to include revision of the Employment Act and Industrial and Labour Relations Act. (3) A third objective was to strengthen the market in land by implementing agreed land reforms. Promotion of liberalisation in urban and rural land markets was to be achieved through adoption of the Lands Act, the disposal of State housing and the recognition of informal settlements. (4) A fourth aim was to improve the delivery of social services by the protection of budget allocations, by the adoption of a National Drug Policy, and by improved collaboration with NGOs.	01 August 1996 14 November 1996	31 December 1997 09 January 1998	90.0 7.8 261.5
Economic Recovery and Investment Promotion Credit (ERIP FY95)	Objectives/components: The credit had four key elements. (1) The first concerned the stabilisation of the macroeconomy with an emphasis on public expenditure restraint, but with protection of social service allocations and completion of trade and tax reforms. (2) The second element was to promote policy reform of in the sphere of development finance by institutional restructuring, to include insurance companies and pension funds. (3) The third area related to reform of the social security system, especially in respect of a national pension scheme. (4) The final element of ERIP sought to support policy reform in the mining sector across legal, fiscal, and environmental frameworks in order to attract new investors. A key measure was the adoption of a privatisation plan for ZCCM.	11 July 1995 12 December 1995	31 December 1997 23 February 1997	140.0 12.1 152.1	0 0

Type of support	Used for	Approval date	Closing date	Amount \$US (m)	Undisb. \$US (m)
Public Sector Reform and Export Promotion Credit (PSREPC FY 1999)	Objectives/components: The credit is designed to support measures in four key areas. (1) A first aim is to facilitate the privatisation of ZCCM by linking funding to the completion of the sale. The Bank is to assist in funding redundancies. (2) In the public service sphere, improvements are to be sought by reforming pay and employment practice and by improving management. The aim is to push through an action plan to implement the delayed Public Sector Reform Programme, to include extensive redundancies. (3) Private investment, especially in export-orientated industries, is to be encouraged by improving access to imported inputs through further tariff reductions and by speeding up investment approvals. (4) Social services are to be promoted through budget protection and support for key policy reforms in the areas of nutrition and the Public Welfare Assistance Scheme.	26 January 1999	NA	70.0	NA
Investment lending					
Agricultural Marketing and Processing Infrastructure	Objectives: To assist Zambia in moving from a State controlled marketing system to a free market, private sector system. Support is provided for marketing, processing and distribution. Components: (1) Credit provision; (2) technical assistance; (3) improving the policy environment; (3) supporting the rehabilitation and maintenance of feeder roads. Note: In November 1997, the project was restructured and the credit line reallocated to the rural roads component. Other activities were transferred to ASIP.	08 September 1992	30 June 1999	33	13
Petroleum Sector Rehabilitation Project	Objectives/components: (1) To initiate the development of a regulatory framework prior to deregulation of the petroleum market; (2) rehabilitation of the Tazama pipeline.	31 May 1994	31 December 2001	30.0	25.4
Health Sector Support Project (HSSP)	Objective: To improve access to, and the quality of, a national package of essential health care services. Components: (1) Support to develop a policy framework and workable health care strategies; (2) investment in the program (capital and recurrent costs) to support Districts implement the Health Reforms by plugging gaps in funding (most Bank money has been used to rehabilitate basic infrastructure and to fund drugs and medical supplies); (3) external monitoring and evaluation of the health reforms.	15 November 1994	31 December 2000	56.0	35
Agricultural Sector Investment Program (ASIP)	Objectives/Components: (1) Policy and institutional improvements in marketing (elimination of subsidies to marketing parastatals), trade and pricing, food security, land use, land tenure; (2) public investment; (3) private sector development through the creation of an enabling environment and incentives; (4) pilot investment schemes to support small-scale capital investment in rural communities on a matching grant basis and the privatisation of government farms.	30 March 1995	31 December 1999	60.0	36.3
Urban Restructuring & Water Supply Project (URWSP)	Objectives: (1) To provide immediate solutions to the worst water and sewerage infrastructure problems in nine key urban areas; (2) to test out community level solutions while strengthening council capacity in Lusaka and the Copperbelt to support such projects; (3) to support institutional and financial reforms to promote new approaches to water supply. Components: (1) The rehabilitation of systems in Ndola and Kitwe and other towns affected by cholera outbreaks; (2) support for demonstration projects based on the community-level rehabilitation of services in both formal and peri-urban areas; (3) reform of urban policy and capacity building in both central and local government to avoid the mistakes of past.	16 May 1995	31 December 2001	33.0	16.3
Environmental Support Program	Objective: To mainstream environmental and natural resources management when considering development at the national and local levels. Components: (1) Support to strengthen institutions, the legal framework and pilot a community environmental management program; (2) the promotion of environmental education and public awareness; (3) a Pilot Environmental Fund (PEF) to look at incentives for community-based micro-projects; (4) the instigation of an environmental information, monitoring and evaluation system.	10 June 1997	31 December 2003	12.8	12.3
Second Social Project	Objective: To assist the Government's poverty reduction programme by financing community initiatives to combat poverty during adjustment Components: (1) The financing of micro-projects identified, prepared and implemented by communities with Micro-Projects Unit appraisal and supervision (a sub-component supports capacity building); (2) data collection through a Living Conditions Monitoring Survey and participatory monitoring and assessment; (3) the financing of policy-relevant research through the Study Fund.	28 June 1995	31 December 2000	30.0	5.9
Enterprise Development Project (EDP)	Objectives: Firm-level support for restructuring by (1) improving technical know-how; by (2) enhancing access to finance; and by (3) strengthening the financial system and access to information. Components: (1) Matching Grant Scheme (to share the development costs of business plans); (2) Multipurpose Credit Facility delivered through commercial banks for investment/exports; (3) technical assistance for the development of financial institutions and the Export Board of Zambia.	27 May 1997	30 June 2002	45.0	41.9

<i>Type of support</i>	<i>Used for</i>	<i>Approval date</i>	<i>Closing date</i>	<i>Amount \$US (m)</i>	<i>Undisb. \$US (m)</i>
Roads Sector Investment Program (RSIP)	Objectives: (1) To invest in road infrastructure to support economic growth; (2) to create a sustainable system to finance and manage roads; (3) to address poor accessibility; and (4) to improve road quality and lower vehicle operating costs. Components: (1) Technical assistance to develop institutions, evolve a policy framework and improve policy implementation; (2) strengthening of the local construction and consulting industry; (3) support for a program of civil works to address the core network maintenance backlog, rehabilitate trunk, district and urban roads, upgrade feeder roads in selected provinces, and pilot a community-level roads program in three provinces.	14 October 1997	31 March 2003	70.0	68.8
Power Rehabilitation Project	Objective: Rehabilitation of the electricity supply industry to provide least cost power. Components: (1) Rehabilitation of hydropower stations; (2) development program for the Gwembe-Tonga group unsuccessfully resettled after construction of the Kariba dam; (3) improving the capacity and efficiency of ZESCO with a commercialisation plan; (4) technical assistance for a regulatory framework promoting private participation in the power sector.	19 February 1998	31 December 2002	75.0	76.4
Basic Education Sub-Sector Investment Program (BESSIP)	Objectives: The joint programme has two development aims: (1) to increase enrolment at the primary and lower secondary levels; and (2) to improve the quality of education as measured by learning achievements. Components: Action is to focus on five key components: (1) raising the number of teachers; (2) improving classroom learning by providing books, targeting disadvantaged groups and addressing the problem of pupil malnutrition and ill-health; (3) providing better pre- and in-service teacher training; (4) the continued refurbishment and building of classrooms, allied to revision of the curriculum; (5) and advancing decentralisation and education management. The Bank is using 'Adaptable Program Lending' to finance its contribution to BESSIP, allowing it to finance any components, depending upon where funds are needed. A second phase of Bank funding is planned, but is dependent on the success of the first phase.	08 April 1999	30 June 2002 [expected]	40.0	NA
Technical assistance					
Mining Technical Assistance (MiningTAS)	Objectives/components: (a) To assist ZCCM to improve its operations, lower its costs, to joint venture its underdeveloped copper resources and to divest its non-mining assets; (b) to strengthen the Ministry of Mines and Minerals Development and enable it to create an attractive investment environment for new private sector mining investment; and (c) to assist Maamba Collieries to reduce costs and prepare a long run strategy.	13 June 1991	30 June 1997	21.0	0.2
Privatisation and Industrial Reform Technical Assistance (PIRTA)	Objectives/components: To strengthen the capabilities of ministries and other institutions responsible for the privatisation and parastatal reform program' and to facilitate macroeconomic reforms. Funds are provided for the hiring of consultants and equipment needed to draft new laws, strengthen the legal system, and to restructure and prepare companies for privatisation.	30 June 1992	31 December 1998	10.0	0.94
Transport Engineering and Technical Assistance Project	Objectives/components: Studies and consultations to establish actions need to improve the institutional framework of the roads sector.	30 June 1993	30 June 1998	8.5	1.3
Financial and Legal Management Upgrading	Objectives/components: To build capacity in ten beneficiary institutions through the procurement of equipment, training, the printing of books and journals, and student placements. The Laws of Zambia have been placed on CD-ROM to facilitate access.	13 July 1993	30 June 1999	18	5.9
Economic Recovery and Investment Promotion Technical Assistance (ERIPTA)	Objectives/components: (1) To pay for investment banking and legal advisory services to prepare a privatisation plan for ZCCM; (2) to support the ZPA by financing consultants to prepare public enterprises for sale; (3) technical assistance and support for the Ministry of Mines to implement the Mining Act; and (4) technical support for the Department of Legal Drafting in preparing new business legislation.	04 June 1996	31 December 2001	23.0	8.28

Sources: Statement of loans/credits as of 31 October 1998; Status of IBRD/IDA Projects in Execution as of 30 June 1998; CAS (1996) and (1999); WAIS listings for Project Information and abstracts of staff appraisal reports; various staff appraisal reports, reports and recommendations to the executive directors, project completion reports. The undisbursed amounts for active loans are taken from the *PSREPC R&R*, 30 December 1998, Status of Bank Group Operations in Zambia, Operations Portfolio, Annex D (except, of course, for loans not then approved). The undisbursed amount occasionally exceeds the amount approved when funds are left to accrue.

Addendum - recently approved projects

<i>Type of support</i>	<i>Used for</i>	<i>Approval date</i>	<i>Amount \$US (m)</i>
Mine Township Services Project	To support the rehabilitation and commercial management of water and sewerage infrastructure in selected mine towns.	NA - May 2000?	NA
Zambia-Konkola Copper Mines plc [IFC]	To help finance Anglo/ZCI's purchase and rehabilitation of former ZCCM mining and processing facilities.	22 February 2000	30
Public Service Capacity Building Project	To support public service reforms, including: 'rightsizing' and pay reform; financial management, accountability and transparency; judicial and legal reform; and decentralisation and participatory development.	28 March 2000	28

Section 2

Privatisation, deregulation and the denial of human rights

Introduction

Deregulation, used here in the sense of the rolling back of the State in areas deemed better regulated by the market, has been used extensively in Zambia to prepare the way for private sector development and privatisation *per se*. However, because deregulation has been carried through with few of the balancing safeguards, it has resulted in the increased denial of economic and social rights in Zambia.

The World Bank, in its support for free market reform and privatisation in Zambia, articulates the need to disentangle the rights and obligations of investors in the private sphere from those of Government in the public sphere:

‘First priority is to modernize business-related laws, curb monopolies, and implement new investment laws that define clearly the rights and obligations of investors and limit Government’s role to issues of providing essential infrastructure and services, safety, environment and social safeguards.’¹

The aim is to maximise the rights and freedom of investors in the market place on the one hand, while defining, within strict parameters, Government regulation and social intervention on the other. In Zambia, the equation has not been balanced for three reasons. First, deregulation implies a certain neutrality: a reduction to pure market forces and the creation of a level playing field. The reality is very different in that rights which are not market-based have been actively diminished - even criminalised - beyond the point of balance. A new Lands Act has instigated a free market in land, removing restrictions on foreign holdings; yet it is also proactive in eroding customary tenure and in underscoring the illegality of squatting. While the Industrial and Labour Relations Act liberalises union membership and removes elements of compulsion, it simultaneously seeks to impose undue controls on the way in which unions conduct their own affairs and to restrict the circumstances under which strike action is deemed legal. A revised Employment Act has dispensed with the social responsibilities of employers to provide worker housing and other social services. Furthermore, essential services - water, sewerage systems, electricity, even medical services - have been provided for many decades by ZCCM, not only to the mining townships, but also to council areas. Once more it is a case of deregulation without balance; no provision has been for the take-over of these responsibilities by the State.

Second, in order to administer those areas of life unsuited to market regulation or to protect the interests of those, the poor and the marginalised, with little or no market power, it is essential that deregulation is accompanied by specific regulation and social protection. This has not happened in Zambia. In the absence of careful supervision, the transfer of land and housing from the State to the private sphere has been characterised by inequity, an absence of finance, personal debt and forced evictions. Privatisation has been administered under an Act which failed at the outset to make provision to adequately protect the interests of employees during the sell-off and to monitor working conditions after privatisation; it has been implemented through an agency which has been bypassed in the privatisation of ZCCM. Finally, where legislation has been enacted, for example to protect social goods such as the environment, private investors have immediately used their financial power to negotiate exemptions.

Deregulation in Zambia has quite clearly been driven by a free market imperative, but this is not the only benchmark. Deregulation must itself be squared with the binding obligations which arise from Zambia’s ratification of the Covenant on Economic, Social and Cultural Rights.²

There is absolutely no question of viewing free market principles as *a priori* incompatible with the realisation of economic and social rights. On the contrary, it must be reiterated that the steps which a State party to the Covenant must take to realise the rights it contains ‘neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question...’³ The Committee is neutral in its approach in that its principles are not predicated on the desirability of ‘a socialist or a capitalist system, or a mixed, centrally planned, or *laissez-faire* economy, or upon any other particular approach.’⁴ The overriding principle is that compliance with the Covenant is mandatory, whatever system is in place. Furthermore, compliance and non-compliance occurs not at the level of the system but within specific legislation and policies. Throughout this submission, care will be taken to relate the denial of particular rights to the existence or absence of specified actions, laws and policies.

Privatisation *per se* and the preparations which have been made to pave the way for private sector investment in Zambia are analysed over the next four subsections, always from the standpoint of human rights in general, and economic and social rights in particular.

The first concern is with *privatisation in the public interest*: whether the sale of national assets has been conducted in a way which is accountable, transparent, and which fosters popular participation. The inadequate regulation of privatisation in Zambia under the Privatisation Act has been compounded by malpractice. Not only is this incompatible in terms of *conduct* with the Covenant, other human rights instruments, and standards in public life; it also *results* in the denial of economic and social rights. The sale of businesses to buyers with no industry track-record or without due guarantees begins with this failure of regulation. Furthermore, a Government cannot be said to use its maximum available resources to promote rights to health, education, housing or social security if the sale proceeds are diverted or misused.

Employment, unemployment, and work-based rights are the subject of a second subsection. A raft of legislation in Zambia designed to deregulate employment or else curtail union activity - principally the Privatisation Act itself, the Employment Act, the Industrial Relations and Labour Act - is bound up with the question of the enjoyment of the right to work, the right to fair conditions of work, and the recognition of the right of trade unions to function freely.⁵ During and after privatisation, monitoring is essential. In its absence, a workforce will be vulnerable to either deliberate exploitation by unscrupulous operators or business failure through incompetence. Proactively, consideration must be given not only to ensuring the best price, but also to whether commitments to protect as many jobs as possible, to maintain existing employment conditions, and to manage social assets are forthcoming.

In a third subsection, due consideration is given to *access to land and the right to housing*. A free market in land is considered to be a prerequisite for private sector investment. The principle piece of legislation is the comprehensively revised Lands Act (1995). This has opened the way for foreign investors to purchase and own land on secure leases. A facility to convert customary tenure to leaseholds which can be sold on the open market threatens the right to land of many Zambians. Legislative reform in Zambia has simultaneously made it more difficult for the poor to gain title to land and has reinforced the illegality of those without it, increasing their vulnerability to forced eviction. In line with the principle that the Government should withdraw from delivering what is best provided by the market, all state-owned housing stock is being sold. The manner of disposal has violated not only the right to housing, but other basic rights. There has been discrimination in determining who is eligible to purchase a house. This applies both to the disposal of government houses and to parastatal houses sold in advance of privatisation. Sales have been predicated on intimidation and forced eviction. The edict to dispose of council houses has deprived many local authorities of income from rents and rates. With no access to finance, purchasers of company houses have been forced to trade away their terminal benefits while those buying council houses struggle to put down a deposit, but then fail to pay the outstanding balance. Councils, starved of revenue and unable to meet their obligation to provide basic services, have sent in bailiffs to recover debts, have cut-off water supplies and electricity and have resorted to evictions. The result is a self-reinforcing cycle of violation.

A final subsection considers *the conduct of parastatal and private companies* during the privatisation process: the degree to which their actions have resulted in the realisation or denial of rights under the Covenant. The initial focus is upon the privatisation of ZCCM. A number of private companies, in different ways, have formed a nexus with the Bank and Government/ZCCM to set the parameters of the sale. The end result is a privatisation plan which neglects to deal with complex questions of municipal service provision and informal settlements on mine land. It is also a plan which furnishes model sales and development agreements for the unbundling of ZCCM which deliberately dismantle or suspend domestic environmental and social protection in those few areas where it has been successfully advanced. By way of substantiation, two case-studies are examined: first, the unprecedented civil unrest and industrial action at the recently privatised Luanshya Mine on the Copperbelt in November 1998; second, forced evictions and involuntary displacement from mine land. Both ZCCM itself and the private company which purchased the Kansanshi Mine are implicated in these actions. The argument is made that such third parties have a direct responsibility to ensure their conduct complies with international human rights law.

Notes

¹ *PIRTA M&R*, para. 6.

² ICESCR ratified by Zambia on 10 April 1984.

³ *GC 3*, para. 8.

⁴ *Idem*.

⁵ For example, see respectively ICESCR article 6, article 7, and article 8.

I. Privatisation in the public interest

Introduction

It is the Privatisation Act (1992) which governs privatisation in Zambia. The Act establishes the Zambia Privatisation Agency (ZPA) whose purpose is to plan, manage, implement, and control the privatisation of State owned enterprises by selling them to those with the expertise and capital to run them on a commercial basis.¹ The Act further determines how the list of enterprises to be sold is drawn up and what modes of sale are allowable.² The Act lays down parameters for competitive bidding and the conduct of negotiations.³ Arrangements for the issue and holding of shares are specified for when the option of public flotation is used.⁴ The Act also specifies the extent to which information relating to the sale process will be made public, how the sale proceeds will be recorded and banked, and the uses to which the money may be put.⁵

The Privatisation Act appears to be comprehensive and to present a sound basis upon which privatisation may proceed in a transparent and independently regulated manner. Indeed, considerable attention has been paid to drawing up the privatisation framework in Zambia. The World Bank has been instrumental in supporting the drafting of the Act and in providing technical assistance funds for the staffing of key advisory positions in ZPA.⁶ Yet, considering what is at stake in privatising entire swathes of the Zambian economy, in a country where major parastatals have acted as a parallel administration, then the Privatisation Act and related legislation must be not only well-suited to the task of achieving a commercially successful transition, but also to safeguarding the rights and legacy of the Zambian people.

It would be misplaced to conceive of the Privatisation Act as explicitly or intentionally concerned with human rights protection. On the one hand, there is an argument that the Privatisation Act should be judged narrowly in terms of the economic success or failure of privatisation. On the other hand, because the realisation of human rights is a principle of universal validity, then it is more than legitimate to scrutinise any legislation which impinges upon the enjoyment of such rights. Furthermore, there is a middle ground: when the Privatisation Act fails to deliver in its own terms on matters of accountability, transparency and the provision of information, popular participation, the protection of employment, or in the specified use of sale proceeds to promote social development, then it also fails to protect, fulfil, or promote specific human rights.

In a first subsection (A), the regulatory principles of accountability, transparency and participation, which the Privatisation Act is meant to guarantee, are articulated in terms of human rights. This brings consideration of the Privatisation Act within the remit of the Committee and sets the benchmark against which the *de jure* and *de facto* regulation of privatisation in Zambia is to be assessed. The Zambian Government's record in this regard is reviewed over three subsequent subsections. Under the rubric of accountability (B), consideration is given to the independence of the Zambia Privatisation Agency, its role in conducting each sale, and its decision-making power. Regrettably, its authority to manage privatisation has been usurped with a corresponding loss of accountability. In a subsection on transparency (C), the primary concern is with access to information on privatisation: the amount realised from the sales and the uses to which the proceeds have been put; details of bidders and the bidding process, to allow the public to judge whether privatisation is being conducted in the interests of all Zambians; and the full facts of each sale, including agreements reached on redundancies, conditions of work and the take over of social assets. (D) Participation of Zambians in the privatisation process has been narrowly interpreted and severely curtailed. The public offering of shares has concentrated a common wealth in the hands of a political and business elite. Furthermore, employee and management buyouts have succeeded in only a few instances in the face of competition from foreign business. Indeed, the use of tax and other incentives to attract foreign investors must deprive the Government of revenue for expenditure on the social sectors of education, health and welfare. In keeping with the principle of joint responsibility, the role of the World Bank in fostering the privatisation framework is reviewed in a final subsection (E).

At this juncture, it is pertinent to note that the consideration of certain aspects of the Privatisation Act *per se* is postponed until Section 2(II): in particular, the failure to safeguard the rights of employees during the sales and the absence of post-privatisation monitoring.

A. Accountability, transparency, participation and human rights

Accountability, transparency and popular participation are all prerequisites if the human rights of any group - workers, retrenched, residents of mining towns, tenants in parastatal housing, the general public - are to be protected under a process such as privatisation with its far-reaching consequences. Each of these principles can be articulated in rights terms, drawing on both Covenants, as well as the Declaration on the Right to Development and the Declaration Against Corruption and Bribery in International Commercial Transactions.

1. A basis in the Declaration on the Right to Development and the Covenant on Civil and Political Rights

Under the rubric of *accountability*, the Privatisation Act must allow each sale to proceed without behind the scenes interference for short-term political or financial gain by the ruling elite. A failure of regulation in this regard threatens aspects of the right to development which is the inalienable entitlement of each and every person and is not the exclusive preserve of those in power.⁷ Under the Declaration on the Right to Development, Government's have the right, but also a duty, to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals.⁸ In respect of the Covenant on Civil and Political Rights, the right of every citizen to take part in the conduct of public affairs, whether directly or through a chosen representative, is undermined when a Government no longer considers itself accountable for its actions.⁹ There must be absolute *transparency* over the sale proceeds and how the money realised is being spent. Future projections on employment and redundancy, as well as the arrangements to be put in place to manage social assets, represent a vital knowledge base for workers and local communities. Full information must be forthcoming to allow people to judge for themselves the merits of each sale. These requirements stem both from the right to free expression and opinion based upon freedom to seek, receive and impart information under the Covenant on Civil and Political Rights;¹⁰ and from securing the right to development of the entire population and all individuals on the basis of their active, free and meaningful *participation* in development and in the fair distribution of the benefits resulting therefrom.¹¹ Where possible, it would therefore seem desirable for Zambians to be given the opportunity to share in the rewards of privatisation through schemes to encourage popular share ownership in the most successful enterprises.

2. International instruments on corruption and malpractice

The process of privatisation in general - that, is turning over state assets to private owners - has been described as 'fraught with opportunities for corruption and self-dealing'.¹² The significance of corruption in undermining fair economic competition and distorting market processes in emerging markets and in the context of large-scale privatisation programmes is noted by the UN Office for Drug Control and Crime Prevention.¹³ The degree of accountability and transparency is a determining factor in the extent of corruption and malpractice. All Member States of the UN, including Zambia, have committed themselves to implement the United Nations Declaration Against Corruption and Bribery in International Commercial Transactions.¹⁴ This recognises that effective efforts to combat and avoid corruption and bribery 'form a critical part of promoting transparent and accountable governance, economic and social development and environmental protection in all countries.'¹⁵ The UN has also adopted the International Code of Conduct for Public Officials and recommended it to Member States.¹⁶ Furthermore, a number of regional instruments have established standards to combat corruption¹⁷ While binding on ratifying States, these instruments have a normative value: the standards they codify are applicable to *all* States. In respect of the principles of transparency and accountability, the OECD's Principles for Managing Ethics in the Public Service (1998) are particularly pertinent.¹⁸

3. The Covenant on Economic, Social, and Cultural Rights: malpractice vis-à-vis obligations of conduct and result

In respect of the Covenant on Economic, Social and Cultural Rights, corruption and malpractice violate the principle of non-discrimination and constitute steps which are incompatible with the progressive achievement of the full realisation of economic and social rights to the maximum of available resources.¹⁹ The award of the sale of a State owned enterprise through malpractice or corruption is arbitrary and results, more often than not, in the violation of specific rights.

The undertaking to ensure non-discrimination is an obligation of conduct.²⁰ the award of the sale of a State owned enterprise to one bidder over another through malpractice or corruption constitutes unequal treatment based upon an arbitrary decision. The undertaking to take steps, which must be immediately implemented, specifies that these steps must be ‘deliberate, concrete, and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.’²¹ Neither corruption or malpractice are appropriate steps as both constitute an immediate violation of the overarching principle of non-discrimination. The OECD’s interpretation that bribery is an offence whether or not the award of a sale or contract was made to the best qualified bidder underlines that corruption is, by its nature, contrary to this obligation of conduct.²² However, corruption and malpractice are most obviously incompatible with the Covenant when they lead to the violation of specific rights.

The Covenant codifies an obligation of result, that a State party takes steps ‘with a view to achieving progressively the full realisation of the rights recognized’ in the Covenant.²³ There is an obligation to move expeditiously and effectively towards the goal of full realisation.²⁴ The award of a contract or sale, on the basis of malpractice or corruption, to a company or individual without a sound industry track-record, or a carefully reasoned business plan based upon due diligence studies, or proven access to the finance needed to invest in a venture will prejudice the likelihood of commercial success. This has negative implications for the realisation of the right to work. Instances are documented within this submission when the sale of a business to an unscrupulous owner in has resulted in the denial of just and favourable working conditions, the non-payment of benefits and entitlements, or asset stripping leading to business closure, mass unemployment, impoverishment and even homelessness when employees are evicted from company houses.

There is a final sense in which corruption is implicated in the dereliction of the obligations of both conduct and result. Article 2(1) of the Covenant requires each State party to take the necessary steps ‘to the maximum of its available resources.’ A Government must show that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, its minimum core obligations.²⁵ This obligation of conduct is undermined when corruption results in the diversion of public resources into private hands. This impinges upon the fulfilment of the obligation of result to achieve progressively economic and social rights. A government cannot be said to use its maximum available resources to promote the right to health, education, housing or social security if large sums of public money are diverted for private gain.²⁶

B. Privatisation and failures of accountability

1. Introduction: the Privatisation Act and accountability

The Privatisation Act, by establishing the Zambia Privatisation Agency as an independent body, seeks to ensure that the privatisation process is conducted in an accountable way and is as free from political manipulation as possible.²⁷ There is a division of decision-making power within the Act between the Government and the ZPA. While the Government determines the overall direction and timing of privatisation, ostensibly it is left to the ZPA to handle and close each sale without political interference. Hence it is the Cabinet which decides and issues policy guidelines on how the privatisation programme is to be implemented and which determines, through its approval of the divestiture sequence plan, which State owned enterprises are to be privatised and the order in which they are to be sold.²⁸ It is then left to the ZPA to advise on the mode of sale in each case.²⁹ The available options for the disposal of a business include, *inter alia*, negotiated or competitive bids, the public offering of shares, the sale of the assets and business of a State owned enterprise which thereby ceases to exist in its own right, and management or employee buyouts.³⁰ Again, it is the Cabinet which has final approval over the mode chosen.

Decisions on privatisation - including the crucial determination as to who is awarded the sale of an enterprise - are ostensibly taken by the Members of the ZPA, in effect a board of directors. Of the twelve designated positions, only three are reserved for government.³¹ The remaining nine positions fall to representatives of civil society and the private sector. This includes provision for the business community, the unions and the churches. At the head of the ZPA board is a Chairman and Vice-Chairman, both of whom are elected by the other members.³² The two government Permanent Secretaries are ineligible for these two positions.

Yet, despite the establishment of the ZPA, there have been significant lapses in accountability on two levels: firstly, a closer examination of the Privatisation Act reveals aspects of its formulation which give the lie to the apparent independence of the decision-making process; secondly, there has been considerable deviation from the prescribed privatisation process and political interference in key sales.

2. The Privatisation Act: in-built failures of accountability

If those in authority fail to account for their actions, for example, in respect of the decisions they make when selling national assets, then the right to development is undermined.³³ Under the Declaration on the Right to Development, Governments have the right, but also a duty, 'to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.'³⁴

Privatisation is a key plank of the Zambian Government's national development policy. The sale of national assets - which are the legacy of, and which belong to, the people of Zambia - must aim to improve the well-being of all Zambians. Whether or not the best interests of the majority of Zambians are served; whether or not their meaningful participation is ensured; whether or not the fair distribution of the benefits of privatisation is achieved; none of these assessments can be made unless there is accountability in the privatisation process. Furthermore, a lack of accountability makes the realisation of each facet of the right to development less likely.

The initial impression is that the ZPA board is dominated by representatives from the business community and civil society, and not by Government appointees. However, although the Privatisation Act determines which organisations are Members of the ZPA, each individual representative is appointed by the President, having first received the approval of a Select Committee of the National Assembly.³⁵ Some of the positions on the ZPA board are empty. As of June 1998, the Law Association of Zambia, the Bankers Association of Zambia, the Zambia Institute of Chartered Accountants, and the Churches of Zambia were not represented.³⁶ This situation was earlier criticised by the Parliamentary Committee on Public Investments tasked with preparing a *Special Report on Privatisation*.³⁷ The right of every citizen to take part in the conduct of public affairs, whether directly or through chosen representative, is undermined.³⁸ As will become apparent, these vacancies reflect the fact that the members of the ZPA board, in reality, have little control over privatisation.

Two seemingly insignificant clauses in the Privatisation Act combine to further undermine the independence of the ZPA board. First, it is specified that when a matter needs urgent attention, a ZPA board meeting can be called without the usual fourteen days notice.³⁹ Indeed, meetings have been convened at very short notice making it impossible for all members to attend. Second, since only five members of the board are required to decide and vote on any matter, the ZPA board may press ahead with business in the absence of full representation.⁴⁰ In such circumstances, providing all three of the Lusaka-based Government members are in attendance, then the Government has an automatic majority on the board. Manipulation is not merely a theoretical possibility, but has occurred in practice. The documented subversion of a prior decision reached by the full ZPA board over the sale of one of the ZCCM mining packages was achieved, in part, by the procedural ruse of convening an urgent meeting between the Committee of Ministers and the ZPA board at short notice.⁴¹ As a result, the letter confirming the ZPA board's original decision to award the sale of the mine to a Canadian mining firm, in contravention of the Government's/ZCCM's wishes, was withdrawn.

It is specified that the Members of the ZPA need only meet once every two months.⁴² It is therefore the ZPA management which takes decisions on the day to day running of the privatisation programme and makes recommendations to the Members.⁴³ This division of labour between the ZPA board as the executive and ZPA management constitutes common practice and is not contentious until it is realised that the board acts as little more than a rubber-stamp on the decisions of the agency's evaluation and negotiating teams. The crucial issues are the degree to which these teams are subject to political or commercial manipulation; whether other bodies, including parastatal boards or unaccountable Government committees have the final say over the sales process; and, ultimately, the extent to which such interference in the privatisation process actually matters. The benchmark for this final judgement is whether the way in which privatisation has been conducted has proved detrimental to the realisation of fundamental human rights.

3. Accountability and deviation from the Privatisation Act in practice

The United Nations has recommended that Member States, in their efforts against malpractice and corruption, are guided by the International Code of Conduct for Public Officials (1996).⁴⁴ General principles are codified whereby to be in public office implies a duty to act in the public interest.⁴⁵ Public officials shall perform their functions in accordance with laws or administrative policies and 'shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.'⁴⁶ Moreover, they shall be 'fair and impartial in the performance of their functions' and 'at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual'.⁴⁷

The Privatisation Act lays down the parameters for the conduct of each sale while ZPA has developed mechanisms by which the Act is implemented.⁴⁸ There are numerous occasions - often involving the sale of the largest parastatals - when the set procedures have been subverted.

Although other modes of sale are specified under the Privatisation Act, the most common way in which large State owned enterprises are sold is through the private sale of shares through negotiated or competitive bids. All bidders must first pre-qualify.⁴⁹ An evaluation team, which is made up of two or three ZPA staff and a consultant, then assesses each bid received for a business.⁵⁰ The team then meets with the ZPA management before presenting its Bid Evaluation Report and recommendations to the Members of the ZPA board. The Members approve a short list of bidders and invite those selected to further negotiations.⁵¹ For each actual sale, ZPA management is assisted by an independent negotiating team whose appointment is approved by the Members of the ZPA board.⁵² This comprises a chairman, a lawyer, at least two technical consultants from ZPA staff, and specialist consultants/advisers, as required.⁵³ The negotiating team liaises and bargains with each selected bidder and eventually hammers out a deal with the selected buyer.

a. The sidelining of ZPA in the privatisation of ZCCM

There are stark instances - for example, in respect of the sale of ZCCM - when the make-up of key negotiating teams has been the subject of blatant political interference. The Zambia Association of Chambers of Commerce is on public record stating, 'We believe that, despite the government's statement to the contrary, amounts realised from the sale of the mines are far less than could have been raised had there been no political interference in the process and had the job been left to Zambia Privatisation Agency.'⁵⁴

Negotiations over the sale of the mining parastatal were being led by the international merchant bank, N.M. Rothschild, when, at the end of March 1997, a former chairman and chief executive of ZCCM, Francis Kaunda, was appointed by the President, rather than by the ZPA board, to head the ZCCM Privatisation Negotiating Team. This appears to be in direct contravention of the Privatisation Act.⁵⁵ Furthermore, the chief executive of ZPA is a Director of ZCCM.⁵⁶ One of the known member's of the ZCCM Privatisation Negotiating Team is also a Director of ZCCM.⁵⁷ The Privatisation Act purposefully specifies that the ZPA, and therefore not the company board and directors of a parastatal, is to handle all sales. In the case of ZCCM, this distinction is blurred. In reality, it is the ZCCM board and the Government itself, not the ZPA, who are handling negotiations over the sale of ZCCM.⁵⁸ The appointment of Kaunda to handle the ZCCM privatisation has been heavily criticised by members of the consortium of international mining companies who failed in their bid to purchase the Nkana and Nchanga package.⁵⁹ The Parliamentary Committee on Public Investments has denounced deviation from the Privatisation Act and has urged the Government to ensure that privatisation is carried out in accordance with its provisions.⁶⁰

Once each individual agreement has been finalised by the negotiating team, it does not come back to the Members of the ZPA board for approval, although both the board and the Attorney General may review the agreement reached.⁶¹ Rather, the Privatisation Act specifies that the Minister of Finance *shall* sign the final Sales Agreement to transfer shares to the selected bidder.⁶² Once more, the process specified in the Privatisation Act is not necessarily followed. The power of decision over the sale of ZCCM lies with a special Cabinet subcommittee (also known as the Committee of Ministers) which decides whether each sale should go ahead in line with the terms which are being agreed by the negotiating team.⁶³ The subcommittee keeps in close contact with the negotiating team throughout to ensure the sale is going ahead in accordance with its wishes.

The unaccountable way in which certain crucial privatisations have been conducted has led to some anomalous decisions. Many commentators and industry analysts are highly critical of what they perceive as the mishandling and eventual collapse of the sale of the key Nchanga and Nkana mine to a credible international mining consortium.⁶⁴ At the close of bidding for the Chibuluma mine in February 1997, the Metorex Consortium openly acknowledged that it was being represented in its negotiations to purchase the mine by Francis Kaunda.⁶⁵ The other bidder for the mine was the Kafue Consortium which wanted to purchase Chibuluma as part of the Nkana/Nchanga sale package. The following month, Kaunda was appointed to handle negotiations over the privatisation of ZCCM. Chibuluma Mine was split from the recommended sale package and awarded to Metorex on 31 July 1997.⁶⁶ Kaunda did not publicly terminate his connection with Metorex, nor resign from the negotiating team, nor exclude himself from negotiations over the sale package which included Chibuluma.⁶⁷

Chronology of key events in the privatisation of ZCCM

January 1995 - An announcement is made in the budget speech that ZCCM is to be privatised within two years

October 1995 - The merchant bank N. M. Rothschild and the legal firm Clifford Chance are hired to produce a privatisation plan for ZCCM.

April 1996 - The Rothschild report recommends the unbundling of ZCCM into ten principal sale packages to be privatised through international competitive tender. The Government is to retain a 'golden share' - typically 15 per cent - in the successor companies which it has the option to sell to Zambian and other investors at a later date.

May - June 1996 - ZCCM privatisation plan approved by both the Zambian Government and the ZCCM board.

February 1997 - The bidding process closes. Each package attracts at least one bid.

A memorandum of understanding is signed between the Government/ZCCM and Anglo American for the exclusive purchase of the extensive Konkola Deep deposit outside of the main bidding process. This deal cements Anglo American's acceptance of the privatisation process, but the option granted to the company to purchase the smelter from another sale package jeopardises the future of the Mufulira mine.

The Kafue Consortium of three leading mining houses (Avmin of South Africa, Noranda of Canada, and Phelps Dodge of the USA) and UK financiers, the Commonwealth Development Corporation, enter into negotiations to purchase the core Nkana/Nchanga asset package.

March 1997 - Appointment by the President of Francis Kaunda to take over ZCCM sale negotiations from Rothschilds and the ZPA negotiating team.

June 1997 - Finalisation of the Nkana/Nchanga sale to the Kafue Consortium appears imminent. In retrospect, the best price for these mines was achieved at this time.

October 1997 - Conclusion of the sale of the Luanshya and Baluba mines to the Binani Group of India.

December 1997 - The Consultative Group meeting with donors to renew balance of payments support is postponed, ostensibly because of governance issues, but also because of the failure to conclude the privatisation of ZCCM.

April - May 1998 - After a year of protracted negotiations, during which time the price for copper has fallen sharply, the final reduced offer of the Kafue Consortium is rejected and the bidding group dissolves.

Balance of payment support from the donor community agreed at the Consultative Group meeting is made conditional on significant progress in the privatisation of ZCCM.

Mid 1998 - Anglo American invited to formulate a rescue plan to repackage the unsold assets of ZCCM.

September 1998 - Over two years after the privatisation was announced, less than 20 per cent of ZCCM's operating capacity has passed into private ownership.

October - November 1998 - Anglo American agrees to relinquish its purchase rights over the Mufulira smelter in the event of an agreement being reached allowing it to purchase the other key ZCCM assets as a single package. A prospective buyer is found for the Mufulira mine.

December 1998 - January 1999 - Anglo American negotiates the option to purchase all remaining key ZCCM assets. A number of preconditions are set by the company to include the identification of a suitable partner, the securing of finance, and the implementation of a ZCCM redundancy program to be paid for using donor funds.

New lending instruments are agreed with the World Bank and IMF as a result of the memorandum of understanding signed between the Government/ZCCM and Anglo American. However, the release of funds is made conditional on conclusion of the deal and transfer of ownership.

March 1999 - The original deadline for conclusion of the sale of the remaining key ZCCM assets passes. The preconditions set by Anglo American for the purchase have not been met.

October 1999 - Anglo American revises the basis of the original deal. A new agreement is reached whereby the high cost Nkana mine is excised from the sale, although the South African Company retains its option to run and purchase the Nkana smelter, crucial to its wider operations in Zambia. Anglo American refuses to take over social assets associated with the mines.

February - March 2000 - While a number of non-operational and smaller ZCCM mines, as well as the Power Division, were privatised relatively early, the eventual sale of the key mine packages at the core of ZCCM to Anglo American (Konkola, Nchanga, Nampundwe and a contract to run Nkana smelter) and First Quantum/Glencore (Nkana Mine and Mufulira) has only recently been concluded. Please refer to Section 2(IV) for a full consideration of the privatisation of ZCCM. A supplement appended to Section 2(IV) details the status of each ZCCM asset package to February/March 1999

b. The sale of the Luanshya Mine: allegations of malpractice

A court case disputing the sale of another ZCCM mine reveals the extent of deviation from the Privatisation Act. Luanshya and Baluba, was sold to an Indian company, the Binani Group in June 1997.⁶⁸ From the outset, the deal struck with Binani has attracted criticism and accusations of malpractice. When a company is to be sold by competitive tender, each bidder must first pre-qualify by demonstrating that they have the necessary financial resources, management capacity, and business experience to buy and run the enterprise in question.⁶⁹ The front runner to win the sale had been First Quantum, a Canadian mining company with a sound industry track record in copper mining. Binani, on the other hand, has no copper mining experience.⁷⁰ Some analysts are of the view that the Binani company does not have the necessary financial backing to fund its ambitious plans for the Luanshya operations, as outlined in its bid and in the subsequent development agreement.

In August 1997, First Quantum filed suit in the High Court against the Zambia Privatisation Agency (ZPA), ZCCM, Binani and the Government of Zambia as a fourth defendant seeking a reversal of the decision to sell to Binani.⁷¹ It alleged that a decision had been reached, on a purely commercial basis, by the Zambia Privatisation Agency to award the sale to First Quantum but that this decision was then overruled, contrary to the Privatisation Act, by members of the Zambian Cabinet. Furthermore, First Quantum alleged that details of its bid had been leaked to Binani.⁷²

The legal action has brought a number of facts to light. First Quantum had indeed originally been selected as the winning bidder by ZPA.⁷³ In doing so, the ZPA board followed the expert recommendation of its advisors, the merchant bank N M Rothschilds, rather than the wishes of the Government/ZCCM. This decision - apparently never verified by letter to the Committee of Ministers, although even this is disputed - was officially reversed following an urgent meeting between Cabinet members and a minority of the ZPA board.⁷⁴ Binani, despite having no copper mining experience, had never conducted full underground studies of the mine. The ZPA board had considered Binani's pledge to retain the workforce in its entirety as 'unlikely to be achieved and actually demonstrates that the Binani Group did not carry out an in-depth due diligence study'.⁷⁵ Yet, despite the absence of such a study and the company's lack of pertinent experience, the Binani Group was still able to table an initial bid⁷⁶. The rules governing the tender process stipulate that bids are to be placed in sealed envelopes and deposited in padlocked metal tender boxes at the ZPA offices.⁷⁷ All bids are then opened in public. In according with the bidding rules for the Luanshya/Baluba package, all offers were received by 28 February 1997 and opened the same day. The award of the sale was to be announced by 1 April 1997.⁷⁸ However, after protracted negotiations with the three competing bidders - during which time First Quantum believed itself to be the 'preferred bidder' - the ZPA requested revised bids on 17 June 1997 with a deadline for their receipt just two days later. The cash component of Binani's final bid, submitted at the last moment, bettered First Quantum's offer by a precise margin, prompting the allegation from the Canadian company that details of its own bid had been leaked.⁷⁹

The jettisoning of due legal safeguards in the conduct of the Luanshya/Baluba sale has, even in the short term, proved detrimental to worker's rights. The deterioration in employment conditions, coupled with persecution of the local union leader, prompted unprecedented industrial unrest in Luanshya in November 1998. There have been negative repercussions for social provision in the local community. A full account of the grievances of the workforce and the township residents, in the context of the flawed development agreement which was signed with Binani/Roan, is given in Section 2(IV).

The denial of rights enshrined in the Covenant in this instance is the ultimate reason why accountability throughout the sale process is vital. The ZPA board and the sale procedure were established so that informed, autonomous decisions could be reached on making the award to the bidder offering not only the highest price, but with the best development plans and a sound track record. Seemingly esoteric provisions in the Privatisation Act take on a heightened significance when their infringement results in the usurpation of the ZPA. This blatant, initial disregard for due process and accountability presaged the unrest and infringement of rights which occurred in Luanshya little more than a year after the sale was concluded. It must also be noted that the allegation has been made in public that President Chiluba had a vested interest in the award of sale to Binani and now owns shares in the enterprise.⁸⁰ The accusation has been denied by the President, but calls for full disclosure of share ownership persist.

C. Transparency and access to information

1. Introduction: the Privatisation Act and transparency

There are two aspects to public information on privatisation: balanced publicity to inform people about the nature, merits, pitfalls and progress of the process; and the publication of more detailed information about each sale to ensure transparency. This focuses here is upon the latter type of primary information. In respect of the former, the conclusion reached within an internal Bank evaluation of privatisation was that the public information campaign on privatisation 'started late and had inadequate coverage.'⁸¹

Transparency is itself predicated on a fundamental right: article 19(2) of the Covenant on Civil and Political Rights states that 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information....' There are at least three areas in which transparency under the Privatisation Act is paramount. First, and because privatisation involves the sale of national assets owned by the Zambian people, information must be made available detailing the sale proceeds and how the money realised is being spent. Second, the full facts behind each sale - who the bidders are, how negotiations are conducted, the reason for the award of the sale of a company to one buyer over another - must be published to allow people to judge for themselves the merits of the decision-making process. Finally, once a company is sold, people affected by the privatisation need as much information as possible about the new owners plans in respect of employment levels, working conditions, and the management of social assets.⁸²

In principle, a number of safeguards exist to promote transparency and to prevent those in privileged positions from benefiting unduly from privatisation. ZPA staff and consultants, together with immediate relatives and business partners, are precluded from bidding, although they may participate if shares in a business are sold by public flotation.⁸³ Indeed, ZPA staff and consultants must disclose any conflict of interest in matters relating to the privatisation process.⁸⁴ However, this disclosure is not made publicly but to the Director of the ZPA who has total discretion in deciding what action (if any) is appropriate in each case.⁸⁵ Political leaders and public officers, in contrast, may participate in the sales although they are required to publicly disclose their intention to bid for a State owned enterprise.⁸⁶ To promote transparency, all potential investors must provide information about themselves and those who make up the investor groups. A direct or indirect interest in a bid for a State owned enterprise must be disclosed.⁸⁷ All employees of the ZPA, consultants and members of the ZPA board must take an oath of secrecy and shall not publish or disclose unauthorised information.⁸⁸ There are stiff penalties under the Act for the unauthorised disclosure of information, including heavy fines and even imprisonment for up to five years for those either releasing or publishing such information.⁸⁹ While seeking to prevent the spread of 'insider information,' the same secrecy clauses reduce the likelihood of those party to proceedings from alerting the public about apparent malpractice or deviation from set procedures.

Under the Act, the ZPA must publish certain information by notice in the *Gazette*⁹⁰: the names of State owned enterprises to be privatised; the names of registered consultants, valuers, lawyers, public accountants and merchant banks dealing with the privatisation process; the names of bidders and how much they are bidding; the successful bidders and the reason they have been selected; the price of shares, or any other special conditions of the sale of shares; and details of any other matters thought to be appropriate. This information is consolidated and reproduced every six months in a progress report which the ZPA must submit to the Minister of Finance.⁹¹ This report is presented to the National Assembly and then published for sale to the public.⁹² Under the Privatisation Act, the ZPA must also submit an annual report and accounts to the Minister of Finance who presents these to the National Assembly before the report is published for sale to the public.⁹³ A parliamentary select committee on parastatals monitors the operations of ZPA.

There are positive aspects to the Privatisation Act in respect of transparency, although, once more, many of its provisions are not fulfilled in practice. At the same time, there are omissions within the Act itself which prevent the public from gaining access to information or from meaningful participation in the process.

2. The Privatisation Act: in-built failures of transparency

In spite of these stipulations, the form in which certain information is published precludes detailed scrutiny. For example, the consultancy listings in neither the *Gazette* nor in the ZPA's progress reports reveal who is in each independent negotiating team or the extent to which any one firm or individual is being used. ⁹⁴ There is often a protracted delay in revealing the details of certain deals.⁹⁵ This engenders mistrust. For example, industry commentators have noted that '[h]ere in a country and under a regime where nondisclosure normally means there is something to hide, we the Zambian public are justified in maintaining a fair degree of scepticism at the way the financial results of the

recent mines privatisation are being withheld from public scrutiny.’⁹⁶ Furthermore, what the ZPA’s annual report and accounts and the six monthly progress reports omit to tell you is often of equal, if not greater, importance than what they reveal. Hence details of how much an enterprise was valued at originally are not published as a matter of course. This makes it impossible for the general public to judge whether the business in question was sold at a fair price. Most seriously of all, there is a total lack of transparency in revealing how much revenue has been generated by privatisation and what has happened to these sums of money.

3. Transparency and deviation from the Privatisation Act in practice

a. Allegations of corruption and self-dealing

The meaning of corruption is often reduced to that of bribery, the definition of which hinges on the offer and acceptance of payments or other advantages.⁹⁷ However, bribery does not necessarily capture the corrupt activity of self-dealing when public officials and politicians manipulate the bidding process to achieve the award of sale to a company in which they have a vested and often hidden interest. The meaning of corruption is taken to encompass both bribery and self-dealing. Privatisation in Zambia has encompassed a diversity of enterprises, some of which have been small in size. However, the process has also involved the sale of large firms and major conglomerates. Privatisation is therefore the preserve of big business and high-level officials. As such, any corruption associated with privatisation is likely to be characterised as ‘grand corruption’.⁹⁸ Malpractice describes both improper or negligent deviation from set procedures and guidelines. Malpractice is often, but not always, both the result and means of corruption.

The UN’s International Code of Conduct for Public Officials stipulates that:

‘Public officials shall not use their official authority for the improper advancement of their own or their family’s personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.’⁹⁹

Privatisation in Zambia has been described as ‘a looting exercise’ by the anti-corruption group Transparency International. Many of the provisions to ensure transparency in principle have been disregarded in practice. According to one commentator the program has stalled ‘amid accusations of incompetence graft and asset-stripping’ and has become ‘a source of corruption.’¹⁰⁰ Transparency International and Zambian journalists have accused a cabal of ministers and officials of buying smaller businesses at bargain prices while failing to close on the sale of major industries. A former Minister for Legal Affairs confirms that Ministers were party to information about the lowest acceptable bid prices.¹⁰¹ The ZPA does not have a clear-cut responsibility, let alone the capacity, for monitoring whether businessmen and politicians have bought shares through third party proxies, even though this is illegal under the Privatisation Act. Furthermore, when remaining Government holdings in some of the larger businesses are publicly floated, the ZPA has no duty to gather information about how many shares individuals have purchased. The fact that most smaller companies have been sold direct to investors by-passes the more stringent disclosure requirements under the Securities and Investment Act.

A copy of ZPA’s consolidated list of political leaders, public officers and individual citizens who have bought former state owned companies was obtained from ZPA in January 1998. The last transaction date given is January 1997 and hence the information requires updating. From the list it can be ascertained that eighteen businesses had been sold to politicians and public officers. Twelve shops and trading outlets in towns across the country were bought by ten MPs, including among their number seven Ministers or Deputy Ministers.¹⁰² Hotels were bought by the Minister for Local Housing and a former MMD Party MP.¹⁰³ A dairy farm near Lusaka was sold to the Deputy Minister for Transport.¹⁰⁴ A much larger farm of 10,000 hectares in Copperbelt Province was sold to RDS Investments Limited, which is owned by the immediate family of Ronald Penza, the then Finance Minister.¹⁰⁵ Consolidated Tyre Service Limited was bought by Amon Kambole Sikazwe and Chibulu Jane Penza.¹⁰⁶ The Penzas had also bid for the strategically important Mpulungu Harbour on Lake Tanganyika, but Ronald Penza was killed before the sale was awarded. The former Finance Minister’s business interests had been subject to press scrutiny following his sacking by the President in a cabinet reshuffle in March 1998.¹⁰⁷ Less than nine months later, in late November, Penza was shot dead at his home in an apparent bungled robbery. Those suspected of the crime were all shot in extrajudicial killings by police. Some believe that Penza was assassinated and accuse the authorities of a cover-up.¹⁰⁸ The investigation into Penza’s murder and the killing of several of the suspects has been roundly condemned by human rights organisations.

There are apparent anomalies in that politicians named in the press as owning newly privatised companies do not appear in the ZPA list. A former MMD Finance Minister, Emmanuel Kasonde, completed the purchase of the General

Pharmaceuticals Company based in Kabwe in May 1994. The acquisition is not recorded in the ZPA's list of purchases by politicians although Kasonde's name is given in the relevant privatisation progress report.¹⁰⁹ It is alleged that, subsequent to the sale, the company was stripped of its assets, employee housing was sold to the Zambian military, the main plant was disposed of, and the workforce sacked without severance pay.¹¹⁰ This must represent a violation of the right to housing and the right to just and favourable conditions of work. The Parliamentary Committee on Public Investments has also expressed its concern over asset stripping by parastatal managers in companies prior to their privatisation.¹¹¹ The ZPA has itself noted that: 'Management of certain SOEs provided themselves extraordinary and excessive benefits in anticipation of privatisation. This created difficulties in negotiations and had a negative impact.'¹¹²

The danger posed by high-level political, administrative and financial corruption stems from its power to determine the whole structure of political and economic relationships, undermining democracy and the rule of law.¹¹³ Other internationally recognised principles iterate that 'political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties.'¹¹⁴ Allegations have been made in a reputable business journal that public money has been siphoned-off into private offshore companies, many of them based in the British Virgin Islands where confidentiality laws are strong and disclosure requirements are minimal.¹¹⁵ The article repeats the accusation that the web of corruption includes the President who owns assets beyond the purchasing power of his salary including properties in Belgium, the Netherlands, South Africa and Zambia as well as stakes in an emerald mine and a lime producer.

The sale of Ndola Lime was handled by Francis Kaunda's negotiating team and not by ZPA. Two leading players in the industry, Chilanga Cement and Portland Cement, tabled bids. Yet the sale was awarded in September 1998 to Socomer SA, a small Belgium firm with neither the relevant background in cement production nor apparent access to the necessary large-scale finance required to invest.¹¹⁶ Sources within the Ministry of Finance were quoted in the Zambian press raising serious questions about the merits and transparency of the deal.¹¹⁷ Attention was drawn to Chiluba's close contacts with Socomer, including his friendship with the majority shareholder in the company. Both Socomer, through a statement from its lawyers, and the ZCCM negotiating team rejected the allegation of any links between the company and the President or the Democratic Republic of the Congo.¹¹⁸ There is presently some doubt as to whether Socomer has the finance to complete its purchase of Ndola Lime and whether other bidders are to be invited to reconsider their original tenders.¹¹⁹ However, conflicting reports suggest that Socomer is itself seeking to reduce its bid for the company to below \$10 million because of the prospect of Anglo American insisting on a five year fixed price for lime for use by Chilanga Cement while it refurbishes former ZCCM facilities.

Kagem Mining, an emerald producer, was due to be sold in late 1999 under the fourth tranche of privatisation. While the Government has a majority stake, forty-five per cent of the shares are owned by an Israeli gem company, Hagura which is running existing operations. The MUZ has expressed its dissatisfaction with returns from the company under private management: good quality stones mined in Zambia are apparently resold for much higher prices in the Far East.¹²⁰ It has been alleged that President Chiluba has an interest in Hagura. Allegations have also been voiced in the Zambian press that the President and a former Finance Minister have shared in the privatisation proceeds and even sanctioned company liquidations for personal gain.¹²¹

These allegations require further substantiation. In this regard, attention is drawn to the Declaration Against Corruption and Bribery in International Commercial Transactions and Zambia's commitment, *inter alia*, 'to take appropriate action to enhance cooperation to facilitate access to documents and records about transactions and about identities of persons engaged in bribery in international commercial transactions.'¹²² Furthermore, the UN's International Code of Conduct for Public Officials stipulates that 'Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.'¹²³

b. Discrepancies in the banking and use of privatisation proceeds

i. Sale proceeds and their deposit in the Privatisation Revenue Account

'Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.'¹²⁴

The sale of former state enterprises might be expected to generate money for the Government of Zambia, although this will not be anywhere near as much as might be assumed. This is because many of the enterprises are currently running at a loss and will continue to do so until the new owners invest in them. For example, over the period 1985-1989,

parastatals cost the Government \$455 million in hidden subsidies against dividends paid to the Government of just \$22 million.¹²⁵ ZCCM has recently been running at a loss of \$25 million every month.¹²⁶ Hence privatisation is less to do with raising money than with saving money and attracting new investment. A small proportion of the money generated from the sale of sound companies has been used to pay off the debts and liabilities of other state-run enterprises.¹²⁷ However, rather than ZPA covering the costs of company liabilities out of the money made from privatisation, often the price paid for an enterprise is adjusted in order to take into consideration existing debts. This means that the amount of money actually received - the cash consideration - is often much less than the value of the sale as a whole.¹²⁸ Yet, even if the market dictates that the prices realised are low, it might still be expected that the sheer size of the sale - involving some very large parastatal companies, as well as hundreds of small and medium sized enterprises - would generate a significant amount of capital for the Government of Zambia which could then be used to increase public expenditure, for example, on retraining or social provision. This has not happened for a number of reasons.

The United Nations Declaration Against Corruption and Bribery in International Commercial Transactions requires States 'to develop or maintain accounting standards and practices that improve the transparency of international commercial transactions.'¹²⁹ Under the Privatisation Act, proceeds from the sale are to be deposited in the privatisation revenue account (PRA) at the Bank of Zambia which is controlled by the Minister for Finance. It is difficult to determine how much money has been generated as figures for the amount of money in the privatisation revenue account are not made public. Initially, the ZPA progress reports did list how much money from each sale went into the PRA, but this practice ceased altogether after the end of 1995 and before the bulk of the sales went through.¹³⁰ Even when deposits into the PRA were listed, no figures have ever been published by the ZPA or the Ministry of Finance detailing outgoings from the account or how the money generated is being spent. This means that it is impossible to calculate the balance in the account.

Although the balance of money in the PRA is not officially stated, a certain amount of information can be pieced together. By adding up the cash realised from each and every sale, the total amount of money generated up until the end of June 1997 was in the region of K143 billion. Some of this amount was on deferred payment terms, but, by the same date, at the very least K100 billion should have gone into the privatisation revenue account. Unofficial estimates put the actual amount passing into the account at less than half this figure. At the end of 1997, the balance in the account was believed to be approximately K30 billion.

Before ZPA stopped publishing any details about the PRA, it was apparent that deposits into the account were not always for the full amount realised in the sale and no explanation was given as to where this money went. On many occasions, the sale price listed or the amount deposited in the PRA were misleading. For example, they either included a sum for liabilities which the new owners had agreed to take over or included capital which they had agreed to invest.¹³¹

At other times, although very large sums of cash were generated from the sale of valuable medium-sized operations or from the sell-off of the largest companies of all, no money was listed as going into the PRA. Nor was it revealed where this money went. The list of unaccounted for revenue includes: Zambia Sugar Company - \$14.8 million; Munkumpu/Nchanga Farms - \$7.2 million; and Mpongwe Development - \$507,000. The complete list is unquestionably much longer and is almost certain to include other significant sales.¹³²

This diversion of funds was confirmed by the Committee on Public Investment in December 1997. In its report on privatisation, it notes instances when the GRZ/ZCCM Privatisation Negotiating Team has sold ZCCM assets such as schools without the prior authorisation of the of the ZPA board. The Committee has questioned the deposition of proceeds from the sale of the mines and their associated assets into a ZCCM account, apparently to be put towards meeting the company's obligations, and not into the Privatisation Revenue Account as required under the Privatisation Act.¹³³ Proceeds from all ZCCM completed sales to the end of 1999 - Konkola North, Chibuluma, Kansanshi, Power, Luanshya/Baluba, Chambishi, Ndola Precious Metals Plant, and Chambishi Cobalt and Acid Plants - should have yielded a cash consideration to date in the region of \$185 million.¹³⁴ The whereabouts or use to which these funds have been put requires clarification.

A further serious omission in public accounting concerns the public flotation of the Government of Zambia's remaining shares in a company. These sales can generate significant sums of money, but the amount realised is not recorded in the ZPA's published records and, once more, it is impossible to verify whether the money generated is deposited in the PRA in accordance with the Privatisation Act or whether it is diverted elsewhere.

ii. The use of the sale proceeds

Assuming the figures on revenue and the balance in the PRA at the end of 1997 are broadly correct, then anywhere between K70 billion and K110 billion of the money generated from the privatisation programme to that date had already been spent or moved to other accounts. It is by no means clear that this revenue, the inheritance of the people of Zambia,

has been put to the uses specified under the Act.¹³⁵ Despite the lack of official information, it is apparent that the income generated has been spent disproportionately on a narrow range of uses from among those specified under the Privatisation Act. With the prior approval of the Minister for Finance, the money generated may be used, *inter alia*, for funding the cost of privatisation and the Privatisation Trust Fund; for financing credit creation by the Government for Zambian investors; for rehabilitating existing plants and supporting new capital investments; and for funding the restructuring of State owned enterprises to be privatised.

A great deal of the money from the sales has gone into paying for the running of the Zambian Privatisation Agency. In October 1998, the ZPA put the figure at K20 billion.¹³⁶ However, it seems likely that this expenditure refers only to funding of the Agency from the beginning of 1995 until the end of 1997. Government Ministers have confirmed that most of the money generated from the sales had been ploughed back into ZPA.¹³⁷ This situation, in which proceeds from the sale of virtually every nationalised company in Zambia has been used up in the running of one organisation for five years, has been described by opposition figures as 'the worst crime'.¹³⁸

At the level of the Privatisation Act, there is a social dimension to the use of sale proceeds for supporting redundancy payment schemes in consultation with the Ministry responsible for labour; for supporting alternative income generating projects; and for funding of any social project that will be in the public interest. These areas have been badly neglected. The fact that no official figures are available from the Ministry of Finance on how the money in the Privatisation Revenue Account has been spent necessitates, from the other side of the equation, a consideration of the Government's poor record of achievement in those other areas earmarked for funding under the Act. Please refer to Section 2(II) and Section 3 on, respectively, the neglect of retraining and the inadequacy of welfare assistance available to retrenchees.

D. The limits to popular participation in privatisation

1. Introduction: defining participation

The right to development of the entire population and all individuals must be secured 'on the basis of their active, free and meaningful participation in development'.¹³⁹ Participation in development moves beyond access to information to encompass 'the fair distribution of the benefits resulting therefrom'.¹⁴⁰ Clearly such benefits in the context of privatisation may be widely defined: for example, a possible expansion in employment or increased tax revenue from a prosperous private sector. However, these benefits are, in the context of Zambia, promissory.

Indeed, privatisation is much more concerned with stemming parastatal losses than with an immediate expansion of the business and industrial base. This is confirmed by the World Bank itself: 'The transition from a state-owned to a private-sector driven enterprise sector...meant that firms were more likely to retrench workers and consolidate operations than to undertake new investment, particularly in the short term.'¹⁴¹

Foreign investors are entitled to incentives under the Privatisation Act in accordance with a comprehensive range of tax concessions and duty exemptions under the Investment Act.¹⁴² This has reduced the amount of revenue which could, in theory, be used to increase social expenditure of benefit to all. Separate legislation or schedules deal with incentives and taxation for the mining sector.¹⁴³

The tax concessions granted to investors in the mining industry in recent budgets are extraordinarily generous; many are guaranteed for periods up to twenty years. Mining-related concessions in the 1998 budget alone were calculated to result in a revenue loss of K18 billion in one year. The concessions confirmed in the 2000 budget are even more far-reaching and will reduce revenue further still. The total cost to the Government will increase year upon year while the concessions remain in place. It will only be reversed when the mining companies not only begin to make a profit, but begin to make a profit which is eligible for tax. Please refer to Section 2(IV) for a more detailed analysis of the nature and implications of the tax regime applicable to the mining sector.

The focus here will be upon those aspects of fair and beneficial participation which can be readily identified: the extent to which Zambians have been afforded the opportunity to share in the rewards of privatisation through direct buyouts; and schemes to encourage popular share ownership in the most successful enterprises.

2. *Employee and management buyouts versus sales to foreign investors*

a. **Employee and management buyouts**

There are two main ways through which Zambians can, theoretically, participate in privatisation. The first is through employee and management buyouts.¹⁴⁴ In a small number of cases, managers and employers have been given the first opportunity to bid for the company in which they work.¹⁴⁵ In general, their bid is considered by competitive tender alongside all others. The barriers to be overcome in launching a successful bid are significant. They include a need for the necessary expertise to draw up and agree upon a business plan and the funds to make a competitive bid.¹⁴⁶ It is not surprising, therefore, that most buyouts have been launched by management. Four buyouts have been initiated with any direct employee involvement of which only one has been successful.¹⁴⁷ The number of successful buyouts by managers has also been small. Of the 59 management buyout teams who have initiated bids, 18 have been successful.¹⁴⁸ This should be set against a total of 188 privatisations by June 1997. Virtually all the businesses bought through buyouts have been officially classified as small companies by the ZPA or else are individual hotels or mills.¹⁴⁹ The approximate value of the firms bought in this way to June 1997 was K4.5 billion out of a total sale value in the region of K143 billion from all privatisations.

b. **Sales to foreign investors**

As of February 1998, 128 companies had been sold to Zambians and 70 to foreigners.¹⁵⁰ The impression is that the majority of enterprises have been sold to Zambians. It is a truism to say that the businesses will have been sold to the well-off: they are the only Zambians able to secure the necessary finance. As has been noted, significant number of politicians and those close to political power have figured prominently in domestic purchases. However, the bald figures on ownership are themselves misleading if it is then assumed that the bulk of the Zambia's newly privatised industries and businesses *by value* are now owned by Zambians. The companies sold to foreigners tend to be the largest companies or those medium sized operations with the potential to make good profits. Those businesses sold to foreigners by mid-1997 were worth eight times as much as those sold to Zambians.¹⁵¹ Once the continuing sale of ZCCM is complete, this will massively alter the balance still further towards foreign ownership. An internal Bank evaluation concluded that no consideration was given to assisting Zambians to purchase enterprises.¹⁵² Without private funding or instalment payment arrangements, few Zambian entrepreneurs or managers could participate as domestic loans were scarce and expensive. Hence the Bank notes that the sale of most of the larger enterprises to foreign interests has created 'some resentment that may have political consequences.'¹⁵³

Any new, committed owner who has a genuine interest in expanding a business by investing in Zambia should be welcomed, whether this is a foreign-owned multinational or a Zambian company. The important question is the type of investment and management which new ownership brings. If the interest is in long-term, sustainable profits, a fitting proportion of which are reinvested in the company; if working conditions are improved; if wages are fair; if employees and local communities are consulted as part of a company's plans, then the nationality of the owners is irrelevant. There is, however, evidence to suggest that some foreign employers have been less than scrupulous in safeguarding working conditions: please refer to Section 2(II) on the right to just and favourable conditions of work.

The ZPA, in its selective presentation of privatisation to the public, emphatically denies that foreign firms will take money out of Zambia.¹⁵⁴ However, at the same time it is conceded that foreigners may 'externalise profits'. What is critical for Zambia's economic future is the level at which profits are taken out of the country in comparison to the amount of capital which is reinvested. Zambia removed restrictions on how much hard currency could be brought in and out of the country by abolishing the Exchange Control Act in 1994. On the one hand, this means that an investor can now repatriate all amounts of capital introduced into Zambia, and can send out of Zambia all dividends, interest earned, and after tax profits without restriction. All earnings by expatriates can also be externalised without difficulty. On the other hand, this removal of restrictions is precisely what is attractive to overseas companies in the first place. Investment can flow in at the same time as profits flow out.

However, there are reasons why countries like Zambia are at a disadvantage when it comes to the free movement of foreign exchange. In common with many countries in the developing world, Zambia is already short of hard currency which it needs to service Zambia's foreign debt; to build up reserves to be used by the Government in the event of unforeseen crises such as drought, a drastic fall in copper prices, or interruptions in foreign exchange coming in from international donors; and to fulfil the needs of domestic businesses which must purchase equipment and machinery from overseas, meet expatriate wages, and to repay off loans to foreign banks.¹⁵⁵ The Government's poor record on governance and the failure to conclude the sell-off of ZCCM in 1997/98 resulted in the suspension of balance of payments from donors. This caused an almost complete lack of foreign exchange: less than \$4 million in total was

delivered from non-traditional exports and one bilateral donor in the first quarter of 1998, forcing the Government to release reserves.¹⁵⁶

3. Popular share ownership

The second route to participation is through popular share ownership schemes. Much has been made of public flotation by political leaders and the ZPA, but the vast majority of Zambians are impoverished and are in no position to participate.¹⁵⁷ In 1996, seven-tenths of households in Zambia shared only 23 per cent of per capita income while the remaining three-tenths of wealthy households accounted for 77 per cent of per capita income.¹⁵⁸ Households in the highest income decile cornered almost 53 per cent of per capita income.

The World Bank has long been preoccupied with the issue of the endorsement of the privatisation program in Zambia. In recognition of the anticipated unpopularity of privatisation, it recommended that the PIRC ought to encourage public participation in the process.¹⁵⁹ Agreement was reached with the Government that it would establish a privatisation trust fund to hold blocks of shares for later public flotation in order to facilitate local investment and avoid the concentration of corporate ownership in the hands of a few, perhaps foreign, investors.¹⁶⁰ A Privatisation Trust Fund has therefore been set up to hold shares which the Government owns in some of the newly privatised companies. It is managed by the Ministry of Finance and five trustees. Remaining Government shares in the newly privatised companies are released in a controlled way from the Privatisation Trust Fund to be sold on the Lusaka Stock Exchange.¹⁶¹ Zambian citizens who purchase a small number of shares will be able to do so at a discount. All Zambians - the public, employees and management - will also be able to pay for these shares in instalments. It is claimed this will encourage more Zambian citizens to become involved as small investors. Adverts are placed in newspapers and on TV which tell people about any new share offer and advise people on how to go about purchasing shares. The proceeds from the sale of shares should be transferred to the Privatisation Revenue Account. There is reason to believe that this has not always happened in flotations to date.

Out of more than one hundred and fifty companies which are being privatised, about thirty or so have been deemed suitable for public floatation.¹⁶² These companies are generally those which are large, have been well managed and have a strong likelihood of making good profits in the near future. Examples of companies which have seen a proportion of their shares publicly floated are Zambia Sugar, Zambia Breweries, Chilanga Cement, Rothmans and National Breweries.¹⁶³ The flotation of other major companies is envisaged.¹⁶⁴

Popular participation in privatisation through the wide public ownership of shares is at best a myth and at worst a subterfuge for the further concentration of economic power.¹⁶⁵ Such industries were owned on behalf of the Zambian people and it is therefore unacceptable for an elite band of investors to benefit from the purchase and sale of shares. There has been a marginal improvement in income inequality in Zambia between 1993 and 1996, albeit described as 'only a silver lining in the dark cloud of inequality.' In 1996, the top fifth of households accounted for over two-thirds of per capita income while the bottom fifth of households shared a fiftieth of per capita income.¹⁶⁶

The early indication is that privatisation and public share flotations will exacerbate this skewed pattern of income generation and consumption. After all, the poor will not buy shares. The Government cites the fact that, by January 1998, 6,000 Zambians had invested in the Lusaka stock market, as a measure of the success of liberalisation and privatisation. This must be juxtaposed to the 6.5 million living in poverty and the 5.5 million people lacking sufficient income to meet their nutritional needs. Less than one per cent of the population own shares while eighty-five per cent of the population subsist on less than two dollars each day.¹⁶⁷

While it is difficult to ascertain the undeclared interests of politicians, it is apparent that many have purchased large numbers of shares. For example, out of the K16.7 bn worth of assets declared by the Energy and Water Development Minister, Ben Mwila, just over K15 bn were in shares.¹⁶⁸ The Minister had holdings in companies awarded nine district water supply and sanitation rehabilitation contracts. The Local Government and Housing Minister, Bennie Mwiinga, declared shareholdings in MG Paterson and Sons, Mubula Estates Ranch, Mwiimbu Gem Mining, Coin Zambia, Lake Hotels and Chilanga Cement Plc.

E. The World Bank's underpinning of the privatisation framework

The World Bank's Country Director for Zambia, Phyllis Pomerantz, has attempted to absolve the Bank from responsibility for failings within a privatisation framework it has itself fostered:

'Pomerantz maintains she has good reason for not letting allegations of corruption and human rights abuses derail aid to Zambia. "By the World Bank's articles of agreement, we cannot take governance aspects into account," she says. "We're committed to working with Governments on issues such as corruption, but only when corruption impinges on economic development." Faced with direct evidence of high level graft that does impinge on economic development, however, she is unwilling to "talk about specific cases".'¹⁶⁹

It is important to record the role of the Bank as instigator and facilitator of privatisation and private sector development in Zambia. It serves as a reminder, in the context of what would otherwise appear a consideration of domestic laws and policy, of the culpability shared by the Bank for those aspects of reform which have resulted in many Zambians suffering a denial of the economic and social rights. While the Government of Zambia is ostensibly responsible for the legal framework and institutional framework - the Privatisation Act, the ZPA, the timetable of divestiture - its development has hinged upon agreements and stipulations in the Bank's adjustment credits backed up by technical assistance. The Bank therefore shares responsibility when this framework is shown to be ill-conceived in respect of its failure to guarantee accountability, transparency and popular participation in privatisation.

The Bank's underpinning of the privatisation framework takes two forms. Firstly, through the implementation of agreed policies and legislation tied to a number of adjustment credits which deliver assistance in the form of balance of payments support. Certain key measures are given force through legally binding covenants so that their fulfilment becomes a condition for the release of further funds. Secondly, through technical assistance credits which pay for the relevant expertise - often private sector financial and legal consultants - to draw up specific strategic documents and advise upon the framing of legislation. Overall, the influence of the Bank at a detailed level on economic, legislative and policy measures can therefore be profound. As technical assistance is often targeted to advance implementation of the agenda agreed under an associated adjustment credit, the impact of both types of lending on promoting aspects of privatisation antithetical to the realisation of economic and social rights will be considered in tandem.

Those adjustment credits which frame objectives and components geared towards the advancement of privatisation include the two Privatisation and Industrialisation Reform Credits (PIRC I and II, FY 1992 and FY 1993 respectively), together worth \$349 m; the closely related first Economic and Social Adjustment Credit (ESAC I), worth \$164 million, which followed in 1994 and has since been succeeded by ESAC II¹⁷⁰; and the Economic Recovery Investment Promotion Credit (ERIP, FY 1995). Both PIRC I and the ERIP credit were accompanied by technical assistance credits.

The two PIRC programs were designed to deepen macroeconomic reform, to continue parastatal reform and to push ahead with privatisation. The specific objectives of PIRC I were to promote competition and efficiency, encourage the private sector, and improve the Government's ability to manage the reform program.¹⁷¹ PIRC II was to build on the same objectives.¹⁷² Two components are of the most immediate interest here: that concerned with the privatisation of the vast majority of parastatals and the improvement of the efficiency of the few that remained,¹⁷³ and that which is aimed at the development of a policy and institutional framework to encourage the private sector.¹⁷⁴ The \$10 million Privatization and Industrial Reform Technical Assistance Credit (PIRTA) was designed to support the implementation of policies agreed with the Bank under PIRC.¹⁷⁵

The enactment of privatisation law, together with a privatisation strategy and implementation plan, was a requirement of PIRC I. The agreement between the Bank and the Government stipulated that the State holding company (ZIMCO) was to be restructured and all of its commercial subsidiaries, as well as other State owned enterprises, were to be privatised.¹⁷⁶ Targets for the number of companies to be sold by set dates were fixed under both PIRC I and II.¹⁷⁷ Under PIRC II, parastatals were to pay government a 10 per cent dividend and to no longer receive subsidies.¹⁷⁸ Companies that could not be sold were to be closed and their assets liquidated.¹⁷⁹ The Government was required to effect a separation of the operational and regulatory roles of major public utilities.¹⁸⁰ Concern that indirect State subsidies to the public utilities would threaten the stabilisation program lead the Bank to demand the introduction of automatic pricing and a tariff structure which would ensure their short-term profitability.¹⁸¹ In other words, Zambian consumers were to be required to pay more for their electricity and fuel.¹⁸²

The objective of PIRTA was 'to strengthen the capabilities of ministries and other institutions responsible for the privatization and parastatal reform program' and to facilitate macroeconomic reforms.¹⁸³ Technical assistance was focused, *inter alia*, upon the development and implementation of a privatization plan for 105 parastatals, to include the

preparation and restructuring of companies to be sold; the reform of major utilities; and, as an overarching component, the development of new laws and the legal system, together with policies, programs, and implementing institutions, all orientated towards furthering private sector development.¹⁸⁴ The Bank's influence in shaping the privatisation through PIRTA is pervasive. Agreements with the Government included stipulations relating to the recruitment of an international privatisation adviser; the drawing up of terms of reference for the main studies and long-term consultants;¹⁸⁵ and the completion of yearly reviews of privatisation progress.¹⁸⁶ At the outset, the enactment of a Privatisation Act was a condition against which the effectiveness of the loan would be judged.¹⁸⁷ A mid-term review would determine the achievement of State-owned enterprise sale targets, the status of legal reforms, and ZPA's ability to operate 'independently and with transparency'.¹⁸⁸ Provision is made to keep the Bank informed about any developments under the privatisation program *vis-à-vis* its objectives.¹⁸⁹

While certain failings in accountability and transparency are due to the fact that the Zambian Government has exploited loopholes in the Privatisation Act or else has deviated from it, other failings relate to serious omissions and silences. The Bank is exacting in specifying how appointees and consultants at the ZPA will plan divestiture and prepare each sale; it is meticulous in its stipulation of financial and technical benchmarks relating to privatisation; yet it has paid scant attention to the regulation of the inevitable social consequences. The Privatisation Act omits to ensure that affected workers are consulted; it fails to give legal expression to the protection of the right to just and favourable working conditions; it neglects to provide for post-privatisation monitoring; and it is silent on the question of arrangements for the continued management of social services associated with some of the larger parastatals.

Closely related to the issue of privatisation *per se* is that component of the two PIRCs underpinning a framework for private sector development. The release of PIRC I funds was conditional on, *inter alia*, the implementation of the 1991 Investment Act, the effective operation of the Zambian Investment Centre, and the overhaul of business related laws, including anti-monopoly legislation.¹⁹⁰ By the end of PIRC I, the legal framework for the private sector had been drafted but not implemented and the Zambian Cabinet was given additional time to review the laws in question before their enactment became a condition for the release of the second tranche PIRC II. The review of land ownership in Zambia and the adoption of a plan to develop a properly functioning market for commercial land was made a condition of third tranche release.¹⁹¹ The financial sector and capital markets were earmarked for reform and legislation was passed to regulate banking and securities. A blueprint for a stock market and Securities and Exchange Commission, which had been prepared by consultants paid for by the Bank, was to be implemented under PIRC II with IFC and other donor assistance.¹⁹²

Notes

¹ Privatisation Act (1992), respectively sections 3 and 8. An Act to amend the Privatisation Act (1996) introduced some minor changes to the principal Act. The analysis which follows takes into consideration these amendments.

² Privatisation Act (1992), respectively sections 8(2)(e), 8(2)(f), 17, and 22.

³ See *ibid.*, section 8(2)(i). On the appointment of an independent negotiating team, see section 32.

⁴ *Ibid.*, section 29.

⁵ *Ibid.*, respectively sections 38 and 39.

⁶ Both the Bank's Privatisation and Industrialisation Technical Assistance (PIRTA) and its Economic Recovery and Investment Promotion Technical Assistance (ERIPTA) have been used in this manner. For a full discussion of this assistance, please see Section 2(IV).

⁷ See DRD, article 1; also article 2(1).

⁸ *Ibid.*, article 2(3).

⁹ ICCPR, article 25(a).

¹⁰ *Ibid.*, article 19.

¹¹ DRD, article 2(3). See also article 8(2).

¹² Susan Rose-Ackerman (1998), 'Corruption and the Global Economy'.

¹³ Office for Drug Control and Crime Prevention (1999), *Global Programme against Corruption: an outline for action*, para. 9. For a wide-ranging examination by the UN of the issue of corruption, see the report of the Secretary-General on action against corruption (E/CN.15/1997/3) and the report of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997 (E/CN.15/1997/3/Add.1).

¹⁴ Adopted by the General Assembly in December 1996 - see A/RES/51/191 and annex. A resolution in February 1998 called upon Member States to, *inter alia*, report on steps taken implement the Declaration for consideration by the Commission on Crime Prevention and Criminal Justice, to ratify appropriate international instruments against corruption, and to criminalize the bribery of public office holders of other States in international commercial transactions. NGOs were invited to provide relevant information to the Commission. (See A/RES/52/87). See also the long-standing General Assembly resolution 3514 (XXX) of 15 December 1975 which condemns corruption and seeks to strengthen national laws to resist bribery in international business transactions.

¹⁵ DAC, 'Preamble'. While the onus in the Declaration is upon the criminalisation of the bribery of public officials of other States in international commercial transactions through the enactment of national legislation to allow for the prosecution of companies and individuals proffering bribes, the definition of bribery offered includes the soliciting, demanding, accepting or receiving of such undue consideration by any public officials or elected representatives (article 3(b)). Hence both the 'supply' and 'demand' sides of bribery are recognised in the text. Compare the text of the

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and accompanying commentary. See note 22 below.

¹⁶ Adopted by the General Assembly on 12 December 1996. See A/RES/51/59 and annex; also A/RES/50/225 of 19 April 1996 on public administration and development; and the Economic and Social Council resolution 1995/14 of 24 July 1995 on action against corruption.

¹⁷ The Organization of American States has adopted the Inter-American Convention Against Corruption (1996). The Council of Europe has adopted the Criminal Law Convention on Corruption (1998) and its Multidisciplinary Group on Corruption is preparing a convention on civil remedies for compensation for damage resulting from acts of corruption and a Model Code of Conduct for Public Officials. Within the European Union, the European Council adopted the Convention on the Fight against Corruption involving Officials of the European Communities or officials of Member States of the European Union on 26 May 1997. The OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) is open for signature and ratification to countries beyond the twenty-nine member countries provided they agree to participate in the Working Group on Bribery. The OECD has also adopted Principles for Managing Ethics in the Public Service (1998) backed by a Council recommendation. The OECD's Development Assistance Committee endorsed a set of Anti-corruption proposals for bilateral aid procurement on 6-7 May 1996.

¹⁸ Principle 6 reads 'The decision-making process should be transparent and open to scrutiny. The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.' Principle 11 reads 'Adequate accountability mechanisms should be in place within the public service. Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.'

¹⁹ Cf. undertakings within ICESCR article 2 (1) and (2).

²⁰ See *GC 3*, esp. para.1. See also the arguments of Jayawickrama (1998), 'Corruption - A Violation of Human Rights?.'

²¹ *GC 3*, para.2

²² Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Negotiating Conference on 21 November 1997, paragraph 4 in respect of article 1. The Commentaries are reproduced in OECD (1997a), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related documents*, DAF/IME/BR(97)20. The Convention itself seeks to make the proffering of bribes on the part of international business a criminal offence. It does not, therefore, explicitly address the illegality of accepting bribes. This notwithstanding, the principle of the incompatibility of corruption with the obligation of conduct is reinforced.

²³ ICESCR, article 2(1). See also *GC 3*, para. 9.

²⁴ *Idem*.

²⁵ *GC 3*, para.10.

²⁶ Cf. clause within ICESCR, article 2(1).

²⁷ The ZPA describes itself as 'an autonomous agency of Government' and emphasises that it is an independent body. See ZPA (undated), 'About Zambia Privatisation Agency'; ZPA (undated), 'Legal Issues in Privatisation,' section 2; and ZPA (undated), 'How far have Zambians participated in the privatisation programme? - Questions and Answers,' q.21. Available at <www.zamnet.zm/zamnet/zambus/zpa>.

²⁸ Both policy guidelines on privatisation and the divestiture sequence plan is prepared by ZPA in accordance with sections 8(2)(a) and (e) of the Privatisation Act (1992). However, it is Cabinet which has final approval over policy and the plan. Certain of the larger enterprises - for example, ZCCM operations - are not listed in the divestiture plan but are selected and time-tabled for privatisation by cabinet resolution.

²⁹ Privatisation Act (1992), section 8(2)(f).

³⁰ Two other methods specified under the Privatisation Act (1992) are the offer of additional shares in a State owned enterprise to an existing shareholder to reduce the Government's holding and the issue of lease and management contracts whereby a private sector company runs a State owned enterprise for a specified period.

³¹ These are the Permanent Secretary of the Ministry of Finance; the Permanent Secretary of the Ministry of Commerce, Trade and Industry; and the Attorney General. See Privatisation Act (1992), section 5.

³² *Ibid.*, section 5(2).

³³ 'The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.' (DRD, Article 1(1)).

³⁴ DRD, article 2(3).

³⁵ Privatisation Act (1992), section 5(1).

³⁶ ZPA (1998b), *Progress Report No. 12*, Members of ZPA: Names and Affiliations, Appendix 2.

³⁷ Report presented before the House in December 1997. See also 'Composition of ZPA Board worry MPs,' *The Post*, 1 December 1997.

³⁸ 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives...' (ICCPR, article 25).

³⁹ Privatisation Act (1992), section 9(3).

⁴⁰ *Ibid.*, section 9(4).

⁴¹ The sale in question was that of the Luanshya/Baluba ZCCM mine. For further discussion of this manipulation of the sale process, see *intra*, pp. 57 ff.

⁴² Privatisation Act (1992), section 9(2).

⁴³ ZPA management comprises the Chief Executives Office, headed by Mr. Valentine Chitalu, and senior staff in the technical directorate. The latter department is responsible for the operational side of ZPA, to include responsibility for all professional functions. Support services are supplied by an administrative directorate.

⁴⁴ A/RES/51/59, para. 2; for the text of the Code, see the annex to the resolution.

⁴⁵ International Code of Conduct for Public Officials, I. General Principles, article 1.

⁴⁶ ICCPO, I. General Principles, article 2.

⁴⁷ *Ibid.*, I. General Principles, article 3.

⁴⁸ See Privatisation Act (1992), section 8(2)(i); also, in general, Part IV, Procedure for Privatisation and Commercialisation. Sale tender procedures are prescribed in Statutory Instrument 40. For a summary and analysis of these procedures, please see ZPA (undated), 'Bid Evaluation Process'.

⁴⁹ The intention of pre-qualification is to ensure a company's background, management structure and financial resources make it a suitable bidder. The requirement of pre-qualification is specified in section 8(2)(h). See also ZPA (undated), 'Privatisation Program,' Prequalification, para. 1.4.

⁵⁰ Evaluations are carried out in accordance with section 23 of the Privatisation Act (1992). See also ZPA (undated), 'Bid Evaluation Process'.

⁵¹ ZPA (undated), 'Privatisation Program,' Members of ZPA Decisions to Shortlist, para. 2.4.

⁵² Privatisation Act (1992), section 32.

⁵³ ZPA (undated), 'Privatisation Program,' Negotiating Teams, para. 2.5; also ZPA (1993a), *Progress Report No. 2*, especially Appendix 6..

- ⁵⁴ Statement by Zambia Association of Chambers of Commerce and Industry spokesperson, cited in *Times of Zambia*, 5 January 1998.
- ⁵⁵ Colonel Nawa, contributing to the debate to adopt the *Special Report on Privatisation* of the Committee on Public Investments, said the appointment of former ZCCM chief executive Francis Kaunda as chairman of the GRZ/ZCCM Privatisation Negotiation Team by President Frederick Chiluba was a blatant disregard of section 32 of the Privatisation Act (1992) which stipulates that all members of the team shall be appointed by the Zambia Privatisation Agency Board. (See 'ZCCM sale smells corruption charges Sesheke AZ MP,' *The Post*, 3 December 1997).
- ⁵⁶ Mr. Valentine Chitalu. As listed in Financial Times Energy (1999), *Mining 1999*.
- ⁵⁷ Mr. Willa Mung'omba. As listed in Financial Times Energy (1999), *Mining 1999*.
- ⁵⁸ For example, when the chief executives of the four major partners in the Kafue Consortium - at the time bidding for the Nkana/Nchanga mines - visited Lusaka in August 1997, they met with President Chiluba, Francis Kaunda, Luke Mwananshiku, and Edward Shamutete to press for a speedy resolution of negotiations. A question was asked in Parliament by Lusaka Central Independent MP Mr. Dipak Patel as to why the Government was heading the ZCCM negotiations, and not the ZPA, as stipulated in the Privatisation Act.. The Deputy Minister of Mines and Mineral Development, Mr. Lembalemba, failed to answer the question or address the issues it raised.
- ⁵⁹ See, for example, Lance Tieghart, project development officer of consortium member Noranda: 'If you'd drawn up a worst-case scenario for the privatization, you couldn't have imagined anything this bad.' (As quoted in Barraclough (1998), 'Trouble in Lusaka').
- ⁶⁰ Parliamentary Committee on Public Investments (1997), *Special Report on Privatisation*.
- ⁶¹ ZPA (undated), 'Privatisation Program,' Conclusion of Negotiations, para. 2.8.
- ⁶² Privatisation Act (1992), section 36.
- ⁶³ This subcommittee is chaired by the Minister of Finance. Its other members are the Minister of Mines and Mineral Development, the Minister of Commerce, Trade and Industry, and the Minister of Energy by virtue of the sale of ZCCM's Power Division.
- ⁶⁴ See, for example, 'Selling the family copper,' *The Economist*, 6 November 1999, p.86.
- ⁶⁵ Murray Sanderson, 'Is Francis Kaunda linked to Metorex?' *Times of Zambia*, 13 August 1997.
- ⁶⁶ ZCCM (1997c), Press Release, 'Sale of Chibuluma Mine'.
- ⁶⁷ 'Is Francis Kaunda linked to Metorex?' *Times of Zambia*, 13 August 1997.
- ⁶⁸ The sale agreements were signed on 30 June 1997. The Luanshya and Baluba mining and metallurgical complex was handed over to the new owners on 15 October 1997 and now operates under the name Roan Antelope Mining Corporation Zambia Plc (RAMCZ or RAMCO).
- ⁶⁹ A ZPA investigating team may also examine the company profile of prospective bidders, seeking information from industry sources, accountants, even foreign embassies. The idea is to prevent Zambia's industry from falling under the control of investors with a dubious background or a poor track record.
- ⁷⁰ Its background lies rather in zinc manufacture and the trading of non-ferrous metals, although it has recently sought to diversify.
- ⁷¹ First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited, The High Court for Zambia, case 1997/HP/2065.
- ⁷² Founding Affidavit, Philip Pascall, 30 October 1997, First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited, The High Court for Zambia, case 1997/HP/2065.
- ⁷³ ZPA (1997g), 'ZCCM Limited: Privatisation of Bco (Luanshya/Baluba Mine),' Minutes of the ZPA board, ZPA/336 6/97, 26 June, para. 4.11.
- ⁷⁴ The ZPA board had approved award of the sale to First Quantum Minerals on 26 June 1997. This decision ran contrary to the wishes of the Cabinet. An Special Meeting of the ZPA board with the Committee of Ministers was convened at short notice for 30 June 1997 which meant that only the Lusaka-based Agency Members were able to attend, to include two Government members and three others. The earlier decision of the full ZPA board was effectively annulled and the letter from the ZPA to the Committee of Ministers confirming the award of sale to First Quantum withdrawn. This paved the way for the subsequent award of the sale to the Government's preferred buyer, Binani Industries, confirmed in a meeting of the ZPA board on 4 July 1997. This chain of events is revealed in documents presented before the High Court for Zambia. In particular, see ZPA (1997h), 'ZCCM Limited Privatisation Reporting Structure,' Minutes of 38th Special Meeting of the ZPA board, ZPA/344 7/97, 4 July.
- ⁷⁵ ZPA (1997g), 'ZCCM Limited: Privatisation of Bco (Luanshya/Baluba Mine),' Minutes of the ZPA board, ZPA/336 6/97, 26 June, para. 4.11(i)(b).
- ⁷⁶ A Confidential Information Memorandum (CIM) on the enterprise in question is prepared by one of ZPA's teams of business analysts as part of a 'tender package'. This gives prospective buyers the information they need in order to assess the worth of an enterprise in conjunction with their own due diligence studies. These involve a careful examination of the company information which is supplied and site visits if these are arranged in advance through ZPA. Each bidder has four to twelve weeks to carry out this assessment and then make a bid.
- ⁷⁷ ZPA (undated), 'Privatisation Program,' Receipt and Opening of Bids, para. 1.8.
- ⁷⁸ N.M. Rothschild/ZPA (1996), 'BCO Information Memorandum,' Bidding Rules, para. 3.10; also para. 3.14.
- ⁷⁹ The cash component of the Binani bid at \$35 million bettered the final bid of First Quantum by \$1 million - an amount considered 'insignificant' by Rothschilds in its bid evaluation. (See ZPA (1997g), 'ZCCM Limited: Privatisation of Bco (Luanshya/Baluba Mine),' Minutes of the ZPA board, ZPA/336 6/97, 26 June, para. 4.7(i)). The accusation by First Quantum that details of its final bid had been leaked was made in a letter from the Chairman of First Quantum to the Chairman of the ZCCM Privatisation Negotiating Team, dated 2 July 1997.
- ⁸⁰ See Edwin Sakala, 'Minerva has failed,' Letters to the Editor, *The Post*, 19 January 1999.
- ⁸¹ *PIRC & ESAC PAR*, p. 30.
- ⁸² See also *intra*, Section 2(IV), for a discussion of the confidentiality of development agreements containing such information.
- ⁸³ Privatisation Act (1992), section 25.
- ⁸⁴ *Ibid.*, section 14 (1).
- ⁸⁵ *Ibid.*, section 14 (2).
- ⁸⁶ *Ibid.*, section 26.
- ⁸⁷ *Ibid.*, section 27.
- ⁸⁸ *Ibid.*, section 15; also section 16(1).
- ⁸⁹ *Ibid.*, section 16(2) and (3).
- ⁹⁰ *Ibid.*, section 38.
- ⁹¹ *Ibid.*, section 44 (1). The ZPA also produces consolidated lists of successful bids which detail ownership by politicians, Zambians, foreigners and overseas companies.
- ⁹² *Ibid.*, section 44 (2) and (3).
- ⁹³ *Ibid.*, section 43.
- ⁹⁴ '...not much is known about the process of picking the independent valuers, consultants and lawyers working the ZPA trail...there is a great need to remove suspicions that these lucrative engagements with the ZPA have been circulating among a clique privileged by their social positioning.' ('Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997)
- ⁹⁵ For example, Sales Agreements for Luanshya and Baluba mines to the Binani Group were signed on 30 June 1997; for the sale of Power Division to the Copperbelt Energy Consortium on 6 October 1997; for the sale of Chibuluma mine to the Metorex consortium on 31 July 1997. However, by the end of the year no full details of the value of the bids received or the reason for the award of the sale to any of the companies concerned had been made public. Independent Lusaka Central MP Dipak Patel, in the parliamentary debate over the Committee on Public Investments *Special Report on*

- Privatisation*, raised the issue of ZPA's failure to comply with section 38 of the Privatisation Act providing for the publication of sales information in the Government Gazette. See 'Committee cries foul,' *The Post*, 4 December 1997.
- ⁹⁶ Bull (1997/8), 'ZCCM - the story nears its close,' p.19.
- ⁹⁷ Bribery has two sides. It is defined by as the offer, promise or giving of any payment, gift or other advantage, to public officials or elected representatives as undue consideration for performing or refraining from the performance of their duties in connection with an international commercial transaction. It is also defined by the soliciting, demanding, accepting or receiving of such undue consideration by any public officials or elected representatives. (Following from the definition given in the United Nations Declaration Against Corruption and Bribery in International Commercial Transactions, article 3 (a) and (b)).
- ⁹⁸ Susan Rose-Ackerman (1998).
- ⁹⁹ ICCPO, II. Conflict of Interest and disqualification, article 4.
- ¹⁰⁰ Barraclough (1998).
- ¹⁰¹ Cited in *idem*.
- ¹⁰² The National Drug Company outlet at Monze was bought by Hon Suresh Desai, MMD MP and then Minister of Agriculture. Former National Home Stores were bought in Sichili and Mongu by Hon Leonard Subulwa, MMD MP and then Minister for Western Province; in Kaoma by Hon Stephen Manjata, MMD MP and Deputy Minister of Community Development and Social Welfare; in Lukulu by Hon S C Ngombo, MMD MP and then Deputy Minister for Education; in Namwala by Hon Chulu Kalima, MP; in Sinazongwe by Hon S Madyenkuku, MMD MP and Deputy Minister of Labour and Social Security; in Siavonga by ZEFA Trading Limited, a company in which Hon Frederick Hapunda, MMD MP has an interest; and in Sesheke by Tusa Security Limited, part-owned by Hon Richard N'ganga, MP. Tusa Security Limited was also successful in its purchase of another outlet in Sesheke, formerly part of the Zambia National Wholesale & Marketing Company. Other shops owned by the Consumer Buying Corporation of Zambia at Kabompo and Kasempa were sold, respectively, to Hon Anoshi Chipawa, MMD MP and Deputy Minister of North West Province and Hon Patrick Kafumukache, MP and Cabinet Minister.
- ¹⁰³ Lake Hotels was sold to Hon Bennie Mwiinga, MP and Minister for Local Government and Housing. La Hacienda Hotel in Mumbwa, Central Province, was bought by Stanford Hlazo, who subsequently resigned his position with the MMD to join the National Party.
- ¹⁰⁴ Hartley Farms, bought by Gilbert Mululu.
- ¹⁰⁵ Nchabga-Mbala Farms.
- ¹⁰⁶ Two previous attempts to sell the business by competitive tender in 1992 and by designated Management Buyout in 1994 had both failed. CTS had a workforce of 176 prior to its privatisation. See ZPA (1996), *Progress Report No. 8*.
- ¹⁰⁷ Penza objected to the award of an oil contract by the Ministry of Energy to a firm whose tender had previously been rejected by the Zambia National Tender Board which he chaired. The implication was that vested interests wished to protect what has been described as 'recurrent corrupt crude oil importation deals'. Comments by the President at the swearing in ceremony of the successor cabinet warned ministers against advertising their personal wealth or displaying arrogance. The comments were interpreted to be directed at Penza. Amid claim and counter-claim, it is difficult to establish clear-cut culpability. The Post demanded the naming of those involved in the oil cartel, describing Chiluba's Government as 'a virtual kleptocracy lacking even elementary transparency'. See 'Penza fired over oil deal,' *The Post*, 24 March 1998; 'Chiluba advises ministers,' *The Post*, 25 February 1998; 'Penza's sacking - Editorial,' *The Post*, 25 March 1998.
- ¹⁰⁸ Penza was shot and killed at his home on the outskirts of Lusaka in the early morning of Friday 6 November 1998. Police issued a statement saying that robbery was the motive for his killing even before they had launched their investigation. By 11.00 on the same day they had caught up with five suspects. All were killed by police - not in a gun-battle, but in circumstances when they could have been apprehended and then interviewed. One man was taken from his home, escorted into the bush near Lusaka, and shot by plain clothes officers. Another was taken from his place of work and was killed in the same manner. Four days later, three further suspects were shot. Permanent Human Rights Commission (HRC) chairperson, Judge Lombe Chibesakunda, condemned the extrajudicial killing of the Penza suspects. Inter Africa Network for Human Rights and Development (AFRONET) Executive Director Ng'ande Mwanajiti described the manner in which police killed the alleged Penza murderers as suspect. The Penza family were not asked to identify the alleged killers. No ammunition cases were found at the scene and one of the security guards at the house told *The Post* that the killers informed him they had come for Penza. The murder of Penza and the immediate killing of the suspects by police has been condemned by, amongst others, AFRONET, the Law Association of Zambia, the Human Rights Commission, the Foundation for Democratic Process (FODEP), Women for Change, and Church of God Superintendent for Central Africa, Archbishop John Mambo. All called for further investigations into his death. Two additional suspects were arrested on 14 December 1998. Their trial for the murder began in the High Court in June 1999, but had not been completed by the year end. The police officer who shot three of the suspects shortly after Penza's murder was convicted of manslaughter in the High Court in April 1999. See the following newspaper reports: 'Penza had been warned of death,' *The Post*, 9 November 1998; 'LAZ dismisses police claims,' *The Post*, 9 November 1998; 'Cover-up blown,' *The Post*, 10 November 1998; 'Another police lie,' *The Post*, 11 November 1998; 'Penzas question police actions,' *The Post*, 13 November 1998; also Barraclough (1998); 'Suspected Penza killers deny charge,' *Times of Zambia*, 8 June 1999; 'How Penza was shot dead...', *Times of Zambia*, 24 June 1999; also 'Cop jailed 15 years,' *Times of Zambia*, 23 April 1999.
- ¹⁰⁹ ZPA (1994), *Progress Report No. 4*.
- ¹¹⁰ Barraclough (1998).
- ¹¹¹ Parliamentary Committee on Public Investments (1997), *Special Report on Privatisation*, presented before the House in December 1997. See also 'Parley endorses decision,' *Times of Zambia*, 29 November 1997.
- ¹¹² ZPA (1993a), *Progress Report No. 2*, para. 4.3.3.2, p.15.
- ¹¹³ Office for Drug Control and Crime Prevention (1999), *Global Programme against Corruption: an outline for action*.
- ¹¹⁴ OECD Principles for Managing Ethics in the Public Service (1998), principle 5.
- ¹¹⁵ Barraclough (1998).
- ¹¹⁶ In May 1999, it was reported that the conclusion of the sale awaited the signing of supply contracts with Anglo American to provide materials for the refurbishment of a number of mine facilities. See 'Ndola Lime sale on hold,' *Times of Zambia*, 31 May 1999.
- ¹¹⁷ 'Ndola Lime to be sold to Congolese,' *The Post*, 28 August 1998.
- ¹¹⁸ 'ZCCM explains Ndola Lime sale,' *The Post*, 4 September 1998.
- ¹¹⁹ See 'Chilanga, rivals asked to revise bid for Ndola,' *Business Day*, 9 March 2000.
- ¹²⁰ See 'Mine sale delay backlash,' *Times of Zambia*, 23 September 1998.
- ¹²¹ 'Workers enslaved,' *The Post*, 10 March 1998.
- ¹²² DAC, article 9.
- ¹²³ ICCPO, III. Disclosure of assets, article 8.
- ¹²⁴ *Ibid.*, II. Conflict of Interest and disqualification, article 6.
- ¹²⁵ Interview with Valentine Chitalu, Chief Executive of the ZPA, Special Advertising Section, *Fortune Magazine*, 24 July 1995.
- ¹²⁶ Bull (1997/8), p.17.
- ¹²⁷ At a conservative estimate, perhaps K5 billion has gone to State owned enterprises, including shops in the trade sector, in an attempt to maintain their viability.
- ¹²⁸ Consider the examples of Munkumpu/Nchanga Farms, National Milling Company, and Cleanwell Dry Cleaners.
- ¹²⁹ DAC, article 5. Governments must ensure that businesses keep appropriate records of transactions. It follows that Governments should themselves

use appropriate accounting standards and ensure the transparency of accounts, such as the PRA in the case of Zambia.

¹³⁰Last listed in *Progress Report No. 7* which covered privatisations in the six months to the end of 1995.

¹³¹See, for example, ZPA's listings in its *Progress Reports* for Munkumpu/Nchanga Farms, Zambia Horticultural Products Limited, Kabwe Industrial Fabrics Limited, Lusaka Engineering Company. There are other similar, documented examples of the ZPA overstating PRA deposits.

¹³²For example, Metal Fabricators of Zambia, Zambia Horticultural Products, BP Zambia and Zamtube, Zambia Oxygen, and many others.

¹³³Parliamentary Committee on Public Investments (1997), *Special Report on Privatisation*. See also 'Committee cries foul,' *The Post*, 4 December 1997.

¹³⁴Some of the cash consideration - for example, in the case of Kanshanshi and Konkola North mines - is on deferred terms, conditional on the buyer opting to move to the next stage in development of the prospect. This has been taken into consideration in estimating the cash value.

¹³⁵Criticism of this lack of accountability over the sale proceeds has appeared in the Zambian press. See, for example, 'Govt challenged to account for privatisation proceeds,' *The Post*, 12 May 1997.

¹³⁶'K20bn spent on privatisation,' *The Post*, 26 October 1998.

¹³⁷The then Finance Minister, the late Ronald Penza, confirmed this in a meeting with businessmen in Livingstone. See 'Aka sees red over ZPA funding,' *Zambia Daily Mail*, week of 9 February 1998.

¹³⁸Ibid., citing Agenda for Zambia president, Akashambatwa Mbikusita-Lewanika.

¹³⁹DRD, article 2(3). See also article 8(2).

¹⁴⁰Ibid.

¹⁴¹*PIRC & ESAC PAR*, Evaluation Summary, para. 18.

¹⁴²See, respectively, Privatisation Act (1992), section 30; Investment Act, Part IV, 'General Incentives,' and Part V, 'Special Incentives'.

¹⁴³Incentives and deductions for mining companies are stipulated under Part VI of the fifth schedule of Income Tax Act. Mineral tax is defined under the Mineral Tax Act.

¹⁴⁴Specified as a mode of sale under section 22 of the Privatisation Act (1992).

¹⁴⁵These were earmarked by Government in 1994. Only if the management/employee bid is considered inadequate or if negotiations fail is the sale opened up to other interested buyers.

¹⁴⁶There are incentives for both employee and management buy outs. As with all successful bids by individual Zambians, and unlike foreign buyers, all MBOs and EBOs may defer payment for a company, allowing them additional time to raise finance.

¹⁴⁷NIEC Overseas has been the only successful buyout involving employees, excluding the formation of a handful of farming co-operatives. In the case of the Dairy Produce Boards in Kabwe and Ndola, local dairy farmers joined together to buy the businesses which they had previously been supplying. In the case of the National Tobacco Company, the business was sold to the tobacco growers themselves through the Tobacco Association of Zambia in partnership with a German firm, Contraf-Nicotex. Such arrangements are strictly the exception rather than the norm.

¹⁴⁸Although tensions can sometimes build between employees and managers when the latter launch a bid without informing their employees, in every case there is a requirement that a 25 per cent share in the company must be put in trust for all employees when a MBO or EBO is successful. This means if the company does well, all employees will share in the success.

¹⁴⁹The one exception to June 1997 is MIL Construction Ltd..

¹⁵⁰Cited by Enoch Kavindele, Minister of Commerce, in a statement to Parliament, 2 February 1998. Cf. Figures given by ZPA in January 1998, which serve only to raise more questions. Of a total of 215 state owned enterprises privatised, 40 were listed as having been sold to foreigners and 100 to Zambians. The ownership by nationality of the remaining 65 enterprises is not accounted for.

¹⁵¹Using figures published by ZPA for the total sale values of State owned enterprises sold up to the end of June 1997.

¹⁵²*PIRC & ESAC PAR*, p.30.

¹⁵³Ibid.

¹⁵⁴See ZPA (undated), 'How far have Zambians participated in the privatisation programme? - Questions and Answers,' question 8.

¹⁵⁵In conjunction with balance of payment support, the other major source of foreign exchange in Zambia has traditionally come through ZCCM which sells currency to the Bank of Zambia and the commercial banks. The decline in ZCCM's revenue from copper and cobalt has already resulted in shortages of foreign exchange. When ZCCM is privatised, the new owners will not be required to supply foreign exchange. Hence the warning of Independent MP Robert Sichinga: 'This country and the Bank of Zambia will be starved of foreign exchange and it will not be possible to sustain the imports that are coming through.' (Quoted in 'ZCCM sale smells corruption, charges Sesheke AZ MP,' *The Post*, 3 December 1997).

¹⁵⁶Edwin Musaika, 'How Zambia fared during the lean first quarter,' *Times of Zambia*, 25 May 1998.

¹⁵⁷See, for example, ZPA (undated), 'How far have Zambians participated in the privatisation programme? - Questions and Answers'.

¹⁵⁸*LCMS* (1996), table 10.6.

¹⁵⁹*ERP PCR*, para.48.

¹⁶⁰*PIRC & ESAC PAR*, para. 2.16.

¹⁶¹The Lusaka Stock Exchange, because it is new and relatively small, does not yet have the capacity to deal in all the shares to be publicly floated. It would simply be overwhelmed if all the shares were put up for sale all at the same time. Shares are therefore held in trust prior to their gradual release for sale to the public and investors. Once all the shares have been released, the Privatisation Trust Fund will be shut.

¹⁶²Many of these larger companies were already part-owned by foreign companies and investors, although it was the Government of Zambia which held the controlling interest in all of them. However, when the time came for the Government to sell its shares as part of the privatisation, the existing co-owners had a legal right to be asked first whether they wished to buy the Government's shares. The Government, in negotiations, secured an agreement from many of these companies that they would not exercise their pre-emptive right to buy up all the shares. This allowed a proportion of the shares to be retained for public floatation. Note: the lower figure of one hundred and fifty companies cited as being privatised is lower than the figure of two hundred plus referred to elsewhere in this paper. This is because the latter figure relates to the number of enterprises being sold and includes companies and holdings which have been split into several asset packages.

¹⁶³Share releases are as follows: Zambia Sugar, 30 per cent; Zambia Breweries, 10 per cent; Chilanga Cement, 37 per cent; Rothmans, 18 per cent; National Breweries, 30 per cent.

¹⁶⁴The prospective list includes BP, Mpongwe Development, AGIP, certain former ZCCM mines, Nanga Farms, Metal Fabricators of Zambia, Kafironda, Zambia Oxygen, Zambia State Insurance Corp., and Zamtel.

¹⁶⁵'The only Zambians who have participated in the process are either those who were already rich in both government and the opposition, and those in government able to borrow from banks because of their positions.' (George Zulu, spokesman for UNIP vice-president Chief Inyambo Yeta, quoted in 'Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997).

¹⁶⁶*LCMS* (1996), table 10.6.

¹⁶⁷Ronald Penza, Minister for Finance, *Budget Address 1998*.

¹⁶⁸Affidavit declaring interests, sworn on 14 January 1998 and deposited with the Chief Justice.

¹⁶⁹Barracrough (1998).

¹⁷⁰*PIRC & ESAC PAR*, Preface, p.5. PIRC I and ESAC were closed and fully disbursed by, respectively, April 1995 and January 1996. PIRC II closed in June 1997. ESAC II, worth a total of \$98, was initially approved in August 1994 to close in January 1998. (World Bank (1998b), *Statement of Loans/Credits: Zambia*, as of 31 March 1998)

¹⁷¹*PIRC & ESAC PAR*, para. 2.4.

¹⁷²Ibid., para. 2.6.

¹⁷³Ibid., para. 2.4.

¹⁷⁴This action was taken further by PIRC II which sought to develop financing arrangements to assist local investors participate in the ownership of newly privatised companies and to improve local capital markets to encourage private sector development. (*PIRC & ESAC PAR*, paras. 2.6 (a) and (b)).

¹⁷⁵Privatisation and Industrial Reform Technical Assistance (TA) Credit (Credit No.2406-ZA - FY 1992).

¹⁷⁶This represented a total of 140 enterprises, excluding ZCCM and a number of public utilities, to be privatised over 5-7 years. (*PIRC & ESAC PAR*, para. 2.14). The ZIMCO group was to be restructured and an investment company established to control the finances of parastatals as they prepared for sale. To prevent the diversion of funds or their absorption in inefficient operations, restrictions were placed on new capital investment. Managerial autonomy was increased by the requirement of a majority of non-Government directors on the Boards of all parastatals. (*PIRC & ESAC PAR*, paras. 2.17 and 2.18).

¹⁷⁷The privatisation of 20 companies was specifically required under PIRC I. By the time of the Bank's appraisal of PIRC II in early 1993, 48 companies had been offered for sale. The actual completion of sale or liquidation of 15 SOEs was required prior to the third tranche release of PIRC II and the Government agreed to do all within its power to sell 20 more. Overall, a minimum of 60 companies were to be offered for sale by the end of the third tranche release. (See *PIRC & ESAC PAR*, paras. 2.14 - 2.15)

¹⁷⁸*PIRC & ESAC PAR*, para. 2.18.

¹⁷⁹Ibid., para. 2.14; see also para. 18 and the requirement that nonviable companies be liquidated under PIRC II.

¹⁸⁰Ibid., para. 2.17.

¹⁸¹Under PIRC II. See *PIRC & ESAC PAR*, paras. 2.9 and 2.18.

¹⁸²Public utilities to be reformed under PIRC included, amongst others, PTC (post and telecommunications), ZESCO (electricity), and ZIMOIL (oil imports).

¹⁸³*PIRC & ESAC PAR*, para. 4.12.

¹⁸⁴*PIRTA M&R*, para. 9.

¹⁸⁵Procurement was to be strictly controlled by the Bank: 'All terms of reference, short lists, consultant contracts, and contracts with a value of US\$100,000 or more will be subject to prior IDA review and approval....A total of about 90 percent of procurement will be subject to prior IDA review.' (*PIRTA M&R*, Annex I, para. 13).

¹⁸⁶Each yearly audit was to be carried out by IDA approved auditors. The Ministry of Finance was to furnish quarterly reports on implementation progress and a final evaluation report within six months of the end of the project. (*PIRTA M&R*, Annex I, para. 16).

¹⁸⁷Ibid., Annex I, para. 3.

¹⁸⁸Ibid., para. 13.

¹⁸⁹The remit for the Adviser to Economic Analysis and Reports Unit requires that the post-holder must keep all donors informed of privatisation progress to ensure consistency with their objectives. (*PIRTA M&R*, Annex I C).

¹⁹⁰*PIRC & ESAC PAR*, para. 2.11. The Government also undertook to review the role of the Export Board and to reduce the burden of licensing and regulation affecting small-scale business.

¹⁹¹Ibid., para. 2.12. To improve the framework for private sector development, the Government agreed under PIRC II to review the deregulation of small-scale enterprises and the operation of the Zambia Investment Centre.

¹⁹²Ibid., para. 2.13.

II. Employment, unemployment, and work-based rights

Introduction

In the short term at least, liberalisation and privatisation have been the cause of significant job losses. The harsh economic logic of opening the economy up to a private sector which must be competitive if it is to make profits, has seen many former uncompetitive state owned enterprises go into liquidation or has seen the shedding of excess labour to make them more efficient and attractive to new buyers. The State has, in effect, already undertaken much of the difficult task of retrenching a sizeable proportion of the work force in the run up to privatisation proper. However, it is unlikely redundancies will end with privatisation as many of the new owners may want to cut their work force in order to increase productivity. The Government has also put in place a Public Sector Reform Programme in order to cut government expenditure on administration, primarily by reducing overmanning in the civil service.

By its nature, privatisation concerns the formal sector. There is an inherent danger that a consideration of the extent and nature of redundancies in Zambia *vis-à-vis* the right to work and just and favourable conditions of work leads to a preoccupation with formal employment. The ILO, in considering the Zambian Government's obligation to pursue appropriate employment policies, made the following observation in recognition of this danger:

'...the Government states that it is endeavouring to promote job creation by establishing an environment conducive to local and foreign investment and that, since 1991, measures have therefore been taken to liberalize trade, deregulate markets, strengthen the financial sector and privatize state enterprises. The Government considers, however, that the effects of this structural adjustment programme will begin to show only in the coming years and that, for the time being, the programme's impact on employment and living standards is negative. The statistics provided by the Government show that employment in the formal sector declined during the period in question, owing largely to the reduction in public sector employment. The informal sector, on the other hand, has grown, having absorbed part of the increase in the active population, and now accounts for almost 85 per cent of total employment. In this context, the Committee notes, from the World Bank's report on Zambia published in August 1996, the hardship that the structural adjustment programme has created for workers in the informal sector, leading to a deterioration in the potential of human resources.'¹

The predominance of the informal sector in economies such as Zambia poses a challenge to the international community to systematically apply human rights and labour standards outside of their traditional sphere of formal employment. A subsection within this paper will attempt to summarise some of the characteristics of the informal sector in Zambia. However, in much of the analysis of domestic legislation and practice which follows, there is an inevitable focus on the formal sector because of the way in which employment laws and policies governing retrenchment have themselves been framed. There are two further provisos. First, for individuals in Zambia there is an inevitable blurring of the distinction between the informal and formal sectors. A significant number of people supplement formal sector wages with money earned from informal trading; those made redundant inevitably find themselves seeking work in the informal sector. Second, while part of the very definition of the informal sector relates to its deregulated nature, it is incorrect to conclude that work-based rights enshrined within the Covenant and other international instruments do not apply. On the contrary, their application is paramount.

(A) Information, where available, will be presented on the extent of recent job losses and firm closures in Zambia as a result of structural adjustment, to include rationalisation prior to, during and after privatisation. This situation will be juxtaposed with the requirement under the Covenant that a State party must take steps, to include appropriate policies, to achieve the full realisation of the right to work.² As part of this assessment, consideration will be given both to the extent to which the economic reform programme has been successful in attracting foreign direct investment of the type liable to create jobs and to the role of the informal sector in providing employment of an acceptable standard. (B) Full realisation of the individual's right to work is not exhausted by obligations in respect of progress towards the achievement of full employment. As a corollary to the right to enter employment is the right not to be unjustly deprived of employment and the adequacy or otherwise of those safeguards which govern how redundancies are conducted. In Zambia, the policies and laws governing retrenchment have, in practice, proved totally ineffective in ensuring consultation, compliance with notice periods, or even the payment of terminal benefits due to employees. It is argued that the withholding of redundancy packages impinges on the right to just and favourable conditions of work.³ (C) An allied threat to the realisation of this right in Zambia lies in the inability of parastatal employers and local and central government to meet wage bills in a climate of extreme austerity and in the lack of binding guarantees upon private sector employers to safeguard or improve working conditions once a company has been sold in the absence of an agency to monitor their compliance. (D) The ability of unions to safeguard working conditions has been seriously diminished by the introduction

of a revised Industrial and Labour Relations Act which has curtailed union activity to the point where trade union rights are violated.⁴ A final subsection (E) will examine what provision has been made in respect of training, retraining and support for small business development. The steps which a Government is required to take under the Covenant *vis-à-vis* full realisation of the right to work include vocational guidance and training programmes.

A. The extent of job losses in Zambia and the right to work

1. Formal sector job losses

States are required to furnish the Committee with information 'on the situation, level and trends of employment, unemployment and underemployment'.⁵ High or rising levels of unemployment are of serious concern to the Committee in assessing the adequacy of the measures adopted by a State party.⁶ Detailed information on the level and nature of employment in Zambia is not always forthcoming. The ILO, in its supervision of the Employment Policy Convention, has repeatedly found it necessary to publicly remind the Zambian Government of its obligation to provide data on unemployment, underemployment, the size and role of the informal sector and the distribution of jobs between the public and private sectors.⁷ However, it is possible to discern broad trends in the employment situation.

As a result of the UNIP initiated Fourth National Development Plan, formal sector employment in Zambia stood at a record high of 545,000 in 1992. Preliminary figures put the number at 465,017 in 1998.⁸ This means that 80,000 jobs have been lost in six years as a direct result of liberalisation, privatisation and reform of the public sector. Of these job losses, many have been in the parastatal sector. From September 1993 to June 1995, employment in State owned enterprises fell by 40,900 as a result of liquidations and preparations for privatisation.⁹ Although some of this fall can be accounted for by increases in private sector employment as companies are privatised and change ownership, there is still a significant shortfall. Over the same period of September 1993 to June 1995, private sector employment went up by 11,400.¹⁰ This means that 29,500 jobs were lost in this transition period. The only conclusion that can be drawn from this is that most of these people must now look for employment in the informal sector if they are to survive. Figures for 1996 and 1997 show that there were a further 6,184 retrenchments.¹¹ There is no indication that redundancies are at an end. Job losses in the mining sector have already been extensive, but the final privatisation of remaining ZCCM assets will see a further wave of mass redundancies. Please see the accompanying text-box.

a. The closure of former State owned enterprises

The ZPA records eleven state owned enterprises as liquidated between 1994 and 1997.¹² It is unclear whether this figure includes the closure of significant operations such as the United Bus Company of Zambia and Zambia Airways which were liquidated before they could be listed for privatisation under the divestiture sequence plan. In those companies closed before their successful privatisation could be concluded, about 6,000 jobs have been lost.¹³

In addition, as of December 1997, 28 companies are listed by the ZPA as either under liquidation or in the process of being wound up after the sale of their assets.¹⁴ Large and medium scale liquidations currently underway or recently completed include the Memaco group of companies, Mpelembe Properties, and Premium Oil Industries. A further six enterprises are in receivership. In late March 1998, Zambezi Sawmills was placed under the receivership of the African Development Bank and the workforce of three hundred was made redundant.¹⁵ Nitrogen Chemicals of Zambia was threatened with receivership in April 1998 when negotiations for its sale collapsed.¹⁶

To December 1997, according to the ZPA, of those businesses privatised, four had subsequently gone into receivership or liquidation. These are General Pharmaceuticals Limited, Kapiri Glass Products, Eagle Travel, and National Drum and Can Company. Zambia Engineering and Contracting Company must also be added to this list. There is newspaper speculation that many others are liable to be wound-up.¹⁷ This is hard to refute when the ZPA admits that almost nothing has been done to track the performance of companies after privatisation. Overall, according to Afronet, citing a Ministry of Labour source, ninety-six companies collapsed between January and October 1997, precipitating 1,482 redundancies.¹⁸ In 1998, 193 companies were struck from the Companies register. However, this is liable to be an underestimation of the actual number of failing businesses as the figure does not include those in receivership or undergoing liquidation, or those which have ceased operating without notification.¹⁹

Which persons, groups, regions or areas do you consider particularly vulnerable or disadvantaged with regard to employment? [Revised general guidelines regarding the form and contents of reports, Annex, Article 6 of the Covenant, para. 2(a)]

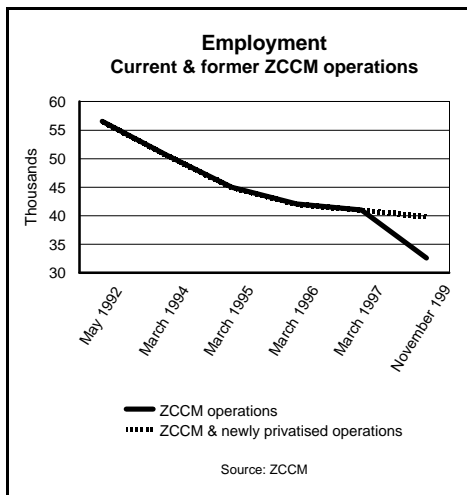
Southern Province and the drastic fall in formal sector employment

A report issued by the labour office in Livingstone recorded that a total of 6,748 people - a fifth of the entire workforce - had lost their jobs in Southern Province since the implementation of the IMF/Bank structural adjustment programme.²⁰ The report covers all 767 companies based in the nine districts of the province. 403 private companies collapsed resulting in widespread redundancies in the farming, textile and other manufacturing sectors. The enormous job losses are set against the expected creation of 400 jobs through foreign investment.

Copperbelt Province and the decline in employment at ZCCM

Employment within ZCCM's core divisions stood at 56,500 in 1992. By the end of 1997, the number of staff at ZCCM itself had fallen to 32,600 - a drop in employment of 24,000 in just over five years.

Only a modest part of the fall in ZCCM staff levels is explained by the transfer of former ZCCM operations to the private sector. This transition accounts for some 7,300 employees. Hence the true cost of the rationalisation program at ZCCM is the loss of some 17,000 positions, at least 12,500 of which comprise redundancies, termination or non-renewal of contracts, and early retirement.²¹



Three of the ZCCM mines and operations privatised before 2000 - Luanshya/Baluba and Chibuluma mines and the Power Division - are significant employers. Within five months of the completion of the sale, the new owners of Power Division had cut 229 jobs.²² At Chibuluma, 300 workers from the mine's health, administration, fire section and police departments were laid off by Metorex, again within 5 months of their take-over of the mine. The company predicts that the 1,100-strong workforce it inherited from ZCCM will be halved in two years and will not increase until reserves at Chibuluma South are developed.²³ In early February 2000, 400 miners were issued with termination notices by Roan Antelope.²⁴ The redundancies were announced shortly after the company's undertaking to retain inherited ZCCM employees came to an end.

In addition, over 160 miners and 55 youths employed in small-scale workings at the otherwise disused Kansanshi Mine were given assurances that the new owners of the prospect, Cyprus Amax, would allow their operations to continue under ZCCM/Government of Zambia supervision in the near term while they carried out studies into redevelopment of Kansanshi.²⁵ Even though exploration drilling and prefeasibility studies alone were to take two years, less than one year after the completion of the deal, these operations were closed.²⁶

The sale of remaining key ZCCM assets - Nchanga, Nkana, Konkola, Mufulira - will result in mass redundancies. These divisions represent the productive core of ZCCM and each division has a large workforce. A document appended to the World Bank's latest adjustment credit cites 7,400 redundancies as a result of the rationalisation of ZCCM associated with the final sale to Anglo American and First Quantum/Glencore.²⁷ This represents a reduction of about a quarter of ZCCM's workforce at the end of 1998.

A study by Anglo American confirms immediate and short-term job losses in the operations it has purchased.²⁸ The workforce at Nchanga is to be cut by 3000. A further 450 posts will be lost at the mine by the end of 2000. At the existing Konkola mine, there are to be 1,640 redundancies, while 91 workers are to lose their jobs at Nampundwe.

b. The Public Sector Reform Program

Local and central government employees have also suffered through rationalisation and restructuring of the civil service which has been carried forward in response to four basic problems in the public sector: overstaffing; a high proportion of expenditure on personnel costs as opposed to spending on service delivery and capital projects; compressed pay scales making it difficult to recruit high quality senior staff; and outmoded management and organisational structures.²⁹ The Government adopted an initial Public Sector Reform Program in 1993, agreed under the World Bank's Second Economic Recovery Credit, to address these problems.³⁰ The Bank's PIRC I continued and extended this action. The Government was required to improve control and monitoring of its agreed public investment program and to limit the civil service payroll while at the same time increasing remuneration for key personnel. Overall savings were to be achieved by the implementation of a mass redundancy program. 20,000 redundancies were to be carried through by the end of 1993.³¹ To mitigate the inevitable hardship, the Bank required the Government put in place an action plan to cushion the impact of redundancies before significant numbers of civil servants were dismissed. By the end of 1992, some 10,000 'ghost workers' and classified daily workers had been eliminated from the payroll but further redundancies

were blocked by the lack of an affordable severance package which could be met out of the budget.³² In order to overcome the difficulty in finding cash to meet the cost of redundancy payments, the Government agreed a partial solution under the Bank's ESAC to substitute payments in kind - houses, land, vehicles.³³ This has restricted the rights of public sector employees to equal and fair remuneration and has resulted in widespread discrimination - please refer to Section 2(III) for an account of the sale of houses in lieu of cash entitlements. In 1994, a further 12,000 public sector workers were retrenched.³⁴

In September 1997, the Government adopted a revised and accelerated PSRP. The aims were to complete the restructuring exercise of the ministries and provincial and local government offices; to reduce the size of the civil service workforce by a further 57,000 by the end of 1999 through a mixture of redundancies, natural attrition and a hiring freeze;³⁵ to decompress pay-scales in line with the private sector; and to introduce new personnel policies including sound pension arrangements and new employment contracts.³⁶ In a Parliamentary statement on 26 November 1997, the Minister for Labour and Social Security announced a public sector pay freeze effective until the end of 1998.³⁷ The action was taken in order to reserve funds to meet the cost of planned redundancies under the PSRP. The Minister confirmed that the Civil Servants Union of Zambia and the National Union of Public Service Workers had been informed of the revised plan and the wage freeze. The unions were not, however, consulted over the action.

Under the revised PSRP, the plan was to retrench 7,000 civil servants by the end of December 1997 followed by 8,000 more by April 1998. Those affected by this first phase of compulsory redundancy were classified daily employees - casual employees such as messengers, cleaners, drivers paid on a daily basis whose jobs could be rationalised or contracted out. The Government has confirmed that 15,500 employees in this category were made redundant during 1997-98.³⁸ Such casual employees do not qualify for pensions under the Pensions Act, but were entitled to terminal benefits. While eighty per cent of those retrenched had received payments averaging K4.5m (circa. \$3200) each by the end of October 1998, approximately 3,200 retrenchees were still awaiting payment at the beginning of 1999.³⁹ It has been impossible to verify whether high payments to certain individuals has skewed the mean or whether in-kind payments have been used. Casual daily employees have been excluded from buying civil service houses. Out of those who have lost their jobs, a number also stand to lose their homes.

A second phase of the PSRP was scheduled to begin in May 1998 on the basis of an action plan approved by the Cabinet in the previous month. The Government allocated K20bn under its 1998 budget to cover, *inter alia*, severance costs, but was forced to suspend planned redundancies while it awaited the approval and release of the shortfall K96 bn from bilateral donors and the World Bank.⁴⁰ A voluntary separation package of three times annual salary for pensionable civil servants was also announced. The then Finance Minister warned that the availability of funds set a ceiling for meeting terminal benefits and that the unions should not make unrealistic demands.⁴¹ By the end of October 1998, only 2059 civil servants had taken voluntary redundancy because of uncertainty in the minds of many caused by the worsening economic situation.⁴² By the same date, the total number public sector employees had been reduced by almost 20,000 to 117,166 from a workforce of 136,984 in June of the previous year.⁴³

It has been acknowledged by the Government that the overall PSRP target of a public sector numbering 80,000 employees by 1999 is neither realistic or feasible: 'further widespread/across the board retrenchments would seriously undermine, if not destroy, the public sector's ability to deliver public services like health, education and law and order and to maintain publicly owned socio-economic infrastructure.'⁴⁴ This admission must place into question the wisdom of the PSRP implementation plan agreed less than a year before and indicate the pressure exerted by the Bank to drive through rationalisation of the civil service. Under the terms of the latest Bank adjustment credit, the Zambian Government has agreed to a revised action and implementation plan which is tied to time-tabled targets in areas such as retrenchments, pay and pensions policies, payroll controls, ministerial restructuring, performance monitoring and the mitigation of the social impact of civil service retrenchment.⁴⁵ The release of certain Bank funds is conditional on Cabinet approval of this plan and its initial implementation.⁴⁶ While there will be a reduction in the pace of redundancies, it is understood that concern was voiced at the meeting of the Bank's board to approve the Public Sector Reform and Export Promotion Credit over the social hardship which would be created by the goal of a thirty per cent reduction in the public sector wage bill.

Against this backdrop of sharply falling public, as well as parastatal, formal sector employment, it is essential to clarify the nature of Government action on three counts: first, the degree to which employment policies have been pursued to encourage job creation; second, the extent to which economic policy has proved incompatible with the realisation of the right to work under the Covenant; and third, whether policies to combat unemployment - that is, action aimed at supporting people back into work and cushioning the adverse impact of redundancy - have been implemented. This latter aspect will be examined in subsection (E) below. The issues of employment policy and economic reform in Zambia *vis-à-vis* the right to work will be given immediate consideration.

c. Economic reform and the absence of a dedicated employment policy

Article 6 of the Covenant, in recognising the right to work, requires that, in accordance with article 2(1), a State party is obliged to implement policies and techniques aimed at progress towards the achievement of full employment.⁴⁷ The Committee, in determining what constitutes an adequate policy on employment, refers to the ILO's Employment Policy Convention of 1964 (No. 122) which itself requires a State party to 'declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.'⁴⁸

In the Zambian context, the two issues of employment policy and the incompatibility or otherwise of economic reform with the right to work cannot be held apart. The Government's policies to encourage employment are, by and large, subsumed within its economic reform programme; that is to say, there is a *laissez-faire* approach towards employment *per se* and an emphasis, rather, on creating the macro-economic and structural conditions for investment and growth⁴⁹. In one sense, there is no employment policy in Zambia.⁵⁰ In analysing the requirement under the Covenant to pursue strategies for full employment, it has been noted that:

'...a government policy that was directed towards the achievement of economic growth at the expense of maintaining a permanent pool of unemployed labour would be in conflict with the State's obligations under the Covenant. Similarly, a stricter level of scrutiny should be directed at policies that relegate employment goals to long-term strategies. In this respect, those States that pursue a pure 'monetarist' philosophy where the emphasis is upon the adoption of fiscal measures to reduce inflation and encourage investment will be required to show that the short and medium-term effects are not unduly detrimental to the employment situation.'⁵¹

The MMD Government's economic reform agenda, as required by the World Bank and IMF, has been characterised by both structural adjustment and macroeconomic stabilisation programmes. In order to improve the structural basis of the economy, policies have focused upon the expansion of agricultural production, the liberalisation of trade and industry, the privatisation of the loss making parastatal sector and reform of the public sector. Stabilisation of the Government's finances has been pursued through policies designed to reduce inflation, balance the Government's accounts - to include the control of public expenditure - and rationalise the financial sector: 'By the end of 1992 the government made control of inflation a top priority. In early 1993 it did the following to reduce inflationary pressures: introduced a cash budget system to control expenditures and reduce the deficit, curtailed credit, and rolled over...maturing treasury bills....To continue stabilising prices and strengthening public finances, consumer and producer subsidies were substantially reduced, the need to subsidize public enterprises was reduced by privatizing and reforming parastatals, and the size of the civil service was trimmed.'⁵²

The majority of these measures are, of course, detrimental to progress towards full employment. This has been the view of the ILO. The Committee of Experts, in its examination of compliance with ILO Convention No. 122 Employment Policy, has shown disquiet over the record of the Government of Zambia and has issued four consecutive observations on its conduct.⁵³ It has repeatedly expressed its concern 'at the difficulties apparently encountered in devising and applying an employment policy within the meaning of the Convention.'⁵⁴ The Committee has criticised the Government of Zambia for not taking measures to place employment objectives within an economic and social policy framework in keeping with article 1 of the Convention and, in the light of public sector job losses and the fact that job creation has been impeded under privatisation, for not seeking to examine how adjustment measures have impacted upon employment:⁵⁵

'The Government states...that it is fully committed to ensuring the right to work by means of a strategy seeking first to stabilize the economy and then to stimulate growth. However, it recognizes that the economic recovery programme will cause further hardship for the people in the short term. The Government considers that this is nonetheless unavoidable and that bold measures will have to be taken in order to ensure a better future. The report contains indications...of the direction followed by macroeconomic policy during the period: priority was given to bringing down inflation and lifting exchange controls so as to promote foreign investment and exports. The Committee notes, however, that the Government does not indicate to what extent the economic growth objectives...have been or are being attained. The report also refers, in the context of structural reforms, to the 1991 Investment Act and the 1992 Privatization Act, but does not indicate how their implementation has affected production and employment.'⁵⁶

The overall compatibility of the Zambian Government's approach with its obligation to pursue policies aimed at progress towards full employment and the realisation of the right to work depends, in part, upon whether recent, current and future job losses in the formal sector are counterbalanced by success in attracting investment of the type which leads to job creation. In a less developed economy, consideration must also be given to the informal sector and whether, for

those joining its ranks, it offers them the opportunity to carve out secure, well-paid and long term employment. The economically active population in Zambia grew from 2.7 million to 3.5 million from 1986 to 1993, equivalent to a rate of 4.1 per cent each year. Assuming this is a continuing trend, then not only will those jobs lost to date need to be replaced, but sustainable new jobs over and above previous levels will need to be created.

d. Job creation in the formal sector

Many statements are made about the economic boom and the expansion in the number of jobs which privatisation is meant to bring about.⁵⁷ However, in contrast, very little concrete information is released about exactly how many jobs will be created and where these will be. Nor is much said about future job losses which are already planned by the new owners of certain companies. General figures have been released by the Zambian Investment Centre which attempt to forecast how many jobs will be created as a result of investment pledges in different sectors of the economy.

Investment pledges \$US			Employment to be generated as a result of pledges in 1997	
1995	1996	1997	Skilled	Unskilled
192,920,000	281,200,000	271,703,743	756	5,453

There can be no certainty that companies will actually invest the amount of money they have promised. This is because the ZIC figures show investment *pledges*, which companies can go back on, and not legally binding or actual commitments. For example, Investment pledges worth \$922 million were made between 1994 and 1997, but the actual investment realised in Zambia was only \$379 million.⁵⁸ The assumption is that all the money promised in one year will be delivered very soon afterwards, at least within two years. This is seldom the case. Investment pledges may be spread out over many years. This needs to be taken into consideration when interpreting the prospects for new jobs given by ZIC.

Even assuming that investment pledges do result in hard cash which is invested in Zambian businesses, by and large within the next five years, then the total number of jobs created is still small in comparison to the number of jobs which have been lost. For example, the total of 6,209 jobs which are predicted to result from investment pledges in 1997, will generate, on average, 1,242 jobs a year over the next five years. Assuming the number of jobs created is proportional to the amount of investment, then investment pledges in 1995 and 1996 should also create, on average, an additional 880 and 1,285 jobs per year respectively. Hence employment to total approximately 3,400 jobs per year will be generated by these levels of investment. This degree of job creation is simply inadequate if it is to balance the number of jobs losses, let alone the numbers of young people entering the job market. Over the five years from 1993 - 1998, on average, about 11,000 jobs have been lost in each year.

Stabilisation measures of the kind pursued in Zambia aimed at reducing inflation to encourage investment, and structural adjustments, to include rationalisation, have caused high short and medium term unemployment. Liberalisation of trade and industry has resulted in increased competition and the closure of inefficient businesses. Privatisation has required the liquidation of firms which are not attractive for investment and the reduction of overmanning, either before or after an enterprise is sold, in those firms which survive. Similarly, the pursuit of a low inflation economy conducive to investment through macro-economic stabilisation has been characterised by swinging cuts in public expenditure. In this context, public sector reform has meant extensive redundancies throughout the civil service and any action by the Government to cushion the impact of unemployment has been severely curtailed.

In the absence of measures to mitigate their adverse impact on employment, such policies are incompatible with the obligation under article 6(2) to pursue policies to achieve full realisation of the right to work and progress towards full employment.⁵⁹ Citing the prospects for employment in the long-term - especially in a situation where foreign direct investment is not creating sufficient new jobs - is not sufficient to constitute progress towards the realisation of the right to work.

The World Bank has conceded that, despite structural changes to Zambian industry implemented as a basis for growth, employment has contracted: 'In summary, the liberalisation of trade and industrial policy (like the whole adjustment program) has been necessary to set the stage for future growth. However, the short-run impact will be hard for those in previously protected enterprises, pushing more families into poverty.'⁶⁰ The Bank expressed this view in its 1994 *Poverty Assessment*. Since that time, as the figures on redundancies and business closures attest, the situation has got worse, not better. Five years down the line, neither growth nor new employment have been delivered. This begs the question as to when the promised future will arrive. In the meantime, it must be recalled that the adverse impact of structural adjustment on the enjoyment of economic, social and cultural rights is a matter of particular concern to the Committee and that the protection of basic rights should, to the maximum extent possible, be integral to adjustment policies.⁶¹

2. *The extent and nature of work in the informal sector*

a. **The rise of an unregulated informal sector**

Given the scale of public and private formal sector redundancies envisaged in the short and medium term, the economic future of many Zambians will be increasingly dependent on employment in the informal sector. The MMD Government has recognised the role to be played by the informal sector in containing unemployment.⁶² A broad definition of the informal sector includes subsistence farmers as well as those either self-employed or working for wages in unlicensed and unregistered businesses. The focus here will be upon the informal sector in urban areas. A closer examination of employment opportunities and conditions in the informal sector is essential in order to judge whether it offers a viable means through which the majority of Zambians can survive and realise improvements in their standards of living.

The provisions in the Covenant to protect the rights of workers under articles 6, 7 and 8 are applicable to both the formal and informal sectors. In the context of the drive to deregulate employment in Zambia, it is particularly important that issues of fair wages, working conditions, health and safety, training, and worker representation and consultation are addressed.

The Committee's concern with the spheres of both formal and informal sector employment is evident by the nature of information it seeks to assess compliance, as specified in its reporting guidelines. In respect of the realisation of safe and healthy working conditions under article 7 of the Covenant, a State party is required to indicate 'which categories of workers, if any, are excluded from existing schemes by law and what other categories benefit from such schemes only insufficiently or not at all.'⁶³ Similarly, there is a requirement that information is provided on which categories of workers are excluded by law or in practice from the enjoyment of rights to rest, leisure, reasonable limitations of working hours, periodic holidays with pay and remuneration for public holidays. A State party is required to outline what measures are contemplated or currently taken to remedy a situation in which certain groups do not enjoy these rights.⁶⁴ In order to assess whether work provides an adequate standard of living *vis-à-vis* article 11, a Government must provide details on the proportion of the working population holding more than one full-time job.⁶⁵ Furthermore, the Committee seeks information on average and minimum wages set against the perspective of the cost of living.⁶⁶

In 1997, the ILO Governing Body's Committee on Employment and Social Policy considered a report of the UN ACC Task Force on Full Employment and Sustainable Livelihoods which examined the labour situation in Zambia and six other countries.⁶⁷ It was noted that:

'the vast majority of the workforce in the countries reviewed...is either in the agricultural or in the informal labour markets, and hence largely falls outside any regulatory framework. In the poorest countries, owing to the small percentage of organized workers, the regulatory framework itself is nascent and the degree of unionization is low. Insecurity of jobs, poor quality of employment and working conditions and lack of social protection are often found linked to lack of social dialogue and a sound industrial relations framework.'⁶⁸

Informal sector workers - and especially women - are largely unprotected and often face unhealthy working conditions.⁶⁹ Job insecurity, inadequate worker protection, and health and safety were all highlighted as issues of concern following labour market deregulation. While recognising the need for a degree of labour market flexibility to attract investment, the Committee concluded that a lack of minimum economic and social protection threatens growth and sustainability and that 'long-term growth and stability is best fostered through a degree of flexibility and full respect for workers' basic rights'.⁷⁰

b. **The size of the informal sector**

Informal sector employment was estimated at 2.3 million in 1993, comprising 1,800,000 people working in agriculture and 500,000 more earning their living in non-agricultural activities, mainly small-scale trading. In 1993, the economically active population stood at 3.5 million. Hence, at that time, the share of informal sector employment was two-thirds of this total. Since 1993, the size of the informal sector has increased even further. The latest figures for 1996 record a labour force of 4 million, out of which 600,000 are classed as unemployed.⁷¹ The number working in informal sector jobs - defined as where a worker is not entitled to pension, gratuity or social security, paid leave and is employed in establishment with 5 or fewer employees - is given as 2.5 million.⁷²

Once more, the vast majority of 1,920,000 worked in small-scale agriculture compared to 532,000 engaged in non-agricultural activities. In poor urban areas, 53 per cent of men and 75 per cent in were characterised as employed in the informal sector.⁷³ About a fifth of those in employment in 1996 had a secondary job.⁷⁴

In relative terms, three-quarters of the employed population were working in the informal sector in 1996. This is significantly lower than the 85 per cent cited by the ILO. Indeed, given that the Central Statistical Office records the number in formal paid employment in 1996 as 479,400, and taking into consideration the number classed as unemployed, on this basis the expected size of the informal sector would be nearer 3 million.

c. Characteristics of those working in the informal sector

Given the number of people in Zambia who work full or part-time in the informal sector, it is apparent that there will be considerable diversity across this workforce. Nevertheless, some generalisations are useful.⁷⁵ Broadly speaking, four categories of people make up the informal sector. First, there are those with traditional skills - for example, those making reed baskets and mats, or producing charcoal - who meet a need which cannot be met by the formal sector. Second, there are those who used to be employed in the formal sector. In a survey of informal sector businesses in Lusaka in 1995, this group made up one quarter of the total.⁷⁶ The majority of these people had lost their jobs due to retrenchments brought about by privatisation, liquidations or the poor economic performance of businesses. This pattern is repeated in other urban areas. For example, the World Bank, in its 1994 *Poverty Assessment*, made reference to the atmosphere in Chipulukusu township, Ndola: 'the compound was rife with testimonies of firings, sudden lay-offs by local industries and mass retrenchment, leaving an impression of a compound confronting the harsh realities of structural change in the economy very abruptly, with little time to adjust.'⁷⁷ A recent survey of informal trading in Kitwe in the Copperbelt estimated that the rate of entry into informal sector trading increased by 400 per cent between 1991 and 1995, coinciding with the period of liberalisation and privatisation.⁷⁸

A third group, one out of every ten, had formal sector jobs but were looking to the informal sector to supplement their income. It is most revealing, however, that by far the largest group is to be found in the final category, those who have never had formal sector employment. This was the situation of 65 per cent of those surveyed in Lusaka. Few of those earning a living in the informal sector do so out of choice. Of those traders who gave a reason for starting up a small business, less than two in every ten said that they had done so because they actually preferred to work in the informal sector.⁷⁹

In the Lusaka survey, three quarters of informal sector workers were involved in trading, and about a fifth in small-scale manufacturing or services. Of those working in the trade sector, nine out of ten were in the retail trade - street vendors, market stall holders, those selling small items and newspapers to car drivers at the traffic lights. Most informal traders come from shanty settlements and live in high density housing. However, a quarter come from medium density areas. This shows the increasing impact of retrenchments on the urban middle classes and former semi-professionals. In 1986, only one in ten of those in the informal urban sector had secondary education. By 1996, this had risen to four people in every ten.⁸⁰ The majority of informal traders are women and a disproportionate number of female divorcees and widows appear in the surveys. Hence a sizeable proportion of female headed households make a living in this way.

d. Business failure and insecurity

A significant majority of informal sector businesses in Lusaka in 1995, over seven out of every ten, were less than four years old.⁸¹ Almost half were less than one year old, indicating either the recent nature of the switch to the informal sector or the short life-span of most businesses in a notoriously insecure and unstable operating environment. Selling goods at a time when people have little money is very difficult. This situation engenders fierce competition and the inevitable failure of people to stay in business: 'Most operators who had closed businesses during the period one year prior to the survey cited lack of business for closing....At Soweto market, some vegetable sellers interviewed said profit margins were very low because of stiff competition. As a result some operators run out of capital and end up closing their businesses. They said it was very difficult for them to borrow money from financial institutions to run their businesses.'⁸² Insecurity is heightened by traders operating from illegal stands. A lack of security of tenure brings with it the threat of eviction - please refer to Section 2(III) for an account of recent actions by Lusaka City Council to clear areas of informal traders.

e. Informal versus formal sector earnings

It is necessary to distinguish between a minority of entrepreneurs who make a good living in the informal sector and who are increasingly taking on employees and the vast majority who either work for low wages or barely make a living selling food, a few clothes, or small trinkets. For those paid a wage, the average formal sector monthly pay packet in 1995 was K94,503.⁸³ This compares with a wage of K63,786 in the informal sector in Lusaka. Entrepreneurs in the informal sector are increasingly taking on employees. For example, half of those working in the trade sector were paid employees. For non-wage earners - those who own their own businesses and are self-employed - average net profits in the informal sector are higher than the average formal sector wage by some K45,000 per month. Yet this average hides the true distribution of these profits which favour a minority of entrepreneurs doing well compared with the majority who are doing badly. In fact, almost two thirds of informal sector businesses in Lusaka were recording a profit of less than K75,000 per month, only a little over three quarters of the formal sector wage. Furthermore, the poorest third, mainly traders, were making less than K25,000 a month.⁸⁴ It must also be noted that profits do not necessarily equate to earnings as money must be reinvested in a business to keep it viable.

The general perception is that many work in the informal sector in order to top up their overall income. While it must be acknowledged that the boundary between formal and informal sector work is a fluid one, nine out of ten operators in the Lusaka survey rely on the informal sector as their sole source of income. A crucial question is whether people earn enough to live on.

When comparing wage levels between the informal and formal sectors, the overall context is the extreme poverty of the vast majority of Zambians. Recent figures for 1996 show that almost two-thirds of Zambian households had a monthly income of less than K76,000 (\$63).⁸⁵ With an average household size of five, this is equivalent to an income per person of less than fifty cents per day. Urban household incomes were three times the level of those in rural areas.⁸⁶ The average monthly income for households headed by a parastatal employee in 1996 was K270,000 (\$225).⁸⁷ With the proviso that it is household income rather than salaries which are being measured, there already appears to be a discrepancy with private sector earnings: the comparable figure for a household headed by a formal private sector employee was K147,500. For households headed by a person working in the informal private sector, the mean monthly income was just K65,910.⁸⁸ Given low levels of pay and the rising cost of living across the board, it is not surprising that levels of urban poverty are on the increase.⁸⁹ The Catholic Commission for Justice and Peace has calculated that the cost of basic monthly requirements for a family of six in Lusaka was K170,592 in January 1996 and K197,700 a year later in 1997.

B. Worker consultation and the handling of retrenchments: the right to just and favourable conditions of work

The analysis which follows will be divided into two subsections. (1) In the first, the issue of the availability of information to workers on the prospects of a company will be examined. Given the scale of privatisation in Zambia, and the wave of redundancies which have followed in advance and in the wake of that process, it is vital that employees are kept informed of developments which affect their future. This applies both to the period during which businesses are prepared for privatisation, during the actual negotiation of the sale itself, and after the deal has been concluded. (2) A second subsection will consider the way in which redundancies have been handled. When job losses are inevitable, it is essential that those affected are treated fairly, in accordance with transparent and just procedures which prevent discrimination and offer protection from arbitrary dismissal. The way in which redundancies are handled falls within the scope of aspects of the right to work and the right to fair and just conditions of work.

1. Information on the prospects for employment and redundancies

It is germane to examine the extent to which workers in State owned enterprises earmarked for privatisation have, firstly, been consulted on employment policy, and, secondly, have been kept informed about employment issues as privatisation proceeds, especially as these pertain to planned redundancies.

The Committee, in its consideration of a State's compliance with the Covenant in realising the right to work, has specifically endorsed the relevancy of the ILO Employment Policy Convention, article 3 of which requires:

‘In the application of this Convention, representatives of the persons affected by the measures to be taken, and, in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies.’

The absence of information on measures taken by the Zambian Government to consult workers on employment policies and their implementation has prompted the ILO’s Committee of Experts to call repeatedly for clarification of the Government’s position:⁹⁰

The Committee recalls that consultations with representatives of the persons affected by the employment policies provided for in the Convention should aim at securing their cooperation in formulating and enlisting support for those policies, and should cover all aspects of economic policy which affect employment. Furthermore, given their importance in the working population, workers in the rural and informal sectors should be associated with these consultations. The Committee cannot emphasize sufficiently the importance of this provision of the Convention, and would be grateful if the Government would state the manner in which all representatives of all the persons affected by the measures to be taken are consulted on employment policies, “with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies”.⁹¹

A Tripartite Consultative Labour Council - made up of employer, union and Government representatives - has been established in Zambia to advise the administration on all labour matters.⁹² However, the decisions it reaches need not be incorporated into Government policy. In August 1998, the MUZ complained in public that ZCCM and the Government was failing to keep the union informed over developments in the sale of mining operations.⁹³ At a conference convened to discuss the formulation of policy both prior to and after privatisation, the MUZ’s Director of Economics and Research stated that debate over the best mode of selling ZCCM was unduly discouraged.⁹⁴ The MUZ was faced with ensuring that practical arrangements were in place to cater for massive redundancies in the mining industry. Of particular concern to the union were the issues of employee retention, investor liabilities in respect of funding the cost of severance packages, and the delinking of company pension funds from the ZCCM Mukuba Pension scheme after privatisation. The current influence of unions at the national policy level was described as symbolic in the absence of legislation guaranteeing that they be consulted over the privatisation process.

It is the responsibility of the ZPA, and in particular its Social Impact Department, to ensure that workers in State owned enterprises are kept fully informed about how the sale of their company will affect them. Yet, in reality, ZPA has only a limited role to play in addressing the impact of privatisation. Very little information about the work of the Social Impact Department is published by ZPA. The last time was in *Progress Report 3*, covering a run down of the Department’s activities over the period July to December 1993.⁹⁵ By that time, seminars had been held with personnel in the first and second waves of companies to be privatised, but it is unclear whether participation extended to all employees or to management alone.⁹⁶ ZPA itself concedes that employees were unprepared for changes to their contracts after the first privatisations and that many parastatal sector employees viewed the intended private sector owners ‘with suspicion and mistrust’.⁹⁷ The Social Impact Department has also undertaken an employment and labour survey of State owned enterprises. This was used in negotiations to establish the position of potential buyers on existing employment issues and was also used as input to the National Social Safety Net - please refer to Section 3 for a critique of this.⁹⁸ These sporadic information initiatives make a mockery of the claim that ‘[t]he impact of the privatisation programme on the people affected has been a prime consideration since its inception.’⁹⁹ Furthermore, because the ZPA concerns itself almost exclusively with the run-up to privatisation of a State owned enterprise, it does not offer guidance to retrenched or employees after a firm has been sold.¹⁰⁰

Of the greatest importance to Zambians are the concrete plans which prospective buyers or new owners have for contraction or possibly even expansion. Despite, or rather because of, its importance, very little employment related information is available. In most instances, plans for the expansion or contraction of the labour force do exist, but these are not made available to the public. The ZPA admits that it is lacking when it comes to hard information about the probable impact of privatisation. It also tends to conceal what it already knows. Part of the criteria for evaluating bids and making the sale award depends not only on the price offered, but also on the bidder’s commitment to continue operating the business and their ability to do so as shown by their track record;¹⁰¹ the extent to which the proposal offers job protection or retrenchment to employees; and a business plan for upgrading the performance of the company and the potential for job creation.¹⁰² All of these factors are of the utmost importance in determining the extent to which a sale is in the interest of employees, their families and local communities.

Under the Privatisation Act, everyone, whether employees of a company or members of the general public, are entitled to know details of who is bidding and the bid prices, and in the case of sales by public tender, the reason why the

winning bid was preferred over all others.¹⁰³ However, beyond the price offered, the ZPA does not supply any further details about how bids meet these other criteria. Although the ZPA will be privy to details of the bidder's plans for a business - it has publicly acknowledged that, during negotiations, buyers will normally give details of which employees they will keep and which staff they will let go in accordance with their plans to make a business profitable - no more information is published to enable members of the public to weigh up the merits of each bid for themselves.¹⁰⁴ Given that future plans for the size and nature of the work force are supposedly taken into consideration when assessing and ranking a bid, there are strong grounds for arguing that this information should be reproduced by the ZPA in its progress reports on the sales to date.

2. The way in which redundancies have been handled

It is telling to note that while Zambia has no formal employment policy, it has drawn up a National Policy on Retrenchment. This acknowledges the adverse consequences of economic reform, in particular the privatisation programme and the Public Sector Reform Programme, for employment levels.¹⁰⁵ The policy offers guidelines on how redundancies are to be handled and how 'excess labour will be directed towards the growth sectors of the economy, through interventions such as training and resettlement'.¹⁰⁶ The preoccupation is with managing how retrenchment is carried out, and not with combating unemployment nor targeting measures aimed at helping disadvantaged groups find employment. As such, the retrenchment policy is not a substitute for a full-blown policy on employment

A right to work must encompass not only a right to enter employment, but also a right not to be unjustly deprived of employment.¹⁰⁷ An obligation to respect and protect the right to work implies that a person should not be arbitrarily dismissed.¹⁰⁸ Clearly, there is a distinction to be drawn between the dismissal of individual workers and mass redundancies of the type occurring in Zambia. In the former circumstance, the notion of arbitrariness relates to dismissal without a valid reason.¹⁰⁹ However, in both circumstances, it can be argued that determining the arbitrary nature of a dismissal depends not only on the validity or otherwise of the reason for terminating an employee's contract, but also to the way in which employment is terminated. The ILO Protection of Wages Convention (No. 95) and the ILO Termination of Employment Convention (No.158), both of which Zambia has ratified, set standards for the way in which redundancies are to be handled.¹¹⁰ Furthermore, the Committee has questioned states over the nature of dismissal arrangements.¹¹¹ The Committee has indicated that the questions of the requirement of notice periods and the entitlement to redundancy payments are a legitimate area of concern under the right to work.¹¹² This paves the way for the Committee's consideration of these, and other aspects, of the way in which redundancies have been carried out in Zambia.

In considering the unjust handling of redundancies in Zambia, appeal will be made to the right to work and its corollary of protection from unjust deprivation of employment; to the ILO Termination of Employment Convention; and to aspects of the right to just and fair conditions of work under the Covenant. In the context of Zambia, how an employee is treated depends upon who is and who is not recognised as being made redundant in the first place; it extends into the determination of who is responsible for meeting redundancy payments; and, ultimately, it depends upon whether agreed procedures are adhered to in practice and upon whether employees are actually paid the terminal benefits to which they are entitled.

a. Defining redundancy and entitlement

Both the Redundancy Act (1989) and Employment (Amendment) Act (1997) recognise that an employee is made redundant - and is therefore entitled to terminal benefits - when a business either closes or the work which an employee is contracted to carry out either ceases altogether or is reduced to the point when there is not enough work to go around.¹¹³ A worker is not automatically recognised as being made redundant when a business is sold and his or her contract is transferred to or taken on by the buyer of the business. This has important implications for employees in firms which are privatised and sold off. It means that they are not entitled to their terminal benefits when an enterprise is sold because workers contracts are transferred to the new owners. Workers cannot therefore claim their terminal benefits from a State owned enterprise earmarked for sale then expect to be re-employed by the new owner of the business on a new contract. Redundancy benefits need not be paid when a businesses closes by reason of bankruptcy or compulsory liquidation, nor to casual employees, those on fixed term contracts or on probation, or when an employee has unreasonably refused alternative employment.¹¹⁴

Under the Government's *National Policy on Retrenchments*, employees are entitled to six weeks notice if they are to lose their job. This notice period is somewhat reduced in the Employment (Amendment) Act which specifies that employee representatives must be told within thirty days of the employers intention to terminate a contract.¹¹⁵ The

representative must be furnished with information about the number and timetable for the impending redundancies and must be consulted on measures to minimise the extent of the layoffs, to mitigate their adverse impact, and to help find alternative employment.¹¹⁶ Each employer must register details with the local labour office of the categories of employees to be retrenched, the reason for making them redundant, and when the programme will be carried out.¹¹⁷ The information must be copied to the Government's Special Retrenchment Division.¹¹⁸ On registration, full information on the compensation package to be paid to retrenchees should be provided.¹¹⁹ Payment of compensation is to be made before the last day of duty of each employee, otherwise the employer is responsible for paying full wages until the redundancy package is paid.¹²⁰ These stipulations apply to both the public and private sectors.

In respect of period of notice, consultation of workers' representatives, notification to the competent authority, and severance allowance, the law in Zambia appears to be in accordance with the relevant provision in the ILO Termination of Employment Convention, 1982 (No. 158).¹²¹ It is in practice that the ILO benchmarks and realisation of the right to work under the Covenant are violated. The extent of these violations is documented in the sections which follow.

b. The responsibility for meeting the cost of terminal benefits

i. Requirements under the National Policy on Retrenchments and the Employment Act

In its *National Policy on Retrenchments*, the Government sets out three basic principles by which workers retrenched as a result of restructuring in the civil service and privatisation of a State owned enterprise are to be awarded their retrenchment packages:¹²²

If valid collective agreements governing the award of compensation exist between the employer and employee representatives, then this will determine what each worker will receive.

If a company is being liquidated, then workers will be paid their terminal benefits in accordance with the bankruptcy law.

If neither of these two circumstances apply, then the Government, through its Special Retrenchment Division, will pay a minimum package as contained in the Minimum Wages and Conditions of Employment Act. This is two weeks salary for each completed year of service.

In the principal enacting legislation - the Employment (Amendment) Act 1997 - the formulation stipulating entitlement is simplified to 'such redundancy payment as agreed by the parties or as determined by the Minister, whichever is the greater...'¹²³ It is apparent from the legislation and policy guidelines that responsibility for redundancies prior to privatisation rests with the parastatals themselves, while the new owners are responsible for payments after privatisation. In the case of State owned enterprises prior to privatisation, the ZPA acknowledges that, although the cost of terminal benefits and redundancy payments have usually been calculated for each company, these have not often been matched by existing funds. This is why State owned enterprises are often sold at a substantial discount because new buyers agree to take on the liability for paying retrenchment packages to any employees who are later made redundant. If people are to be laid off while a company is being restructured in preparation for privatisation or if workers lose their jobs while protracted sale negotiations are under way, then finding the resources to pay employees their entitlements is often very difficult.

ii. Obligations arising from the Covenant and ILO Conventions vis-à-vis redundancy payments

Article 7 of the Covenant on the right to just and fair conditions of work reads:

'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular: (a) Remuneration which provides all workers, as a minimum with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind...; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant...;'

To make use of article 7 in the context of the handling of redundancies requires iterating a number of basic principles: it is applicable to all workers at whatever stage in their employment; redundancy payments fall under the definition of remuneration; the failure to pay a redundancy package causes extreme hardship and runs counter to the provision of a decent living; paying benefits to some while denying payment to others amounts to discrimination; and, in interpreting the right to just and favourable conditions of work under the Covenant, it is germane to consider complementary ILO provisions.

First, there is no question that article 7 applies and offers protection to those workers who face redundancy or to those workers who have been made redundant in contravention of internationally agreed standards. The nature and level of redundancy payments, whether stipulated in law, in an employee's contract or by collective agreement, constitute part of the conditions under which a worker is employed in the first place.

Second, it is more than credible to argue that terminal benefits fall within the definition of remuneration. The use of the term 'remuneration' in the Covenant has wider applicability than the term 'wages' and is interpreted to apply, *inter alia*, to any additional emoluments whatsoever such as bonuses or benefits paid by the employer to the worker arising out of the worker's employment.¹²⁴ The definition of remuneration must include the payment of terminal benefits. In accordance with the Covenant, every worker has the right to a *minimum* level of remuneration. In this regard, the Committee has focused on the provision of a minimum wage in its examination of State reports and how the determination of the level at which this is set should take into account the needs of workers, their families and relevant factors such as the cost of living and inflation.¹²⁵ This concept of a minimum applies equally to remuneration due as terminal benefits. To argue how the level of such a minimum ought to be set is, in the context of the situation in Zambia, a moot point given that many workers have not been paid their terminal benefits at all. This circumstance constitutes a clear-cut violation of the right to remuneration.

Third, within article 7 of the Covenant, it is further stipulated that States Parties must ensure remuneration which provides workers with 'a decent living for themselves and their families in accordance with the provisions of the present Covenant.' The fact that many workers who are made redundant, in the absence of universal social security in Zambia, will be in desperate need of the money owed to them as part of their terminal benefits heightens the pertinence of this clause. The non-payment of such benefits threatens violation of, *inter alia*, the right to housing, the right to food, the right to clothing, the right to health and the right to education.¹²⁶ The accompanying text-box is a stark reminder of the human cost of such violations. In Section 2(III) further instances are documented where the non-payment of terminal benefits has cost people their homes.

Fourth, to meet its obligation under article 7(a)(i), the Zambian Government must ensure that all workers receive 'equal remuneration for work of equal value without distinction of any kind.' Once more, this clause has normally been applied in respect of equal wages for those doing the same or comparable jobs.¹²⁷ The inclusion of terminal benefits within the concept of remuneration extends the application of this sub-clause to those situations when some workers in comparable jobs receive their terminal benefits while others do not. There are also instances in Zambia when senior or favoured employees have received a redundancy payment while other employees within the same firm have been denied. This violates the overarching principle that all rights within the Covenant, to include the right to just and favourable conditions of work, must be guaranteed without discrimination as to, *inter alia*, 'other status.'¹²⁸

Finally, having established that redundancy payments fall within the definition of remuneration under article 7 of the Covenant, then the Committee ought to give due consideration to relevant articles in the ILO Protection of Wages Convention 1949 (No. 95) and the ILO Termination of Employment Convention 1982 (No.158) in its consideration of Zambia's compliance with the right to just and favourable conditions of work.¹²⁹

Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract. [ILO Protection of Wages Convention (No. 95), article 12(2)]

A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to- (a) a severance allowance or other separation benefits, the amount of which shall be based *inter alia* on length of service and the level of wages, and paid directly by the employer or a fund constituted by employers' contributions; or (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or (c) a combination of such allowance and benefits. [ILO Termination of Employment Convention (No.158), article 12]

Face to Face
Getrude Kamwale - a retirees relative

by Anthony Mukwita

At an unfinished house in Lusaka's Woodlands township, at least 100 people squat there. These are men and women from all over the country, widows and widowers who are waiting to claim the terminal benefits of their late spouses, brothers and sisters.

Some of them have not been paid since their relatives died in 1990. Since they depend on the goodwill of people in Woodlands to give them a job for a packet of mealie meal and some Kapenta, their lives are unpredictable. They don't know when the sun rises whether they will eat or not.

They are part of the thousands of people around the world that make up the bracket of the poorest of the poorest. They have lost faith in the government and they don't even know about the existence of NGO's involved in fighting for human rights.

The story of these pensioners was first broken by *The Monitor*, *The Post* followed it up and later *The Mirror* followed it up too. In this edition, *The Monitor's* Anthony Mukwita talks to one of the women - Getrude Kamwale - chasing for her relatives retirement package.

This interview was conducted in Nyanja, a local dialect.

QUESTION: What are you doing here at this unfinished house Mrs Kamwale?

ANSWER: I am waiting to get my late brothers terminal benefits from the pensions funds offices.

Q: When did you first come here and where are you from?

A: I first came here in November last year. My mother, my two children and I are from Mazabuka.

Q: So you have been staying here since November, waiting this long for your older brothers terminal benefits?

A: Yes, but I have actually not been here long, some people I am living with here have been camping since 1996 so I am actually lucky.

Q: Why haven't you been paid up to now what do officials at the fund say is the problem with the payment?

A: They say they would very much like to pay us but they have no money for us just yet, maybe they never will have it looking at how long some people have been here.

Q: So how do you feed your old mother and the two children you came with from Mazabuka?

A: Sometimes we eat but several times we don't. What happens is in the morning, I carry the youngest child on my back and move around for some piece work to do in the neighbourhood. I do some washing for people or draw water for others since there is a water problem. When I make a little money we buy some food and hope that I will be able to get another job the next day and life goes on.

Q: Why don't you go back to Mazabuka and do some farming or something instead of doing menial jobs in this harsh city?

A: We have no money to use for bus back home, we used up every ngwee we had on the strength that we would get my brothers benefits...we really would like to go back but how?

Q: Since you seem to be so cash strapped and you only get a job when you are lucky, what happens when you fall sick or one of your children falls sick?

A: Mostly, the children recover naturally when they fall sick because thinking of taking them to hospital is inconceivable. How can we even consider taking them to hospital when we have no money?

Q: This house you stay in seems to be pretty small for the number of people I have seen here, over a hundred, both male and female, how do you manage with the children, do you share your rooms with men?

A: Men have a partition in the house where they sleep and us women have another partition...we share our partition with the children but both men and women have to share the same toilet, there is quite a lot of us here. The house has no windows and doors and we sleep on cardboard boxes or chitenge's.

Q: So what are you going to do when the owner of the house decides to move you out to pave way for completion?

A: Actually, the government, from what we hear, has directed the owner of the house to kick us out in the street because we have been making too much noise about our money in the press. We don't know what we will do when push comes to shove but I guess we will face each day as it comes?

Q: Don't you think it is pretty inhuman for the government to make such a move, especially that it's not by choice that you are squatting here but circumstances are the one that have forced you into this predicament?

A: Absolutely but then we guess the government has its own way of looking at things. We know of big-wigs who have been paid two months after retirement...for us village bumpkins, we have to wait and see.

Q: Have you not tried to approach human rights organisations like Afronet or the Zambia civic education association to help you out of this situation?

A: We don't know about these human rights organisations, and what they do even though we hear about them condemning the government for one thing or another, but I am sure they know about what we are going through, maybe they are too busy for our sort of problem, who knows.

Q: Indeed, who knows, nevertheless, what has been the reaction from the pensions office about your situation, apart from the fact that they have no money of course and the threat of eviction?

A: Well, Mr Shitima, the boss says he does not care about the noise we are making because he has no money so we shall make as much noise as we can and nothing is going to happen.

Q: What do you intend to do with your late brothers money, if you get it at all?

A: If we get it, my mother and I will go back home to Mazabuka and cultivate a little track of land send my children back to school...we have had to pull them out because of lack of money to pay for them.

C. The failure to deliver adequate compensation for those made redundant

Under PIRC II the Government was required to review and adopt a redundancy assistance and compensation program.¹³⁰ The Bank conceded that corporate restructuring - that is the rationalisation of parastatals prior to their sale - would place considerable financial and political pressure on the Government to design a redundancy assistance program.¹³¹ Bilateral and Bank technical assistance was secured to design a suitable scheme. The Bank required the Government to review and adopt this 'comprehensive redundancy assistance and compensation program' as a condition of the second tranche release of PIRC II. Assets at the Government's disposal - shares in privatised companies, urban and agricultural land, the physical assets of parastatals - were to be used to fund the scheme. The aim was to standardise procedures to determine compensation, to develop policies for dealing with redundancy issues in sale negotiations, to determine the value of assets which might be used to fund compensation packages, and to deal with pension fund liabilities.¹³²

The legal and policy framework to deal with redundancy compensation has proved totally ineffective. The Government recognises within its *National Policy on Retrenchments* that the controversy surrounding accelerated redundancies is widespread. It acknowledges two critical problems: the lack of clear policy guidelines to handle retrenchments and determine severance packages; and the inability of both Government and parastatals to meet the cost of redundancies which has resulted either in delays in paying out benefits or in the non-payment of terminal benefits to retrenched workers.¹³³ Time and time again, in company after company, employees have received totally inadequate payments or else have been deprived entirely of their terminal benefits. Thousands of workers are affected. This constitutes a clear-cut violation of article 7 of the Covenant and article 12 of the ILO Termination of Employment Convention. The Bank, by virtue of its failure to ascertain the existence or effectiveness of the required comprehensive redundancy assistance and compensation program under PIRC II, must bear some of the responsibility for this situation.

The list of companies whose employees have received late or reduced redundancy payments, or no payment at all and who are still fighting their claims, is a long one. Most at risk are those workers caught in a situation when either an existing or newly privatised business goes into liquidation. Afronet describes a situation in which those claiming entitlements from liquidators are either refused settlement or else receive paltry amounts of compensation. Increasingly, they are taking the law into their own hands in an effort to secure redress.¹³⁴ They are given no protection under the Employment Act and are last in line to receive the benefits due to them after banks, creditors and suppliers have been paid out of what little money remains. They are entitled only to a small, statutory minimum. In the run up to privatisation, notable closures and liquidations have included the Memaco Group, Zambia Airways, and the United Bus Company of Zambia. The accompanying text-box, based on personal testimony, gives an insight into how the delivery of terminal benefits in the latter enterprise has been confused and arbitrary. A number of recently privatised companies - for example, Zambia Engineering and Contracting Company, General Pharmaceuticals Limited, Kapiri Glass Products, Eagle Travel, and National Drum and Can Company - are currently facing closure or are undergoing liquidation. Many of those who lost their jobs in these companies have been fighting ever since for adequate compensation.

The difficulty encountered in funding retrenchment and retirement is not, however, confined to those companies in liquidation. It affects both parastatals and privatised businesses. The highly centralised Public Service Pensions Board in Lusaka has been described by Afronet as 'the retiree's nightmare,' forcing claimants to travel from across the country only to find that money owed to them could not be paid.¹³⁵ Within ZCCM, a restructuring exercise was launched to prepare for the transformation of the parastatal into an investment company to administer the Government's retained share in its privatised operations. Certain positions were earmarked for rationalisation, yet employees could not be retrenched due to insufficient funds with which to pay terminal benefits. A leaked ZCCM memo from the Director of Human Resources revealed that a number of employees in departments at Mutondo House and Corporate Affairs in Ndola would be put on recess beginning on 1 May 1998 until they were either recalled or they were paid their terminal benefits.¹³⁶ The refusal to accept an alternative job, if offered, would result in the termination of an employee's contract without redundancy benefits. While on recess, those affected would be entitled to their current salaries, various work-related benefits, medical services, and assistance with education and housing.¹³⁷ In the same month, ZCCM was urged by the UNIP Vice-chairman for mines to pay benefits and salaries to widows, retirees and workers who were discharged on medical grounds in the previous year.¹³⁸

On 4 March 1998, 300 ancillary workers in the health, fire, police and administrative departments were placed on enforced leave by the new owners of Chibuluma mine.¹³⁹ Those affected continued to receive pay and work-related benefits. However, the company claimed that it had no funds to pay redundancy packages. On 9 June 1998, police were called to disperse several former ZCCM miners from the General Offices of Roan Antelope at Luanshya who were demanding payment of terminal benefits which were eight months overdue. Many of the miners needed the money to buy houses they had bought.¹⁴⁰ In mid-August, the company said that it would continue to honour conditions of service carried over from ZCCM and purportedly paid out terminal packages worth K1.1 billion to 53 retirees, some of whom

Mr. Mwila and the collapse of UBZ
The battle of retrenched for terminal benefits

When the United Bus Company went into liquidation, Mr. Mwila was retrenched at the beginning of 1995. He had worked for the company for eighteen years.

UBZ collapsed in confusion. Initially, employees received written assurances that their terminal benefits due to them would be paid. It soon became apparent that the company did not have the cash nor the assets to meet its obligations. Within three months, the Ministry of Labour issued guidance that compensation should be paid in accordance with legislation drawn up in 1964. This offered a statutory £200 to each employee, except the amount paid was converted directly into Kwacha. The result? After eighteen years of employment, Mr. Mwila was to receive K200. It was argued that the company had not been closed, but had gone into voluntary liquidation. This meant the employees were not entitled to their terminal benefits.

There was an outcry and Mr. Mwila joined with others to hire a lawyer to fight their case. Yet the case was not solved by the courts. Instead, the President agreed to receive a deputation from the UBZ retrenched. He promised to find funds as compensation - the minimum K1 million, the maximum K4 million - as a humanitarian gesture.

The President's offer was, of course, most welcome. However, compensating workers on humanitarian grounds for what is, after all, a legitimate claim to their entitlement makes the process arbitrary. One year and seven months after Mr. Mwila lost his job with UBZ, he received K2 million. He and some of his colleagues were the lucky ones. The President has not intervened in each and every deserving case when a State owned enterprise has collapsed leaving its former employees destitute without the compensation which is their due.

[Reproduced from *Fact Sheets on Privatisation*, Rights and Accountability Project, 1998. The account given originates from a meeting with a group of a dozen retrenched held in Kitwe on 24 January 1998. The name of the UBZ retrenchee concerned has been changed.]

had worked for over thirty years at the mine.¹⁴¹ On 24 March 1999, a protest was staged by 87 ex-miners, made redundant by Roan Antelope in October 1998, over the failure of the company to pay terminal benefits.¹⁴² Operations at the mine were halted until the protesters dispersed after being assured by management that a meeting would be arranged with the Binani Group chairman who was on a visit to the Copperbelt. The men were joined in their action by widows of former miners, also seeking the payment of entitlements. A total of 190 people assembled at the company offices on 29 March.¹⁴³ However, the agreed meeting never took place as the chairman, Mr. Gokul Binani, had already left for Lusaka without informing the demonstrators or attempting to address their grievances.

Even when the non-payment of benefits contravenes Zambian law, the inability of the courts to provide remedy to those who have not received their entitlements is apparent. To cite two examples, workers retrenched from Mansa Batteries in 1993 have not received their terminal benefits; neither have 300 Bank of Zambia employees retrenched in 1994.¹⁴⁴ Court orders to pay ex-employees have simply been ignored. Provision within the Privatisation Act to allow some of the sale proceeds to be used to fund redundancy payment schemes has not been utilised to any extent, mainly because the money generated has been swallowed up in running the ZPA or else has been diverted out of the Privatisation Revenue Account. No systematic attempt has been made to allocate a fair and equitable amount of money to assist people who find themselves without a redundancy package as a direct result of privatisation. In the debate surrounding the adoption of a report on privatisation by the Parliamentary Committee on Public Investments, the ZPA was called upon to review its social policy and ensure that terminal benefits due to retrenched were agreed and paid before a sale was finalised.¹⁴⁵

Furthermore, there is a lottery in which some receive compensation while others, equally deserving, lose out. This has frequently happened when employees are given the opportunity to purchase houses as sitting tenants at seemingly attractive prices in return for the cash which would have been paid to them from their terminal benefits. The ZPA confirms that the 'payment of terminal benefits can be immediate, deferred, cash or kind or any combination developed by the parties involved.'¹⁴⁶ In other words, these arrangements are often put in place because a State employer, or ultimately the Government, does not have the money to meet the cost of retrenchment packages.

Three serious problems arise as a consequence of such arrangements. First, employees are forced into accepting payment in kind when many would have preferred a cash payment. For example, most miners would rather they were paid terminal benefits at the end of their contracts with ZCCM itself and then be re-employed on fresh contracts by the new owners, should a buyer be found. This has been ruled out on the grounds that neither the company itself nor the Mukuba Pension Scheme have the cash to meet payment should such massive demands be made all at once. In any case, the Redundancy Act does not automatically recognise the situation when a contract is transferred from an existing employer to a new owner as redundancy and hence terminal benefits cannot be claimed.

Second, many employees do not know how much their terminal benefits are worth and therefore may even find themselves in 'negative equity' or debt if the price of the house is greater than their eventual entitlement. The 229 workers retrenched by the Copperbelt Energy Consortium - the new private sector owners of the former ZCCM Power Division - were paid their terminal benefits. However, some retrenched reported that their benefits were absorbed by loans and payments for company houses. A number of those affected were left with debts to ZCCM of K3 million.¹⁴⁷

Third, if they are then made redundant, retrenched are saddled with paying council rates and other costs on a house in an area where there may be little work. Those ancillary workers placed on enforced leave by Metorex at Chibuluma

mine expressed their concern that terminal benefits due to them would be entirely absorbed when set against the high purchase price of houses which they had bought. At the same time, having given up cash compensation for being made redundant, they are left without a lump sum to tide them over a difficult period or money to invest in a small business of their own.

D. The failure to safeguard conditions of employment

1. Labour law reform

Under its liberalisation program, the MMD Government's objective in respect of employment legislation has been to free the labour market from what it regards as excessive State intervention. Overall, it has sought to frame legislation to guarantee more efficient and cost effective contractual arrangements between employers and workers and to promote good labour relations for the purpose of attracting investment.¹⁴⁸ The World Bank has been proactive in its support for the revision of labour-related legislation in Zambia under its ESAC II credit:¹⁴⁹

‘The amendment of the Employment Act will repeal the article relating to the provision of housing or housing allowance by the employer (thereby making the labor law consistent with the National Housing Policy) and will relax the definition of casual labor in order to accommodate the short, intermittent and geographically shifting demand for labor by such industries as construction. These changes will reduce the housing related cost and improve the absorption of labor in the economy. The amendments to the Industrial and Labor Relations Act will enable each enterprise to have separate collective bargaining, as opposed to the sector-wide bargaining mandated by current law, so that labor benefits will be commensurate with the capacity of each enterprise to pay thus facilitating market entry.’

The second tranche release of funds from the credit was made conditional on the approval of this revised legislation by the Zambian Government. Both sets of amendments were duly adopted. The extent to which adequate working conditions have been safeguarded or disregarded during the transition to a free market economy depends upon the precise nature of this revised legal framework.

The Industrial and Labour Relations Act (1993), while it removes elements of compulsion in respect of union membership, also undermines sector-wide collective bargaining and seeks to impose undue controls on the way in which unions conduct their own affairs and to restrict the circumstances under which strike action is deemed legal. The ILRA is given full consideration in the next subsection on trade union rights.

Under the revised Employment Act, worker housing and welfare are now negotiable matters. Unless housing, or loans and mortgage guarantees to buy housing, are agreed in advance in a collective agreement, an employment contract or in the general conditions of service, an employer has no legal duty to provide them.¹⁵⁰ In the same way, the provision of medical services must be agreed with each employer who has no obligation to supply such services in law.¹⁵¹ In respect of casual labour, the term is defined to mean ‘any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months.’¹⁵² Furthermore, any contract between an employer and an employee under sixteen is automatically considered to be a daily contract.¹⁵³ Casual employees are not entitled to redundancy payments.¹⁵⁴

A State party is not required under the Covenant to ensure that employers provide homes for their employees under the right to just and favourable conditions of work.¹⁵⁵ In certain cases and in certain industries - for example, in mining - it could be argued that the ending of mandatory medical services impinges upon the right to safe and healthy working conditions.¹⁵⁶ However, in respect of both housing and medical services, other rights and obligations of the Covenant must be taken into consideration. First, the obligation of progressive realisation means that regression in the right to health or the right to housing caused by the revision of the Employment Act is unacceptable. Hence while the responsibility for providing housing and medical services may be removed from the employer, it is incumbent upon the Government to ensure that transitional arrangements are in place to protect employees and their dependants from a deterioration in respect of the corresponding rights. Evidence is presented in Section 2(III) that the disposal of employee housing in advance of privatisation has taken place in the absence of proper regulation or suitable financial arrangements and has resulted in inequity, indebtedness, eviction and overall violation of the right to housing.

Certain privatised businesses - despite pledges to the contrary - have sought to withdraw housing subsidies. In one instance, this sparked unprecedented social unrest on the Copperbelt - please refer to Section 2(IV) for further details. Article 7 of the Covenant is infringed because workers' pay does not rise accordingly when in-kind benefits such as housing and health care are withdrawn. This threatens fair wages;¹⁵⁷ it also prevents employees from earning a decent living for themselves and their families.¹⁵⁸ Moreover, Zambia has ratified ILO Social Policy Convention (No. 117), article 11(7) of which reads: 'Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.' In Zambia, parastatals such as ZCCM have operated as a parallel administration making provision not only for housing and health facilities, but also for water, electricity, sewerage systems, and infrastructure. This applies not only to the mine townships, but to the wider community. The debacle surrounding the utter failure to take steps to plan for the takeover of this vital social support after privatisation is also considered in Section 2(IV) *vis-à-vis* the Covenant.

As always, it is necessary to move beyond the level of law to the level of practice. Hence immediate consideration is given in the subsections which follow to the actual consequences, both prior to and after privatisation, of labour-market deregulation in a depressed economy: unpaid or reduced wages, the withdrawal of allowances and work-related benefits, an increased use of casual employees. This denial of the right to just and favourable has been allowed to occur in the absence of official monitoring.

2. *The deterioration in working conditions*

Working conditions in the parastatal and public sectors have deteriorated both prior to, and immediately after, privatisation thereby seriously diminishing the realisation of article 7 of the Covenant. Moreover, in respect of the Privatisation Act, the right to just and favourable working conditions is threatened by a failure of omission. No adequate provision has been made for the monitoring of employee rights either during or after privatisation.

a. Safeguarding working conditions prior to privatisation

In the run up to the sale of state owned enterprises, many operations have sought to reduce costs in order to improve, or at least maintain, their financial viability. In some firms, asset stripping by managers and other establishment figures has been rife, despite measures designed to prevent this under the Privatisation Act.¹⁵⁹ Other firms have simply been starved of funds as Government subsidies are withdrawn, parastatal customers fail to pay their bills, and credit facilities are suspended. In these circumstances, workers in parastatals are either not paid in full and entitlements are withdrawn, they are paid late, or else they are not paid at all.

On 13 January 1998, 373 miners at Nkana refused to work in protest over ZCCM's failure to pay overdue production bonuses.¹⁶⁰ Armed riot police were drafted in by mine managers to keep vigil over the miners who occupied the plant before returning to work after an intervention by the MUZ. While ZCCM acknowledged that production targets had been exceeded, it was not possible to pay the bonuses because the company had been unable to meet specified unit production costs. The strictures imposed on ZCCM under a World Bank supported action plan required the company to increase productivity.

During the previous week, miners at Mindolo and Luanshya refused to go underground until production bonuses owed to them had been paid. Their situation is complicated by the fact that the mines have been sold while the non-payments relate to production under ZCCM.¹⁶¹ In the following month, suppliers on the Copperbelt, owed millions of Kwacha by ZCCM since the previous November, reported that production had been halved because of their inability to purchase raw materials. They admitted that they were unable to pay their own workers as a consequence.¹⁶² Later in the year, 243 casual workers employed by Techpro Zambia, a ZCCM subsidiary, paralysed operations at the Luanshya smelter after downing tools in a protest over the signing of new contracts which exempted their dependants from the company medical scheme. The workers were described as 'mere casuals' who were not entitled to certain working conditions, although ZCCM management promised to address their concerns.¹⁶³

In those businesses facing receivership, the situation is particularly acute. Severe and continuing financial problems at Nitrogen Chemicals Zambia caused extreme hardship for workers and their families and repercussions in the wider community.¹⁶⁴ NCZ had been earmarked for sale to the South African company Sasol, but negotiations with ZPA broke down because of disagreement over the scale and funding of NCZ's existing liabilities.¹⁶⁵ The union at NCZ reported that salaries - already frozen at a very low level - had not been paid for three months, leaving workers and their families destitute. The union's vice-chairman had been suspended indefinitely by the company on 6 April 1998 for alerting the

media to the desperate plight of employees. 4,000 workers and their families took part in mass demonstrations on 7 April 1998. A spokeswoman for the spouses of NCZ employees said that children were being fed only on toasted grain and that seventy per cent of houses in Kafue had been disconnected from water and electricity supplies because of the inability of company employees to pay service charges. In response, the Minister for Lusaka Province appealed to ZESCO and the district council to desist from carrying out disconnections. Indeco Estates, owed K800 million in rentals by NCZ, threatened residents with eviction. A petition, delivered by the children of workers, read 'We are starving and a lot of our friends have been threatened to be thrown out of school because our parents cannot pay school fees.' It continued, 'Mr President our future depends on our parents and help us by providing job security to them.' Placards carried by the children carried emotive messages: 'How many street kids is Zambia going to have?'; 'Save NCZ from collapsing'; 'Liquidations lead to no food, no electricity, no shelter, poor health.' The ostensible contrast with the rights protected under the Covenant is stark.

In the public sector, the severe controls on public expenditure - the reduction of departmental budgets and the introduction of strict cash budgeting - have resulted in wage freezes, the curtailment of work-related benefits, and, increasingly, a failure even to pay Government workers. In 1997, the Government failed to honour the existing collective agreements with the Civil Service Union of Zambia and the National Union of Public Service Workers in respect of pay increases. The Industrial Relations Court found in favour of the unions and ordered the Government to make the award. The then Finance Minister described the ruling as irresponsible and was found in contempt of court. It has been observed that the reason behind the Government's decision to refuse to implement the agreement was its preoccupation with satisfying the benchmarks agreed with the IMF.¹⁶⁶

Despite the award, the CSUZ, like so many other unions in Zambia, was unable to protect the purchasing power of employees. CSUZ members received gross monthly wages of between K90,000 and K149,000 in 1997.¹⁶⁷ As has been noted, the minimum monthly living wage for a family of six in Lusaka was calculated at K197,000 in the same year.

The situation worsened when, in a Parliamentary statement on 26 November 1997, the Minister for Labour and Social Security announced a public sector pay freeze effective until the end of 1998. The ZCTU alleged that the Government, by announcing its intent without union consultation, had violated ILO conventions on collective bargaining, labour relations and public service bargaining.¹⁶⁸ Afronet maintains that the Government's unilateral imposition of the wage freeze was a violation of the ILO Tripartite Consultation Convention 1976 (No. 144) to which Zambia is a party.¹⁶⁹ The Government refused a written request from the CSUZ, the NUPSW, and the ZCTU for talks. Twenty-two affiliates of the ZCTU threatened major industrial action and union demonstrations around the country went ahead on 26 January 1998.¹⁷⁰

The CSUZ and the NUPSW took the matter of the pay freeze to the Industrial Relations Court. To its credit, the IRC ruled the freeze illegal and directed the Government to pay a salary increase of forty per cent, effective from 1 January 1999.¹⁷¹ The Government exercised its right of appeal;¹⁷² however, the case was dropped and a circular was issued by the Ministry of Labour signalling the retraction of the wage freeze.¹⁷³

In June 1998, University Teaching Hospital Workers went on strike demanding payment of long-service bonuses dating back to 1995, as well as leave and travel benefits.¹⁷⁴ The eighty doctors concerned were threatened with disciplinary action and, in the following month, a new law was passed conferring powers on the Medical Association of Zambia to punish doctors at public health centres for engaging in strike action.¹⁷⁵

In the same month of June 1998, Copperbelt magistrates issued an ultimatum to the Civil Service Commission to increase salaries as agreed in July 1997 or else face strike action. An appeal was made to the Auditor General to investigate financial irregularities.¹⁷⁶

Some of the most acute problems in the public service sector have been suffered by those in the teaching profession and in local government. Staff at the University of Zambia went on strike for a week in August 1998 over pay and conditions, watched over by paramilitary police.¹⁷⁷ Indeed, Afronet highlights how attempts to protest over poor conditions of service were met with force by the State, citing the use of tear gas by riot police to break up peaceful, if angry, protests by teachers at the Ministry of Education and State House in October 1998.¹⁷⁸ Warnings of industrial action by primary and secondary teachers in Masaiti District, the Copperbelt and Lusaka over delays in the payment of salaries threatened national unrest.

Wives of employees at Choma district council staged a protest at the council's offices over the failure of the local authority to meet their husbands' salaries for over a year.¹⁷⁹ The ILO's Committee of Experts noted that it had received information from the Zambia Congress of Trade Unions (ZCTU) attesting to the fact that local authorities had failed to pay the wages of employees for periods of between two and nineteen months. Article 12(1) of the ILO's Protection of Wages Convention 1949, which Zambia has also ratified, requires that '[w]ages shall be paid regularly.' This situation

affected close to 10,000 workers and 100,000 other persons, including the families of employees. The Government failed to respond to the initial request for clarification, prompting the Committee of Experts to issue a public observation asking the Government to report in detail in 1999.¹⁸⁰

b. Safeguarding working conditions after privatisation

The safeguarding of working conditions in a firm after privatisation ought to begin during negotiations for the sale of an enterprise.¹⁸¹ When a buyer has been selected, the negotiating team has overall responsibility for securing the best possible deal and for ensuring that agreement is reached on all issues of concern to the Government of Zambia. A major consideration is the specification of investment pledges. The ZPA states that there is a requirement that retained workers will enjoy conditions of service under new ownership at least comparable to their parastatal terms, although such a stipulation does not appear in the Privatisation Act.¹⁸² Hence the negotiating team is responsible for ensuring that certain conditions with regard to the rights and protection of employees are built into initial pledges (known as memorandums of understanding) and the final sale and development agreements themselves. The ZPA makes it clear that: 'employees are employees of the SOE [State-owned enterprise] not of the businesses' owners or shareholders and, consequently, existing contractual arrangements, like conditions of service and collective agreements, are legally binding and are transferred unchanged unless renegotiated by the parties. These contracts of employment cover terminal benefits like redundancy payments, pensions, long service gratuities etc.'¹⁸³

There are, however, three potential problems with these arrangements. First, the strong negotiating position of some new investors has resulted in development agreements which do not offer cast-iron guarantees over working conditions or social provision to workers and their families. Such agreements are confidential, but one which has come to light as the result of a court case is critically reviewed in Section 2(IV). Second, existing collective agreements are often superseded by new agreements. Indeed, the Industrial and Labour Relations Act (1993) requires a new employer to register with the Commissioner of Labour and enter into union recognition agreements which itself triggers the negotiation of a collective agreement.¹⁸⁴ Many of the new buyers will have a strong hand in bargaining over the future of such agreements and contracts when the real threat of redundancies hangs over the work force. In the context of the need to resurrect Zambian industry through significant investment, there is a perception among sections of the investor community that the price to be paid is an acceptance of diminished employee rights: 'Workers will have to sacrifice and be patient for them to start enjoying the so called international standards. They will only reach that level if the whole national economy reaches such standards.'¹⁸⁵ Finally, over and above the role played by unions, it is unclear whether the ZPA or a new Government body will be set up to monitor newly privatised businesses and ensure that stipulations in the sale agreements continue to be adhered to. Evidence of a deterioration in working conditions is growing.

The ICFTU, in its 1999 annual report of violations against trade unions, records that, in the case of Zambia, '[t]here were increasing complaints from workers - mainly in newly-privatised companies, often foreign-owned, of racial harassment, unfair treatment, denial of the right to join trade unions and poor working conditions.'¹⁸⁶ In January 1998, the ZCTU condemned job losses, the failure to honour terminal benefits, the non-payment or late payment of wages and worker exploitation during the previous year. The union accused new investors of hiring people on insecure contracts for meagre pay.¹⁸⁷ Particular attention was drawn to the circumstances of workers in the trade sector. In the following month, the Zambian Human Rights Commission confirmed that it had been inundated with complaints from workers at the South African owned Shoprite supermarket chain complaining of mistreatment, long working hours, no overtime pay, slave wages and a protracted delay in the signing of a union recognition agreement.¹⁸⁸ It promised to investigate any conflict of interest between liberalisation policies and working conditions.¹⁸⁹

The Kansanshi branch of the MUZ indicated that the 150 local jobs which Cyprus Amax had claimed to have created during the exploration phase of its operations at the mine were casual posts not covered by agreements on working conditions.¹⁹⁰ The union expressed its concern over the fate of 55 youths, formerly employed in small-scale operations at Kansanshi by ZCCM, who had been engaged on a contractual basis as part of a Government-backed skills training project. They were denied full benefits on termination of their contracts because of their status.¹⁹¹

In July 1998, 750 workers across all twelve departments in the recently privatised Scaw foundry went on strike over poor salaries.¹⁹² They demanded a promised wage increase, the payment of terminal benefits for those workers made redundant or who had retired since the firm was sold, and the dismissal of company officials who were characterised as insensitive and, in one case, corrupt. Scaw had been sold to the Indian BK Engineering Group of Companies, part of the same company, Binani Industries, which had purchased the Luanshya and Baluba mine. Since privatisation, an agreed daily amount in lieu of food had not been added to worker salaries and only K60,000 (\$40) per year had been allotted to each employee as an education allowance. In another recently privatised operation on the Copperbelt, 200 miners at Mindolo mine in Kitwe began strike action on 2 November 1998 because they had not been paid their October

salaries.¹⁹³ The miners expressed their dissatisfaction with working conditions following the management buyout of Mpelembe Drilling in November 1997.

c. Post-privatisation monitoring of the obligations of employers

The Covenant obliges a State party to take steps to achieve the full realization of the rights recognized by all appropriate means.¹⁹⁴ The Committee has determined that ‘...the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation.’¹⁹⁵ The objective that a ‘...State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction’ is considered a precondition for the effective implementation of the Covenant.¹⁹⁶ Hence, in respect of the implementation of article 7 on just and favourable conditions of work, there is an unequivocal obligation on a State party to monitor the actual situation. Although the Covenant does not specify the nature of institutions which should be set up to monitor working conditions, information is sought by the Committee on what machinery exists for the monitoring of a minimum wage and what administrative or other provisions are in place for the enforcement of health and safety conditions.¹⁹⁷ It follows that the step of institutional monitoring applies to all provisions of article 7. ILO Labour Administration Convention (No. 150), which Zambia has ratified, assists in clarifying aspects of this requirement:¹⁹⁸ a State party is obliged to ensure the effective operation and coordination of a system of labour administration.¹⁹⁹ Such a system covers all public administration bodies whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralised administration.²⁰⁰ Competent bodies within the system are responsible for the preparation and administration of national labour policy and for its implementation through laws and regulations.²⁰¹ Taking into account international labour standards, they are required, *inter alia*, to:

‘study and keep under review the situation of employed, unemployed and underemployed persons, taking into account national laws and regulations and national practice concerning conditions of work and working life and terms of employment, draw attention to defects and abuses in such conditions and terms and submit proposals on means to overcome them’²⁰²

The issue of post-privatisation monitoring is vital in an economy when unemployment and underemployment are high. Employers are in a strong position when it comes to setting working conditions and pay levels for the simple reason that there is a readily available pool of labour in the informal sector should existing employees fail to fall in line. The ZPA is charged under the Privatisation Act with overseeing all aspects of the implementation of privatisation in Zambia and with monitoring its progress.²⁰³ It must be noted that this provision does not refer to monitoring what happens after privatisation. Indeed, the whole emphasis in the Act is upon the rapid sell-off of state owned enterprises, not on examining the impact of their privatisation. However, there is limited scope for the development of what is referred to as ‘final sale monitoring guidelines.’²⁰⁴

The ZPA has itself outlined its responsibility to ensure that an investor in a privatised firm abides by all agreements and commitments made in the negotiations for the sale of the business.²⁰⁵ These include terms of payment, liabilities assumed, capital to be invested, treatment of employees, conditions of service, and various other commitments such as Zambian participation in management. Most of these stipulations appear in the development agreement as part of the sale documents. During sale negotiations, a prospective buyer will normally indicate the extent to of planned retrenchments. The ZPA confirms that it has a responsibility to see that retrenchments are managed properly and that those retrenched are compensated promptly.²⁰⁶ At the same time, the ZPA also maps out the limits to its responsibilities: the protection of workers’ rights after a company has been privatised ‘lies with the Union/workers’ representatives - and ultimately with the individual employees themselves.’²⁰⁷ In view of this, the ZPA therefore emphasises the importance of educating employees ‘about their rights as stated in the terms and conditions of their contracts, the labour laws, and the terms of the privatisation sales agreements.’

The stated position of the ZPA is contradictory on at least four counts. First, it is not clear where the ZPA’s responsibility for monitoring begins or ends. On the one hand, the ZPA states that it has the responsibility for ensuring that an investor lives up to all the commitments and agreements it has made. On the other hand, it claims that once a company has been privatised, it no longer has a responsibility to protect workers’ rights. The extent of the ZPA’s duty to monitor is in urgent need of clarification. It has been asserted in the *Times of Zambia* that the ZPA has no scheme for post-sale monitoring: ‘To critics this has embodied Government insensitivity to the plight of those who depend on the good performance of these enterprises for their very survival....As it is nobody knows whether the process is bringing the intended benefit of improved performance by companies sold.’²⁰⁸ The scope of monitoring itself ranges from watching for the compliance of individual businesses with a development agreement to evaluating information on the wider results of privatisation. The ZPA technical director is on record admitting that the ZPA is ‘only depending on hearsay’ when it comes to assessing the impact of privatisation.²⁰⁹ The study which has been completed by the ZPA on

the impact of privatisation adopts a short-term view and is, in any case, deeply flawed.²¹⁰ A consultant at the launch of an initiative to improve research in Zambia condemned the absence of systematic research into the short and long-term implications of privatisation, its negative social consequences, and a failure to evaluate current strategies for cushioning its impact.²¹¹ The ZPA has been criticised by the Parliamentary Committee on Public Investments for not undertaking an analysis of the social costs to employees of the privatisation programme.²¹²

Second, the development agreement which has come to light as a result of the suit filed by First Quantum over the sale of Luanshya Mine does not envisage any explicit monitoring role for ZPA at all. Determination of compliance with certain clauses, following the failure of discussions with the Government, is made by a sole expert.²¹³ To add to the confusion, the Government announced in November 1997 that a joint monitoring team made up of personnel from the ministries of mines, environment, legal affairs and commerce would be established to ensure all sales and development agreements were properly implemented.²¹⁴ There has been a failure to deliver on this promise. A third and related contradiction is that educating employees about the content of sales and development agreements is precluded by the fact that such agreements are regarded as commercially sensitive and are not made available in the public domain by either the Government or an employer.

Finally, the ZPA was envisaged, from the outset, as a short-lived agency tasked with completing the privatisation sell-off.²¹⁵ The claim that it has a role to play in post-privatisation monitoring is contradicted by public statements about the inevitability of the Agency's demise. This confusion serves to underline that a system of post-privatisation monitoring has not been developed. In its absence, it will be impossible to judge the success or failure of privatisation. While the monitoring role of the ZPA is at best ambiguous, once it ceases to exist, it is by no means clear who will be responsible for ascertaining whether the new owner of a privatised business continues to comply with a development agreement. In the absence of such scrutiny, it is difficult to envisage how the Government will uncover malpractice and what will prevent unscrupulous employers from renegeing on pledges which, although embedded in legally binding development agreements, are laced with caveats. A heavy burden will be placed on a disunited trade union movement.

E. Trade Union Rights

Introduction

‘Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers’ freedom of association or the right to organize and bargain collectively.’ [Principle 45, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy]

The Industrial and Labour Relations Act (1993), as amended in 1997, governs the formation of union and employer organisations, their operation and funding, the conduct of collective bargaining, and the resolution of industrial disputes.²¹⁶ It has been interpreted as an attempt to both decentralise and restrict the formation of unions in order to attract foreign investors.²¹⁷ On the one hand, the power of union federations has been curtailed and any stipulations resulting in ‘one industry, one union’ have been abandoned. From the perspective of individual rights, there are positive aspects to the curbing of monopolistic union power. In particular, the principle that individuals should be free to reject union membership or form or join an alternative union has been strengthened. On the other hand, certain provisions within the ILRA seek to unduly control union activity and to thereby restrict the right to freedom of association. It is, of course, neither useful nor necessary to characterise the ILRA in its entirety as either conducive or harmful to the rights of employees. The rights framework is sufficiently differentiated to allow for a meaningful assessment of specific provisions within the ILRA.

1. The response of the Zambian Government to prior ILO criticism of the Industrial and Labour Relations Act

In order to examine how specific provisions within the ILRA impinge upon employee rights, it is highly relevant to review the controversy surrounding its predecessor. In 1991, no fewer than nine national and international unions and their affiliates presented a complaint against Zambia over the violation of union rights to the ILO's Committee on Freedom of Association [hereafter the CFA]. The substance of their complaint centred on legislation introduced by the previous UNIP Government which has since been repealed or revised. The Industrial and Labour Relations Act, 1990 - the object of much of the initial complaint - was reframed in 1993 and amended once more in 1997. At the time, the

CFA felt compelled to make recommendations to the ILO's Governing Body urging the MMD Government to take account of its comments in its revision of the ILRA, 'numerous sections of which run counter to the principle of freedom of association.'²¹⁸ At the time of the complaint, Zambia had not ratified the Freedom of Association Convention, but has since done so in 1996.²¹⁹ That is not to say that the provisions in the Convention did not apply to Zambia at the time: it is deemed so fundamental to the protection of employees rights under international law that provision exists for the consideration of compliance in non-ratifying States. Furthermore, Zambia has been a party to the Covenant since April 1984 and therefore has binding obligations to protect and promote trade union rights:

'The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice...; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations...; (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law...; (d) The right to strike....' [ICESCR, article 8(1)].

Changes have been made to bring Zambian industrial relations law in line with provisions in the Covenant and the ILO Freedom of Association Convention. Under the revised Industrial and Labour Relations Act 1993, unions are no longer required to disaffiliate from the ZCTU and then re-affiliate on the basis of a two-thirds majority vote by members, a provision which the CFA considered a clear violation of a union's right to affiliate to confederations.²²⁰ The stipulation that a secret ballot of members be run each time a union sought to affiliate outside of Zambia, contrary to the right of union to function without government interference, has been dropped.²²¹ Likewise, Ministerial approval for the receipt of financial and other assistance from international organisations, which was deemed by the CFA as incompatible with the principle of free association, has been abandoned.²²² Specific clauses which gave the Commissioner of Labour full discretion in suspending a union official for alleged financial irregularities without appeal to the courts; a ban on expenditure not directly related to the welfare of the members; and detailed rules governing the use of funds for political purposes – all have been excised from the 1993 Act. However, while a number of problematic clauses have been removed in the revised Act and others have been modified, some provisions which are incompatible with trade union rights have been left substantially unaltered. Certain new clauses have been introduced which undermine specific rights.

2. The Industrial and Labour Relations Act, 1993 (as amended) and the undermining of the rights of employees

a. The right of trade unions to function freely

Certain retained provisions of the ILRA may run contrary to the right of unions to organise their administration and activities without interference. Above all else, the Covenant emphasises the right of trade unions to function freely without limitations other than those prescribed by law.²²³ Furthermore, national laws must themselves be in accordance with the Covenant and may, therefore, only limit union activity 'in the interests of national security or public order or for the protection of the rights and freedoms of others'.²²⁴

Under the 1990 Act, the CFA concluded that stipulating the nature of a trade union's constitution and the detailed regulation of its finances infringed the right of an organisation to function without government interference. While yearly audits of accounts are necessary to protect union funds from misuse, statutory controls should not normally exceed placing an obligation on an organisation to submit periodic reports. The Act still requires that union funds must be expended on lawful objects defined in an organisation's constitution.²²⁵ The purposes to which funds may be applied must be stated and, in this regard, it must be recalled that the Commissioner must be satisfied with the provisions made in a constitution before registering a union.²²⁶ Furthermore, unions are obliged to notify the Minister of outside material, technical or financial assistance within thirty days of its receipt and there is still a requirement that the ZCTU includes in its constitution any proposal to affiliate with any organization outside of Zambia.²²⁷

Other modifications of the ILRA 1990 have attempted to deflect the criticism of the CFA that the exclusion of individuals from simultaneously holding office in a union and a union federation and from holding a union post after less than twelve months experience in an industry curtailed the right of workers to choose an individual to best represent them and ran contrary to the principle of freedom of association.²²⁸ The twelve-month occupational requirement is retained in the revised Act, yet may now be waived if a trade union is satisfied with the suitability of a candidate not meeting this criterion.²²⁹ However, the Commissioner of Labour is empowered to call for information and documentation to ensure eligibility conditions are complied with and there is the possibility that unions may be called upon to justify the decisions they make.²³⁰ The ban on an individual holding full-time office in a union federation and a trade union remains.²³¹

b. The rights to form and to join trade unions

Although certain provisions have been modified in the 1993 Act, their full compatibility with the rights to form and to join a trade union under the Covenant and parallel ILO standards is open to question. The registration of a trade union within six months of its formation is compulsory in Zambia.²³² The Minister may prescribe the form which an application to register may take.²³³ The Commissioner of Labour then has the power to assess whether the constitution of the proposed trade union is in accordance with the ILRA and its attached schedule.²³⁴ Both Ministerial prescription and the Commissioner's assessment may impinge upon the right to form trade unions. Furthermore, it is a general requirement that the registration application is signed by at least fifty supporters.²³⁵ The CFA, when reviewing the previous threshold in Zambia of 100 members, determined that 'the establishment of a trade union may be considerably hindered or even rendered impossible when legislation fixes the minimum number of members at obviously too high a figure, such as 50.'²³⁶ The Commissioner may still cancel union registration in Zambia.²³⁷ The CFA has emphasised that such a power is tantamount to suspension or dissolution by administrative authority.²³⁸ However, unions who are refused registration, or whose registration is cancelled, may now appeal to the Industrial Relations Court and the cancellation does not take effect unless or until it is confirmed by the Court.²³⁹ This does, at least, safeguard against the dissolution or suspension of a union by a purely administrative authority.

In order to bring Zambian law in line with the ILO's Convention on Freedom of Association, the ILRA does allow for freedom of choice in determining the structure and composition of trade unions. Workers are free to form more than one union within the same industry or even to form several unions within one enterprise. As well as recognising the rights to form and belong to a trade union, the ILRA enshrines the right not to join or to relinquish membership.²⁴⁰ It also allows employees to opt out of paying automatic subscriptions to a union.²⁴¹ While it would be misplaced to suggest that union power should be maintained by a compulsion to join a single union within an industry or for unions to affiliate to one confederation, it is nonetheless relevant to reflect on the likely consequences of fragmentation for employee bargaining power and, ultimately, for the protection of just and favourable conditions of work. Zambia was one of the countries singled out for criticism by the ILO Governing Body's Committee on Employment and Social Policy in its consideration of the report of the UN ACC Task Force on Full Employment and Sustainable Livelihoods because of the inadequacy of institutional labour structures and the weakness of workers' and employers' organisations.²⁴²

c. The rights to union recognition and collective bargaining

All employers over a certain size - and that includes former parastatals under new ownership - are required to register with the Commissioner of Labour for the purpose of entering into a recognition agreement with registered trade unions to which their employees belong.²⁴³ It is on the basis of recognition agreements that employers and unions enter into collective agreements with each other.²⁴⁴ Clearly, protection for the principle of union recognition and collective bargaining is to be welcomed. In the past, a collective agreement could be rejected on the grounds that it ran contrary to Government policy on prices and incomes. The CFA was of the view that the final decision over the nature of a collective agreement should rest with the parties to it.²⁴⁵ Collective agreements in Zambia are still subject to Ministerial approval.²⁴⁶

However, there is a danger, at a time of high formal sector unemployment and heightened fears over plant closure and redundancy, that employers will seek to exploit their negotiating power. Under the ILRA, collective agreements can be concluded at the level of an individual undertaking with a recognised union and need not be conducted at the industry level, although provision still exists for industry-wide negotiation between employers organisations and a large trade union.²⁴⁷ The unbundling of major parastatals and their sale to private sector buyers is likely to usher in an end to cross-industry single union recognition agreements and collective negotiation. Splinter unions may even be played-off against each other by employers.

The Mineworkers Union of Zambia has expressed the fear that their member base will become fragmented and their power to negotiate curtailed if a multiplicity of independent unions are recognised in agreements with the new owners of the mines. Workers at the newly privatised Power Division reached a decision in September to leave the MUZ and either form a new union or join the Zambia Electricity and Allied Workers Union.²⁴⁸ The breakaway union, the Zambia National Union of Skilled Mineworkers (ZNUSM), claimed that 5,000 ZCCM employees had shown willingness to join its ranks. It was reported that 4,000 skilled workers - many of them graduates of technical colleges or with engineering degrees - had already withdrawn from the MUZ. The ZNUSM accused ZCCM management of colluding with MUZ and alleged that an internal circular from the company's Industrial Relations Bureau, dated 13 March 1998, had targeted 123 of its leadership, supporters and sympathisers for dismissal.²⁴⁹

The ZCTU has also seen its power diminish under the ILRA at a time when its membership has halved from 1993 levels because of redundancies resulting from privatisation and the retrenchment of government workers. In the past, it was compulsory for a trade union to affiliate with the ZCTU.²⁵⁰ A union may now disaffiliate from the ZCTU and choose to affiliate with a union federation of its choice.²⁵¹ In 1994, the Mine Workers Union of Zambia and four other ZCTU constituent unions split from the Congress and established a rival umbrella organisation.²⁵² With the exception of the MUZ, they have now rejoined and eighteen of the country's 19 large national unions, organised by industry or profession, are once more affiliated with the ZCTU.

The departure of the MUZ from the Congress marked the beginning of a bitter battle between the two organisations. The splinter Zambia National Union of Skilled Mineworkers is alleged to benefit from ZCTU sponsorship.²⁵³ In a strongly worded editorial, the independent *Post* newspaper launched a scathing attack on the ZCTU leadership and drew attention to the compromised position of other union leaders in the Civil Service Union of Zambia.²⁵⁴ Concern was expressed over the plight of ordinary workers who had borne the entire burden of what was described as a 'criminal and immoral' privatisation programme²⁵⁵.

The President has acknowledged that the erosion of bargaining strength may occur 'as a result of liberalisation in the formation of trade unions' and has offered limited reassurance that the MMD Government will encourage strong industrial unions.²⁵⁶ However, unions have been warned that their unity cannot be guaranteed through legislation.²⁵⁷ Indeed, it must be reiterated that the statutory denial of the right of an employee to form or join a union of their choosing is not necessarily a legitimate basis for the maintenance of union strength. In this respect, the revised ILRA appears to be appropriately framed. The fragile and factious position of unions in Zambia is rather exacerbated by overt political interference.

In September 1998, unionised workers at ZESCO threatened strike action over the failure to effect an agreed salary increase. In the very next month, the MMD moved to block the election of the Mr. Austin Liato, President of the Zambia Electricity and Allied Workers Union (ZEAWU), to the presidency of the ZCTU.²⁵⁸ The Government ordered an investigation of the financial affairs of the ZEAWU and, amid allegations of impropriety, Mr. Liato was dismissed by his employers. The Minister of Labour deregistered the ZEAWU. Mr. Liato was exonerated in the courts, but subsequently lost the ZCTU leadership election in controversial circumstances. Accusations of vote rigging and interference by the police have been referred to the courts. Human rights monitors in Zambia maintain the Government's actions were politically motivated and designed to block the accession of the independently-minded Mr. Liato.²⁵⁹

The relative bargaining strength of employers in a weak domestic economy - especially those transnationals with an ability to organise their operations on a global basis - is not unique to Zambia or even confined to developing economies. Although legislation governing industrial relations in a single country cannot, of itself, guarantee that employers and employees will come to the negotiating table on an equal footing, it is at precisely those times and in those places when workers are vulnerable to exploitation that a Government, the international community and responsible companies have an obligation to ensure that labour rights are not violated. In this respect, the ILRA must offer safeguards to ensure that collective disputes are either independently adjudicated with the agreement of both sides or else that the right to strike, together with the protection of workers on strike from reprisal, are guaranteed. Outside of the ILRA *per se*, it is incumbent on the Zambian Government to ensure that other employment-related legislation exists to guarantee just and favourable conditions of work and a safe working environment which must underpin any collective agreement or employment contract. Finally, the standards which exist must be capable of being implemented. In this respect, serious concern arises over both the nature of development agreements concluded with new private sector buyers in Zambia which fail to guarantee minimum standards in working conditions and over the lack of supervisory machinery to see that private companies honour their undertakings.

d. The right to independent legal redress

Article 8 of the Covenant on the trade union rights is viewed by the Committee as immediately justiciable in national law and requires the provision of judicial remedy.²⁶⁰ Furthermore, the Covenant on Civil and Political Rights, to which Zambia is a party, recognises both the right to form and join trade unions and the provision of effective remedy for persons whose rights and freedoms are violated.²⁶¹

The determination as to whether or not a number of provisions within the ILRA are in accordance with the realisation of workers' and union rights depends upon the right of appeal to an independent court. In Zambia, the Industrial Relations Court has the exclusive jurisdiction to hear and determine any industrial relations matter and any proceedings under the ILRA;²⁶² to interpret awards, collective agreements and recognition agreements; to adjudicate on any matter affecting the rights, obligations, and privileges of employers, employees and their representatives; and to decide disputes between an employer and an employee.²⁶³ The decision of the Court on any matter, including how a collective dispute must be

resolved, is binding on all affected parties, although it may be appealed to the Supreme Court on any point of law or any point of mixed law and fact.²⁶⁴

It is in the context of the IRC's wide powers that an apparent bias in favour of Government in its composition and functions remains a cause for concern. Indeed, the revised Act appears to have increased the possibility of partiality. The chair and deputy chair of the Court, both of whom must be High Court Judges, are appointed by the President. The members of the Court - up to ten in all - are appointed by the Minister. There no longer appears to be a role for worker and employer 'assessors'.²⁶⁵ However, recent rulings suggest that the IRC is maintaining its independence.

e. Collective disputes and the right to strike

The right to strike is enshrined by the Covenant, and, against this and parallel ILO benchmarks, clauses in the ILRA constraining industrial action are too draconian and go beyond the legitimate restriction of union activity on the grounds of national security, public order, or for the protection of the rights and freedoms of others.²⁶⁶

There is a right to strike in Zambia, but such action is only permitted after all other legal recourse has been exhausted. Once an employer and employees have met and failed to resolve a collective dispute, the matter is referred to an agreed conciliator or a board of conciliation upon which both parties are represented.²⁶⁷ If conciliation fails, the parties to the dispute may then refer the matter to the Industrial Relations Court or else conduct a ballot to settle the matter by strike or lockout.²⁶⁸ The two-thirds majority required by secret ballot to initiate strike action has been reduced to a simple majority.²⁶⁹ However, even after a vote in favour of a strike, unions may be required to clear further stages before industrial action can take place. The Minister may intervene before action commences to try and resolve the dispute.²⁷⁰ Of greater concern is the power of the Minister to apply to the Industrial Relations Court to declare a strike or lockout not in the public interest.²⁷¹

Industrial unrest in Zambia has increased in recent years. In 1996 there was a total of forty-one strikes in Zambia. Over the ten months from January to October 1997, forty-six strikes were recorded.²⁷² The International Congress of Free Trade Unions reports that all strikes in Zambia in 1998 were, in fact, declared illegal by the Government, leaving those taking part in all such stoppages without the due protection of the law.²⁷³ For example, on 9 March 1998 the ZCTU called a strike to protest against the two-year freeze in public sector wages, imposed by the Government without consultation. As reported by the International Confederation of Trade Unions, the Cabinet Office issued a circular in which it declared that the stay-away illegal, that workers in essential public services must not engage in stoppages under the State of Emergency then in force, and that disciplinary action would be taken against striking workers.²⁷⁴ The Minister of Labour threatened to deregister the ZCTU and any of its affiliates taking part in the action and to fire striking workers without recourse to appeal procedures. The stay-away went ahead, with the army deployed at Government offices.²⁷⁵ The ICFTU reports that no workers were victimised for going on strike.²⁷⁶ The State of Emergency was itself lifted on 17 March. In the previous October, 400 workers on strike at Ndola Lime were issued with letters warning them that their action was illegal and that they should consider themselves dismissed if they failed to return to work by a stipulated date.²⁷⁷

Other aspects of how the right to strike is framed in the revised ILRA give rise to serious concern. A clause prohibiting sympathy strikes - those 'not in contemplation or furtherance of a collective dispute to which the...trade union is a party' - is retained and contravenes the principle of freedom of association.²⁷⁸ Furthermore, the revised Act still offers a wide definition of essential services in which strike action is illegal.²⁷⁹ Under section 46 of the Preservation of Public Security Act, it is an offence for any person to incite, instigate, or in any way encourage or persuade any person or class of persons employed in a necessary service to take such action. Afronet observes: 'Although international norms permit restrictions on the right to strike in respect of essential services, in Zambia, 'necessary service' is so widely defined as to encompass virtually every conceivable service. In these various ways then, the acknowledged right to strike is rendered meaningless.'²⁸⁰ In respect of the mining industry, the areas identified to maintain safe and sound conditions are so extensive as to potentially include virtually all miners.²⁸¹

The Minister also has powers to define, by statutory instrument, any service as essential, albeit after consultation with the Tripartite Labour Council.²⁸² The CFA has already concluded that, instead of specifying what are essential services and therefore imposing a blanket ban on strike action, it is better to agree and make mandatory a minimum level of service to ensure safe operation in consultation with employer and employee organisations.²⁸³ The powers of police officers to arrest without warrant any person who is believed to be acting in contravention of the ban on strikes in essential services must, as the CFA has observed, constitute a denial of due process and diminish the right of unions to operate in a climate free of insecurity and fear.²⁸⁴

Finally, in respect of industrial action, the ILRA retains a clause which prevents picketing and demonstrations near a dwelling place.²⁸⁵ In the Zambian context, where housing is often located at a place of work, the ban amounts to ‘unacceptable interference by the authorities in the activities of worker’s organisations’.²⁸⁶ Under the Public Order Act, police permission is required for any public meeting, demonstration or procession. Under section 14 of the Public Order Act, it is an offence to advise, encourage, command, aid or procure a strike. The ICFTU confirms that, during 1997 and 1998, the Act was used to arrest and charge trade unionists demanding payment of wage arrears.²⁸⁷

F. The steps taken to combat unemployment: retraining and business development

Introduction

High unemployment is a reality in Zambia. The claimed inevitability of economic reform and privatisation which has fuelled this decline in formal sector jobs is hard to accept when these measures taken have not been implemented in the context of a meaningful policy on employment. Whether the incompatibility of such a situation with the right to employment and other rights under the Covenant is compounded, depends upon the extent to which steps have been taken by both the Zambian Government and its international backers to combat the adverse impact of unemployment.

The nature of the steps required needs further clarification. The Committee, in its past examination of State reports, has sought evidence of initiatives aimed at tackling unemployment in general and targeting disadvantaged groups in particular.²⁸⁸ In the Covenant itself, it is stipulated that the steps taken to achieve the full realisation of the right to work shall include technical and vocational guidance and training programmes.²⁸⁹ Such schemes have a particular relevance for the unemployed. Realisation of the right to work therefore requires policies to combat unemployment which are characterised by support to help people back into work.

The UN ACC Task Force on Full Employment and Sustainable Livelihoods has identified a failure to accompany economic reform with meaningful action to combat the impact of unemployment:

‘Especially in countries like Zambia...with high levels of poverty and inequality...market reforms are not enough. They need to be supplemented by policies and programmes designed to strengthen the capacity of key groups, including the poor, to respond adequately to new opportunities, especially through exercising their right to organize and bargain collectively. Other policies include overall human resource development, including entrepreneurship development, credit schemes, extension services and promotion of growth of medium, small and micro enterprises as well as carefully designed training.’²⁹⁰

A number of agencies and Government ministries have responsibilities for tackling the social problems caused by redundancies. Overall, it is the task of the Ministry of Labour and Social Security to give ‘a new vision to relations between employers and employees as well as building future social security for workers who are out of formal employment’.²⁹¹ It was therefore within the Ministry that a National Social Safety Net was set up in 1993, although it is managed by a Co-ordinating Committee which allows all the relevant bodies to work together. The Co-ordinating Committee was given the task of producing a policy framework - the aforementioned National Retrenchment Policy - within which redundancies could be managed on an equitable basis as this relates to counselling, retraining, entrepreneurship promotion, redeployment and support for resettlement schemes for retrenched. Details of the schemes, run by the relevant Ministry or agency, but co-ordinated under the National Social Safety Net, are as follows:

Scheme	Run by	Purpose
Land Resettlement Programme	Department of Resettlement in the Office of the Vice President	Provides plots in resettlement schemes for small scale agriculture.
Public Welfare Assistance Programme	Ministry of Community Development and Social Services	Basic assistance with food, shelter, healthcare and education for the poorest.
Social Impact	Zambian Privatisation Agency, Social Impact Department	Informs employees, managers and the public about the likely social impact of privatisation.
Future Search	Public Service Management Division	Seeks to equip graduates with business skills for the future.
Small Business Development Programme	Ministry of Commerce, Trade and Industry	Assesses projects and provides funds for selected small business initiatives.

It is apparent that support for retrenched falls into two broad categories of social assistance and programmes aimed at re-employment through training and business development. Consideration of the extent to which the Government has provided social safety nets to cushion the impact of redundancy is postponed until Section 3 which examines the welfare system in Zambia and the right to social security. In the context of the right to work, the immediate concern is with the provision of (1) training and (2) business support. The obligation of the Zambian Government to monitor the training situation in the country is considered in a third subsection (3) while a final subsection (4) reviews the adequacy of Bank support for training initiatives and business start-up in Zambia.

1. Training, retraining and the right to work

a. The national training policy

To implement the right to work, the Covenant specifies that:

‘The steps taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes...’ [article 6(2)]

In order to allow the Committee to examine whether this obligation is being fulfilled, a State party is required to ‘describe the technical and vocational schemes which exist, their effective mode of operation and their practical availability.’²⁹² The Committee has, in its past examination of State reports, also sought information on how such schemes are financed and the extent to which the authorities have evaluated the needs of industry and played a role in the coordination of public and private initiatives.²⁹³

The MMD Government created the Ministry of Science, Technology and Vocational Training as the lead ministry to formulate and implement a national training policy which was adopted by Cabinet in 1995. Subsequently, the Technical Education, Vocational Training and Entrepreneurship Training Act was passed in 1998. Its purpose is to provide a legal basis for the reform of the training system in Zambia. The Act repeals previous legislation which established the Department of Technical Education and Vocational Training in 1972 as the part of Government responsible for co-ordinating all technical education and vocational training activities in the country. The DTEVT was responsible for running technical colleges and trades training institutes as well as setting standards for other public and private institutions. By law, no private institution would operate without first seeking registration from the Department.

The 1998 Act abolishes the DTEVT which is replaced by an autonomous Technical Education, Vocational and Entrepreneurship Training Authority with responsibility for the coordination and regulation of national training. The establishment and registration of private training institutions will be encouraged; management boards will be created to run former DTEVT training institutions; and a training levy will be introduced. The overall aim is to move beyond a system providing technical and vocational training orientated towards young people with a formal education: the new policy seeks to incorporate entrepreneurship development and to cater for the training needs of both the formal and informal sectors of the economy.

Most existing training in Zambia is, in contrast, delivered either through two-year certificate courses at trades training institutes or through three-year diploma courses at technical colleges, all formerly run under the DTEVT.²⁹⁴ In 1997, 6,473 trainees were enrolled in twenty-one such institutions countrywide running seventy programmes in subjects ranging from mixed farming, leather-work, home management, weaving and other basic skills at the trade institutes to courses covering aviation, electronics, business studies, technical teacher education and other vocations at the colleges. However, in their current form, both institutions have little relevancy for those seeking to retrain after years of public sector or parastatal employment. They have no relevancy for those working in the informal sector who have no formal education, no money for fees, and for whom the daily struggle for life is all consuming.

A joint UN review of the employment situation in a number of countries published in early 1997 identified, in respect of Zambia, three problem areas: first, high levels of youth unemployment which accentuated the need for ‘a major overhaul of the existing training system’; second, declining formal sector employment which highlighted the need for ‘special training programmes for retrenched workers’; and third, the resettlement of retrenched requiring ‘assistance for would-be farming families’.²⁹⁵ The extent of action on each of these issues is examined over the next three subsections.

b. Training and employment initiatives in the informal sector: the STEP IN programme

The main focus in this submission has been upon structural unemployment, with limited reference to the nature of work in the informal sector. In the region of 200,000 of those who drop out from school in Zambia each year are unable to gain access to the formal system of vocational training because of their low level of education. In the recent past, the ILO's Committee of Experts has expressed its concern over the negative impact of economic reform on youth training programmes and growing unemployment among urban youths in Zambia.²⁹⁶ Furthermore, it has been calculated that in the region of 60,000 unskilled or semi-skilled employees in the public and parastatal sectors have either lost their jobs as a result of structural adjustment or stand to do so in the foreseeable future. Entrepreneurs running small businesses in the informal sector and the thousands of petty traders and street vendors add to the numbers of those requiring access to training and vocational guidance. The extent to which the national training policy delivers training to such groups is a test of commitment of the Government, and the international community, towards the realisation of the right to work for all Zambians.

That part of the national training policy which relates to the urban informal sector has been implemented mainly through the STEP IN Programme.²⁹⁷ This initiative aims to provide not only accessible 'non-formal' artisan and business training through existing institutions, but also to set up 'seed' credit for micro-scale businesses, to encourage women to set up enterprises, to match job seekers to employers, and to strengthen advocacy in the informal sector.²⁹⁸

STEP IN was launched in 1997 by a unit in the then DTEVT with funding from the German Government. Despite an increase in the donor component of the budget during the first year, the programme was under-resourced in relation to its original scope.²⁹⁹ Those components targeted at formal sector retrenchees, adults with no formal education, and street vendors were initially placed on hold.³⁰⁰ This has resulted in a programme with a narrow focus and one which is confined to Lusaka after the decision was made to discard a planned extension in the Copperbelt.³⁰¹ Indeed, Government schemes targeted at training and employment in the informal sector in towns and cities outside of Lusaka remain extremely limited.³⁰² STEP IN itself relies on local partners to implement the programme, but many of these have been characterised as lacking vision and know-how which means a large proportion of the initial budget was spent on 'capacity building': only fifteen per cent of the total budget for the first year was allocated to program delivery.³⁰³

The programme has established service centres to bring informal sector operators together with those providing business support and services - advisers, trainers, marketers.³⁰⁴ Agreements to run centres were reached with three Lusaka institutions: the Chilenje trades training institute, the Small Enterprise Development Board's office in Makeni, and Kabwata Cultural Village. Funding from STEP IN is provided until June 1999, after which each centre will rely upon service charges to finance its operation.³⁰⁵ As of the end of 1998, the centres were not yet operational. STEP IN support for Kabwata Cultural Village, once a showcase for Zambian crafts established as a National Monument in 1970, has resulted in an agreement with private sponsors, the Government and donor agencies to work with the villagers to upgrade the dilapidated infrastructure and to provide business training to develop new markets for the handicrafts produced.³⁰⁶ The project has a high profile and status: hence progress has been swift.³⁰⁷ In contrast, a scheme using the services of a private job agency to place graduates from a local college proved ineffective and has been wound-up.³⁰⁸ A revolving credit scheme, set up amongst women in Matero Compound, Lusaka, has met with limited success.³⁰⁹ A failure to repay loans has resulted in periodic suspensions of the scheme which is unlikely to prove self-sustaining.³¹⁰ Furthermore, a lack of monitoring means its impact upon poverty alleviation is unknown.³¹¹

The actual delivery of training under STEP IN has been extremely modest: an advisor for entrepreneurs at a Lusaka craft gallery; a one month training visit from a craft expert; the as yet to be delivered apprenticeship training component within the service centres; and an agreement between the United Nations Economic Commission for Africa (UNECA) and two STEP IN supported groups to deliver business training to six hundred women in ten peri-urban compounds in Lusaka.³¹² UNECA severed its relationship with one of the groups at the end of 1998.³¹³ In the previous quarter, it was reported that a total of just seven women from the group had completed the training course. Collaboration has begun with other institutions to set up a regulating structure within the TEVETA to oversee the running of entrepreneurship training modules.³¹⁴ Once more, this initiative is promissory until training is actually delivered.

The STEP IN initiative has been hard hit by swinging cuts in its operational budget in 1998 from DM 1.1 million to less than DM 0.25 million.³¹⁵ Its future depends upon two factors: first, continued support from the German Government;³¹⁶ and, second, with the demise of the DTEVT, whether the programme can be incorporated, as seems likely, into the Entrepreneurship and Informal Sector Development Unit (EISDU) of the new TEVETA.³¹⁷

c. Training and retraining in the formal sector

Retraining is essential for retrenchees if their standard of living and their enjoyment of basic economic and social rights is not to diminish. Given the contraction of the formal sector, virtually all those made redundant must make a living in the informal sector. Most will become self-employed and will either be required to learn a new trade or else to market existing skills. Training in entrepreneurship and how to run a small business is vital, but must be matched by access to affordable credit.

The provision of training and vocational guidance are, of themselves, recognised requirements for the realisation of the right to work. In the context of rising unemployment and underemployment, the absence of training and retraining adds weight to the charge that a State party has failed to meet its obligations to implement policies and techniques aimed at progress towards the achievement of full employment. It is regrettable that the training and retraining measures planned and adopted by the Zambian Government, and the action taken by international donors, has proved inadequate when structural adjustment was predicated on a program of mass redundancies and the need to redeploy and absorb retrenchees in other sectors of the economy was known in advance.

A distinction can be drawn between the requirements placed upon third parties - that is, private sector companies - to deliver training which accords with the obligation of the Zambian Government to ensure protection of the right to work in all its facets; and measures taken by the Government itself to fulfil its obligations to provide training as part of the right to work.

i. Training within privatised companies

Little can be learnt about the initiatives within newly privatised companies to offer training to employees or retraining to those who are to be made redundant as a business is rationalised to cut costs and raise productivity. Any training or retraining schemes which are required as part of the conditions surrounding the privatisation of an enterprise will be encompassed within the development agreement as part of the sale. As has been noted, such agreements are not available for scrutiny in the public domain. For example, in April 1998, the Copperbelt Energy Consortium, the new owners of the former Power Division of ZCCM, confirmed 229 redundancies. The company announced that a newly established local business unit would be at their disposal to assist them to set up their own businesses. However, when CEC was contacted and asked to provide further details of the scheme and a copy of the development agreement, it failed to furnish the information requested or even to respond.

The development agreement for the sale of the former ZCCM Luanshya division to Roan Antelope which has become available outlines the nature of obligations stipulated by the Government in respect of training. While it cannot be inferred that all such agreements, especially those in other industries and for smaller businesses, will share equivalent clauses, in the case of ZCCM at least, it is understood that a model agreement has provided the basis for all sales.

The new owners are required to comply with the existing ZCCM Training and Human Resources Management Programme until they submit a new programme within the year.³¹⁸ A committee, chaired by a representative from the Ministry of Labour, and comprising one permanent member each from Roan Antelope and the Ministry of Mines and Minerals Development, and one temporary member from the local council, is established to monitor implementation of the Training and Human Resources Management Programme.³¹⁹ However, it is explicitly stated in the development agreement that the committee has no powers to bind the company.³²⁰ It reviews quarterly reports provided by Roan Antelope on problems encountered, positions filled and the number of local people employed.³²¹

All of the training measures to be implemented - modular courses to improve the technical and management skills of non-graduates, tests to identify suitable candidates for further training, training in the use of new equipment, management programmes for Zambian professionals to minimise expatriate employment - are aimed at improving the skills of existing employees. No measures are specified in respect of retraining or preparing those to be made redundant for future employment, even though pledges relating to maintaining existing employment levels are subject to alteration.³²² The training programme is itself subject to modification by the company if it is unable to comply with the original because of 'circumstances or events beyond its control.'³²³ The Government shall not unreasonably withhold consent for such alteration.³²⁴ Should a dispute arise, and following unsuccessful talks, the matter is referred to a nominated sole expert for determination.³²⁵

ii. Government initiatives to retrain retrenchees

In respect of Government action on retraining, the *National Policy on Retrenchments* includes a commitment to develop counselling, training, redeployment and resettlement programmes for retrenchees.³²⁶ Implementation is meant to be

achieved as part of the Government's National Social Safety Net, designed to mitigate the negative impacts of adjustment – please refer to Section 3 for a critique of the welfare components of this programme. Of immediate concern are the two measures on training for retrenchees.

The first is the aforementioned skills training, including STEP IN, run out of the Ministry of Science, Technical Education and Vocational Training. Liaison between STEP IN and the Zambia Congress of Trade Unions in early 1998 finally resulted in a component of the program being targeted at retrenchees. A Centre for Informal Sector and Employment Promotion was opened in late 1998. To date it has contacted companies expecting to implement redundancies to refer retrenchees for advice on wise use of their terminal benefits and how to seek new employment.³²⁷ Retraining, at least at the outset, does not appear to be a priority.

The second measure is the Future Search programme run by the Public Service Management Division in response to the wave of redundancies in the civil service and public sector. It is aimed at the well educated and seeks to equip graduates who are being made redundant with appropriate business skills.

Overall, the committee charged with coordinating the National Social Safety Net has indicated that, by the end of 1997, a total of only 234 retrenchees had received any form of retraining. This is despite the fact that the safety net was devised in 1993 and must be set in the context of 80,000 redundancies in the parastatal and public sector since 1992.

d. The resettlement of retrenchees

The UN ACC Task Force on Full Employment and Sustainable Livelihoods highlighted the policy of the Zambian Government to resettle former formal sector employees and drew attention to the need for assistance for would-be farming families. Support, guidance and training is particularly important for those who have spent their working lives to date in the civil service or in industry within an urban environment.

The Office of the Vice President is responsible for all resettlement in Zambia, while the National Social Safety Net limits its concern to the resettlement of retrenchees. The number of demarcated plots has risen under the overall resettlement programme from 1,434 in 1991 to 5,457 in 1996. In that year, there were fifty-two resettlement schemes and the total number of people resettled rose from 8,604 in 1991 to about 32,742 in 1996.³²⁸ These figures appear high and probably reflect the official allocation of plots to people in situ as well as new settlement by people moving into an area. However, the official monitoring of resettlement is inadequate. Indeed, neither accurate figures are available for the number of retrenchees who have been resettled nor for the numbers who may have drifted back to the towns and cities.

The difficulties faced by poor settlers in securing the degazetted land under resettlement schemes is given full consideration in Section 2(III) on access to land in Zambia. The particular concern here is with the daunting problems faced by urban retrenchees and retirees when moved to a rural resettlement scheme.

A study of the socio-economic impact of privatisation on the Zambian Copperbelt refers to the highly urbanised setting and concludes that 'for most retrenched employees it will be very difficult to relocate to [a] rural environment, let alone survive and be successful.'³²⁹ First and foremost, there is not enough land to go around and there is a waiting list for resettlement. The Government has not been able to meet its responsibility to provide infrastructure and services to all sites. Urban resettlers lack agricultural experience. They also lack resources. Assistance is not provided to help people move to a resettlement scheme nor to clear land once it has been allocated.³³⁰ The Government no longer supplies hoes, axes, seeds, fertilisers, or funds for clearing one hectare of land in the first year. It has also stopped offering mealie meal and relish to feed people seeking to establish themselves during their first year. Not only has Government assistance ceased, but often retrenchment packages either have not been paid at all or have been paid late, and then not in full. Credit facilities are almost non-existent. The National Social Safety Net has carried out a study on setting up revolving funds of credit, but it is only now in the process of drawing up a plan in order to seek donor support. Overall, liberalisation of the agricultural sector has made it difficult for small producers to compete, to find buyers for their produce, or even to transport it to market.

2. Initiatives to support business start-up

In the absence of formal sector opportunities, training delivered in isolation from a package of support for new enterprises will not result in gainful employment. The UN ACC Task Force on Full Employment and Sustainable Livelihoods concluded that, *inter alia*, a major constraint on the growth of small-scale enterprises in Zambia was the poor access to credit and physical infrastructure.³³¹ Studies have shown that almost nine out of ten people starting out in the informal sector source their initial money for investment in a business either from their own savings or from friends and relatives.³³² Less than one per cent seeks or secures loans from banks or financial institutions, showing the total lack of support from either Government or private funds. On the rare occasion credit is available to those in the informal sector, it is characterised by prohibitively high rates of interest and discrimination against women in its distribution.³³³ This situation must, in part, reflect on the failure of the Government and other agencies in Zambia to provide seed credit.

a. The Small Enterprise Development Board and wider programmes to provide micro-credit

Government support for small business development in Zambia is channelled through the Small Enterprise Development Board which operates out of the Ministry of Commerce, Trade and Industry. Its purpose is to provide advice, assess applications and provide funds for selected small business initiatives. From January to June 1997, the SEDB financed just five projects to a total value of K26 million (\$20,000) and Board officers visited 150 projects to assess performance and offer business counselling.³³⁴ During 1997, the Board trained 205 entrepreneurs in business skills: it is unclear whether this figure is reflected in the umbrella figure for the delivery of training cited by the National Social Safety Net.³³⁵ To put this support in perspective, financial assistance through the SEDB represents less than 0.1 per cent by value of the tax concessions to the mining sector announced in the 1998 budget.

Two general initiatives at the micro-scale, both run under the Ministry of Community Development and Social Services, may offer limited assistance to a small number of retrenchees, without being specifically geared towards their needs. The Micro Bankers Trust is aimed at empowering the poor through credit delivery, savings mobilisation, and training. Women Development Programmes encourage income generating activities such as tailoring, poultry rearing, small scale trading and hammer milling. Financial support for this scheme was worth K34.3 million (circa. \$26,000) in 1997.³³⁶ This amount covers administration of the scheme and does not, therefore, represent the actual funds available for investment.

Taken together, these limited initiatives are no measure of subsequent business success and must, in any case, be set against massive formal sector redundancies over the past five years:

‘The effects of these job losses may manifest in the increased numbers of people working in the informal sector. Without a corresponding increase in the funding of supporting institutions such as the Small Enterprise Development Board (SEDB) there is likely to arise especially on the Copperbelt, restlessness, homelessness, increased malnutrition and other dehumanizing conditions which can easily lead to civil strife.’³³⁷

b. The Enterprise Development Project: support for larger businesses

The Bank’s \$45 million Enterprise Development Project was approved in May 1997. One objective is to provide short and long-term credit lent through Zambian financial intermediaries.³³⁸ Finance is provided for a Multipurpose Credit Facility.³³⁹ To be eligible, it is apparent that businesses will need to be of significant size: commercial banks in Zambia proposed lower limits for credit of between \$25,000 and \$50,000.³⁴⁰ The credit component, allocated \$40 million of IDA funds, is therefore a complete irrelevance for retrenchees and informal sector operators who require loans the equivalent of tens, or at the most, a few hundreds of dollars.³⁴¹ A study of informal sector businesses reveals that six out of ten were started with capital of less than K25,000 (\$28) and eight out of ten on less than K75,000 (\$85).³⁴² The situation was no better in businesses which were up and running. A quarter had virtually nothing to their name, and almost half had assets worth below K25,000.

A second component of the project seeks to establish a Matching Grant Scheme worth \$2.8 million to allow firms to pay for professional business services to develop their expertise.³⁴³ Matching grants can only be spent on business services, not on capital goods; a business whose application for a grant is successful must pay for the expertise it requires first before half the agreed expenditure is reimbursed; and grants of up to \$75,000 are only made on the basis of an appropriate business plan.³⁴⁴ While very small businesses are not excluded from seeking grants, the very process of

application and the need to find the funds to pay for services first before reimbursement are significant barriers for informal sector operators. An allied initiative, therefore, is the provision of service development grants to 'supply-side' organisations - be they NGOs or business associations - to enable them to develop standardised services and training aimed at very small firms.³⁴⁵ It remains to be seen how successful this initiative will prove.

3. The inadequacy of official information on training and the obligation to monitor

It is difficult to obtain information on training initiatives in Zambia which allows for a full and frank consideration of their actual delivery and effectiveness. It is all too easy to outline policies and define institutional responsibilities without ever bringing the action described to fruition. Indeed, despite the policy and legislative reforms in the area of training, the Government concedes in its 1997 *Economic Report* that 'the resources going to these activities were inadequate and, in some cases, severely constrained the execution of these activities'.³⁴⁶ Concrete measures have been sought by the ILO's Committee of Experts from the Zambian Government to coordinate policies for education and training with prospective employment opportunities:³⁴⁷

'Although the Government refers to programmes for job creation, combating unemployment among young people, training for employment and promoting small enterprises and self-employment, it provides no information in the report on the nature and scope of these programmes and their objectives, nor does it give any evaluation of the results of these initiatives.'³⁴⁸

In 1999, the Committee of Experts repeated its previous observation of two years standing requiring, *inter alia*, the Government to provide available statistical data on the employment situation and to report on any progress in establishing a labour market information system as the necessary basis for the determination and implementation of such measures required by ILO Convention 122 on Employment Policy.³⁴⁹ The ILO Committee trusted the Government to rectify omissions from the report form and provide information on the measures taken to promote an employment policy in keeping with the Convention. Detailed information was also sought on consultations held in practice with affected persons over employment issues and how their views were actually taken into account in policy formulation.³⁵⁰

The report of the Zambian Government to the Committee on Economic, Social and Cultural Rights is long overdue.³⁵¹ Under the Covenant on Economic, Social and Cultural Rights, the Zambian Government has an obligation to report to the Committee and to monitor 'the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed'.³⁵² The obligation to monitor is not fulfilled by the provision of aggregate national statistics or estimates but requires special attention to vulnerable or disadvantaged groups.³⁵³ Retirees must fall into this category in respect of the right to employment. Furthermore, the Committee has determined that 'the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies for their promotion, are not in any way eliminated as a result of resource constraints.' It is incumbent upon the Zambian Government to provide the Committee with full information about the steps it is taking to achieve full realisation of the right to work: in the absence of such information, it is difficult to refute the argument, on the basis of the evidence presented, that the Government is failing to comply with its obligations in the Covenant with respect to training and vocational guidance.

4. The failure by the World Bank to support retraining in mitigation of required redundancies

In 1994, the Bank in its *Poverty Assessment* identified the need to foster micro-entrepreneurs in Zambia's towns and cities as requiring priority action.³⁵⁴ Measures to raise access to market information and improve relevant skills, to remove legal and regulatory constraints on micro-entrepreneurs, and to established combined training and information centres in urban compounds were advocated. Two years later, the Bank's Operations Evaluation Department, in its review of assistance to Zambia, reconsidered the circumstances of the self-employed in the informal sector. Its analysis is bleak and can only be read as a damning indictment of Bank inaction:

'Among the many factors that impede the development of entrepreneurship and skills in people are the following: declining life expectancy; the share of work women are already bearing; the traditional barriers to women's access to credit and land ownership; the low level of personal savings due to poverty; the inability of the poor to risk their income sources (the low-risk route out of the ghetto, notably the public service, does not lead to entrepreneurship); the high percentage of youths heading

households due to early deaths of parents; and a lack of knowledge of alternative lines of production. The Bank's country assistance strategy should address this set of issues and propose specific measures.³⁵⁵

The Bank's Country Assistance Strategy for financial years 1997 - 1999 fails to propose any direct measures aimed specifically at training or retraining retrenched. In the related area of broader business development, the Bank's sole vehicle is the aforementioned Enterprise Development Project.³⁵⁶

While there has been an absence of Bank action, either through credit agreements or project assistance, on training or otherwise equipping retrenched for gainful employment in the informal sector, at the same time, it is a matter of record that Bank/IMF loan conditionality requires public sector and parastatal restructuring which is itself predicated on programmes of mass redundancy. While structural adjustment of this kind is not, by its nature, incompatible with the right to employment, the Committee has determined that endeavours to protect economic and social rights become more, rather than less urgent in such a situation. Both State parties to the Covenant and UN agencies, including the World Bank/IMF, should 'make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment.'³⁵⁷ The action of the Bank becomes incompatible with the right to work under the Covenant when programs of mass redundancy are pursued in the absence of adequate measures to mitigate the impact of reform on vulnerable retrenched. The absence of training and retraining to equip retrenched and others for a working life in the informal sector is a violation of the right to work in which the Bank shares culpability with the Government. The degree to which the Zambian Government endorsed restructuring is a moot point: it is sufficient to establish that the Bank was the joint architect of reform in order to question the advisability of its international measures of assistance against the datum of social and economic rights within the Covenant. In Section 3, consideration is given to the adequacy of welfare support for retrenched.

Notes

¹ Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Convention No. 122, Employment Policy, Zambia, 1999, para.1. (Hereafter CEACR/IO/122/-/Zambia).

² ICESCR, article 6.

³ ICESCR, article 7.

⁴ The formal title is the Industrial and Labour Relations Act, 1993, as amended by the Industrial and Labour Relations (Amendment) Act, 1997. References throughout this section to the ILRA refer to this 1993 amended Act, unless otherwise stated.

⁵ *Reporting Guidelines*, Annex, Section B, Article 6 of the Covenant, para. 2(a).

⁶ See citations in Craven (1998), p.209, notes 126 and 127, respectively E/C.12/1987/SR.5, para.23, E/C.12/1987/SR.6, para.16 and Concluding observations on the report of Lebanon, E/C.12/1993/10, para.12.

⁷ CEACR/IO/122/1995/Zambia, para.2. Information is required from Zambia in conformity with article 2 of the report form adopted by the ILO's Governing Body. See also CEACR/IO/122/1997/Zambia, para.1 (repeated in 1999).

⁸ SCR (1999), table 8. (Based on data from the Central Statistical Office).

⁹ Central Statistical Office.

¹⁰ *Ibid.*

¹¹ *ER 1997*, para. 23.

¹² ZPA (1997a), *Status Report*, 31 December 1997.

¹³ Job losses are from 1992 onwards. See ZPA (1997e), 'Social Impact of Privatisation: Performance of Privatised Companies and Public Opinion on Privatisation'.

¹⁴ Of course, those in the latter group include enterprises such as the National Dairy Board, National Home Stores Limited, the National Hotels Development Corporation, Consumer Buying Corporation of Zambia, Zambia Agricultural Development Limited, Zambia Cold Storage Corporation, Zambia Steel & Building Supplies, and others which were broken up into asset units before being privatised.

¹⁵ '300 workers lose jobs at Zambezi sawmills,' *The Post*, 21 April 1998.

¹⁶ For more detail, see *intra* p.90.

¹⁷ 'So far many of the companies privatised are only headed for liquidation.' (George Zulu, spokesman for the UNIP vice-president Chief Inyambo Yeta, quoted in 'Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997).

¹⁸ Afronet (1997), *The Human Rights Report 1997*, Chapter 3: The Labour Movement and Legislation.

¹⁹ Afronet (1998), *The Zambian Human Rights Report*, respectively Chapter 5: Economic and Social Rights.

²⁰ See 'More lose jobs South,' *Zambia Today*, 18 February 1998. The figures cover all districts apart from Siavonga, the data from which was yet to be processed.

²¹ As a separate category to redundancies, ZCCM lists 'voluntary displacement' of 1,884 employees over the period. The figure of 12,500 includes this number. It excludes summary dismissals, normal retirement and medical discharge and other miscellaneous losses. See ZCCM (1997i), *Labour Rationalisation Progress Report*, annexed as Schedules I & II to an internal document entitled 'Manpower Planning and Development'.

²² The Power Division was sold to the Copperbelt Energy Consortium, comprising the UK's Midlands Power International, the National Grid Company, and 5 senior ZCCM managers (ZPA (1998b), *Progress Report No. 12*, pp. 36 ff.). The number employed within the Power Division was listed as 883 in the ZCCM press release announcing the sale (see ZCCM (1997j), 'Sale of Power Division'). This figure is probably based on the entire division workforce, including Bulk Transport which was not part of the sale to CEC. In reporting the retrenchment of 229 workers, the *Times*

of Zambia states that 538 staff remain. The implication is that the workforce was 767 strong when CEC took over. (See 'Energy firm prunes 229,' *Times of Zambia*, 1 April 1998).

²³ Cited in Buchanan (1998), 'Slow progress for Zambian Copper'.

²⁴ 'RAMCZ retrenches Pwele,' *Times of Zambia*, 8 February 2000.

²⁵ Stipulated under the terms of a Small Scale mining Agreement. See ZPA (1997b), *Progress Report No. 10*, p. 42; and ZPA (undated), 'The Zambia Consolidated Copper Mines (ZCCM) Kansanshi Mine Sale: Questions and Answers'.

²⁶ The sale of Kansanshi is listed by the ZPA as completed on 14 March 1997. Formal production at the small-scale operations ceased on 15 January 1998. Cyprus Amax maintains that the decision to close was taken by ZCCM alone on commercial grounds, although under the terms of the agreement, Cyprus Amax could require such termination if the mining was deemed incompatible with its exploration work. See 'Kansanshi mine shut,' *Times of Zambia*, 14 January 1998; 'Kansanshi workers refute claims,' *Times of Zambia*, 28 January 1998; ZCCM (1997a), *Employee Privatisation Update*, Number 2, p.6; also Knight-Ridder Money Center, Story #16117, 13 January 1998; also Cyprus Amax (1998), 'Cyprus Amax Kansanshi PLC - Update of 1997 Exploration Activities'.

²⁷ *PSREPC R&R*, Annex I, Letter of Development Policy, paras. 17 ff.

²⁸ Study by the Anglo/ZCI subsidiary Konkola Copper Mines plc, reported by Reuters, 21 January 2000.

²⁹ *PSREPC R&R*, para. 26.

³⁰ See *ERC PCR*, paras. 27 and Annex 1, para. 13.

³¹ *PIRC & ESAC PAR*, para. 2.10.

³² *Ibid.*, para. 3.18.

³³ *Ibid.*, para. 3.19.

³⁴ *ESAC II R&R*, Annex G, Section E - Civil Service Reform.

³⁵ The hiring freeze was implemented in August 1997 in advance of the announcement of the full revised PSRP.

³⁶ See *PSREPC R&R*, para. 40. The two other elements were to strengthen the system for controlling the public payroll and to develop an improved performance management system.

³⁷ Measures in accordance with the revised PSRP announced in November 1997 included the placement of all unqualified officers and those unsuccessful in selection interviews on six months forced leave until a final decision on their future was made. Appointments of non-professionals aged over 55 years to cease and recent or provisional appointees would have their employment terminated. In addition, the exercise to eliminate ghost workers on the civil service payroll was to continue.

³⁸ *PSREPC R&R*, Annex I, Letter of Development Policy, para. 26.

³⁹ *PSREPC R&R*, para. 41. Of the 6,000 Government employees laid off in December 1997, while some received payment in February 1998, others were still awaiting payment in April 1998. (See 'To Paris with a bad record,' *Monitor*, Issue Number 22, 10 - 23 April 1998). It is unclear whether those who still have not been paid their benefits include retrenchees from this initial group. If this is the case, then some individuals will have been waiting over a year for their entitlements.

⁴⁰ In December 1997, the World Bank and the UK, Norway and Sweden committed K96 billion towards the K116 billion needed to fund the second phase of the PSRP. However, this money was not disbursed and the PSRP was discussed again at the next Consultative Group meeting of donors.

⁴¹ Weekly press briefing by the Minister of Finance, Ronald Penza, State House, 24 December 1997.

⁴² *PSREPC R&R*, paras. 41 and 42.

⁴³ The total is arrived at by the loss of 15,524 classified daily workers through compulsory redundancy, 2059 pensionable civil servants through voluntary redundancy, and a net reduction of 1463 posts by setting natural attrition against the reduced level of hiring. See *PSREPC R&R*, Annex I, Letter of Development Policy, para. 26.

⁴⁴ *PSREPC R&R*, Annex I, Letter of Development Policy, para. 28.

⁴⁵ Public Sector Reform and Export Promotion Credit, worth \$170 million. The credit was approved by the Bank's Board on 26 January 1999.

⁴⁶ The PSREPC is payable in a first tranche of \$65 million, a floating tranche of \$40 million and a second tranche of \$65 million. It is the release of the floating tranche which is conditional on the PSRP revised action plan.

⁴⁷ A State is not obliged to legally guarantee the right to work through full employment. Full employment is best perceived in terms of the availability of work for those seeking it. For a discussion of this, see Craven (1998), p.204.

⁴⁸ ILO's Employment Policy Convention of 1964 (No. 122), article 1(1).

⁴⁹ 'In Zambia, as the country implements its ongoing structural adjustment and reform programme, the major emphasis is on attaining macroeconomic stability and reviving growth followed by emphasis on public sector reform and privatization, rehabilitation of the country's economic and social infrastructure and provision of support to vulnerable groups. The government believes that the provision of an enabling environment for private sector development, especially micro and small enterprises, will stimulate jobs and incomes.' (UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, Chapter 1 The commitment to full employment and sustainable livelihoods, section 1.3).

⁵⁰ An article in *Profit Magazine*, a publication of the Zambia Association of Chambers of Commerce and Industry, concluded: 'We have no policy for industry. It may sound hard but the government regards most of it as expendable. Who will replace the employment power of factories that die? We have no employment policy. The government seems scarcely to care when more and yet more lose their jobs.' (*Profit Magazine*, March 1994).

⁵¹ Craven (1998), p.208.

⁵² *CAR*, paras. 1.30 - 1.31.

⁵³ CEACR/IO/122/1993/Zambia, CEACR/IO/122/1995/Zambia, and CEACR/IO/122/1997/Zambia. As no reply was received in response to the Committee's 1997 observation, the CEACR reissued the same observation in 1999.

⁵⁴ CEACR/IO/122/1997/Zambia, para. 3 (repeated in 1999); also the Committee's expression of concern in CEACR/IO/122/1995/Zambia, para. 2.

⁵⁵ CEACR/IO/122/1993/Zambia, para. 2; see also CEACR/IO/122/1995/Zambia, para. 2; also CEACR/IO/122/1997/Zambia, para. 3 (repeated in 1999).

⁵⁶ CEACR/IO/122/1995/Zambia, para.1.

⁵⁷ 'The negative aspects of redundancies are evident but should not obscure the positive opportunities afforded of moving the work force into new and growing areas of employment and wealth creation.' (ZPA (1993a), *Progress Report No. 2*) 'The privatisation programme is assisting to revitalise economic activity in Zambia.'; 'With economic activity expected to pick up strongly in 1998, job opportunities are expected to be generated on a large scale.' (Government of Zambia, *ER 1997*). 'With the anticipated injection of fresh capital, new management and entrepreneurial skill and up-to-date technologies the Government expects major increases in the production efficiencies of the mines, the opening up of employment opportunities and a rejuvenation of the general business and economic atmosphere on the Copperbelt.' (Minister of Finance, *Budget Address 1998*).

⁵⁸ Pledges summarised in *ER 1995* and *ER 1997*. Figures for actual foreign direct investment from *PSREPC R&R*, Zambia - Key Economic Indicators, Annex B.

⁵⁹ Craven (1998), in his interpretation of the fulfilment of the right to work under the Covenant, is of this opinion. (Op. cit., p.208).

⁶⁰ *PA*, para. 4.27.

⁶¹ *GC 2*, para.9.

⁶² 'Government says it has accepted the fact that the informal sector was here to stay and that it has continued to play a pivotal role in the socio-economic development of the nation.' ('Informal sector is an asset,' *Daily Mail*, 23 January 1998).

⁶³ *Reporting Guidelines*, Article 7 of the Covenant, para.3(a).

⁶⁴ *Ibid.*, Article 7 of the Covenant, para.5(b).

⁶⁵ *Ibid.*, Article 6 of the Covenant, para.4.

⁶⁶ *Ibid.*, Article 7 of the Covenant, para.2(b)(iv).

⁶⁷ Committee on Employment and Social Policy, 'Preliminary report on a synthesis of ACC Task Force country employment policy reviews,' ILO Governing Body GB.268/ESP/2, 268th Session, Geneva, March 1997. The other countries reviewed by the ACC task force were Chile, Hungary, Indonesia, Morocco, Mozambique and Nepal.

⁶⁸ *Ibid.*, para. 20.

⁶⁹ *Ibid.*, para. 20.

⁷⁰ *Ibid.*, para. 35.

⁷¹ The labour force is equated to the economically active population, itself defined as all persons aged 12 and above 'whose main economic activity was to supply their labour for the production of economic goods and services'. Both employed and unemployed persons are included in the figure for the total labour force. See *LCMS* (1996), paras. 9.2, 9.3 and 9.5.

⁷² *LCMS* (1996), para. 9.9 and table 9.10.

⁷³ *Ibid.*, table 9.10.

⁷⁴ *Ibid.*, table 9.12.

⁷⁵ Most of the information on informal sector employment in the proceeding paragraphs draws upon The Study Fund (1997), *Informal Sector Business Activities in Lusaka Urban District under the Structural Adjustment Programme*, Lusaka, 1997.

⁷⁶ *Ibid.*

⁷⁷ *PA*, observation on Chipulukusu shanty, Ndola.

⁷⁸ Taylor (1995), 'Informal trading: a means of economic survival in the face of economic reforms in Zambia - a case study of Kitwe'.

⁷⁹ Study Fund (1997).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *LCMS* (1996), para. 10.2.

⁸⁶ Average household income in urban areas was K191,000 compared to K71,000 in rural areas. See *LCMS* (1996), para. 10.2.

⁸⁷ *Ibid.*, table 10.3.

⁸⁸ *Ibid.*

⁸⁹ There has been a rise in the cost of living. An apparent increase in average formal sector monthly earnings from K15,480 in 1992 to K97,005 in 1995 masks that, in reality, this is equivalent to an increase of just K915 when the falling value of the Kwacha is taken into consideration. While the level of formal sector earnings has thus remained almost static, the cost of living has increased by 491.2 per cent in real terms over the same period. See Study Fund (1997).

⁹⁰ CEACR/IO/122/1993/Zambia, para. 3; CEACR/IO/122/1995/Zambia, para. 3; CEACR/IO/122/1997/Zambia, para. 3 (repeated in 1999).

⁹¹ CEACR/IO/122/1995/Zambia, para. 3.

⁹² Industrial and Labour Relations Act, Part X Tripartite Consultative Labour Council.

⁹³ 'Who are buyers of our mines...?' *Times of Zambia*, 13 August 1998.

⁹⁴ Muchindu (1998), 'Issues on the Privatisation of the Mines'.

⁹⁵ ZPA (1993b), *Progress Report No. 3*, para. 4.11.

⁹⁶ ZPA (1993a), *Progress Report No. 2*, para. 6.3

⁹⁷ 'After the sales agreements were signed for Auto Care and Eagle Travel, it became apparent that the employees had the mistaken impression that they would receive redundancy pay when the new owners took over the SOEs. The workers had not been adequately informed about the effects of the change of ownership on their employment contracts.' (ZPA (1993a), *Progress Report No. 2*).

⁹⁸ ZPA (1993b), *Progress Report No. 3*, para. 4.11.

⁹⁹ ZPA (1993a), *Progress Report No. 2*.

¹⁰⁰ 'The Government refers in general terms to measures to soften the negative impact of structural adjustment on the most affected groups of the population and to assist and counsel retrenched workers....the Committee notes the absence of more precise information on the exact nature and scope of social measures taken to accompany the structural adjustment policy.' (CEACR/IO/122/1997/Zambia, para. 2).

¹⁰¹ Privatisation Act, section 8(2)(i) (ii) - (iii).

¹⁰² As part of the qualitative assessment of a bidder's business plan 'employment expansion' as well as 'employee training and benefits' are to be given due consideration. This arises out of the interpretation of the Privatisation Act, section 8(2)(i)(ii), to evaluate offers with regard to the 'ability to develop the enterprise'. See ZPA (1993a), *Progress Report No. 2*, para. 5.2.2.

¹⁰³ Privatisation Act, section 38 (c) and (d).

¹⁰⁴ See ZPA (undated), 'Transparency in the privatisation programme: questions & answers,' question 20. This briefing is posted at <www.zamnet.zm/zamnet/zambus/zpa>.

¹⁰⁵ Ministry of Labour and Social Security (1995), *National Policy on Retrenchment* [draft], paras. 1 - 2.

¹⁰⁶ *Ibid.*, 'Mission Statement', para.15.

¹⁰⁷ See Craven (1998), p.205.

¹⁰⁸ *Ibid.*, pp. 221 ff.

¹⁰⁹ Valid reasons are deemed to be connected with the capacity or conduct of the worker or based upon the operational requirements of the undertaking concerned. See, for example, ILO Termination of Employment Convention (No. 158), article 4.

¹¹⁰ The ILO Protection of Wages Convention (No. 95) and the ILO Termination of Employment Convention (No.158) were ratified by Zambia on, respectively, 23 October 1979 and 9 February 1990.

¹¹¹ The questions asked by the Committee have probed the question of unjust dismissals: see, for example, E/C.12/1987/SR.6, para.16 on the role of unions in protecting against arbitrary dismissal and E/C.12/1987/SR.13, para.49 on the concept of grievous fault. The Committee has examined whether appeal procedures and remedies exist to safeguard against unfair dismissal. Numerous references which attest to the fact that the Committee regards these matters as warranting examination in respect of the right to work are furnished by Craven (1998), notes 230 - 235.

¹¹² E/C.12/1989/SR.11, para.66.

¹¹³ Employment (Amendment) Act (1997), section 26B (1).

¹¹⁴ *Ibid.*, section 26B (4)(a).

¹¹⁵ *Ibid.*, section 26B (2)(a).

¹¹⁶ *Ibid.*, section 26B (2) (a) and (b).

¹¹⁷ *Ibid.*, section 26B (2)(c). This notification to the proper officer must take place not less than sixty days prior to effecting the redundancies.

¹¹⁸ Ministry of Labour and Social Security (1995), *National Policy on Retrenchments* [draft], para. 13.

- ¹¹⁹Employment (Amendment) Act (1997), section 26B (2)(c)(iv).
- ¹²⁰*Ibid.*, section 26B (3)(b).
- ¹²¹See articles 11 to 14.
- ¹²²Summarised and paraphrased from the *National Policy on Retrenchments* [draft], para. 11(a) - (c).
- ¹²³Employment (Amendment) Act (1997), section 26B (3)(a).
- ¹²⁴Craven (1998), p.233. The ILO's Equal Remuneration Convention, 1951 (No. 100) defines remuneration as including 'the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly whether in cash or in kind, by the employer to the worker and arising out of the worker's employment' (article 1 (a)). The Committee, in its *Reporting Guidelines*, confirms the direct relevance of the Equal Remuneration Convention in its examination of State reports in assessing compliance with article 7 of the Covenant. Further detail as to what constitutes remuneration is given in the General Survey of the Committee of Experts, Minimum Wages, ILC, 79th Session, 1992, Report III (Pt. 4B), 7-13.
- ¹²⁵Craven (1998), pp.234 - 236 and footnotes.
- ¹²⁶The clause in article 7(a)(ii) 'in accordance with the provisions of the present Covenant' requires that a decent living is defined in relation to all other rights within the Covenant.
- ¹²⁷For a discussion of this sub-clause and the sub-clause 'equal pay for equal work', see Craven (1998), pp.237 - 240.
- ¹²⁸ICESCR article 2(2).
- ¹²⁹The Committee's practice of considering relevant ILO conventions in its examination of State reports is codified on several occasions within its guidelines on the form of State reports.
- ¹³⁰*PIRC & ESAC PAR*, para. 2.19.
- ¹³¹*Idem.* The Bank expected corporate restructuring as leading to the layoff of 30,000 individuals or 7.5 per cent of formal sector workforce.
- ¹³²*Idem.*
- ¹³³Ministry of Labour and Social Security (1995), *National Policy on Retrenchments* [draft].
- ¹³⁴Afronet (1998), *The Zambian Human Rights Report*, respectively Chapter 5: Economic and Social Rights.
- ¹³⁵*Idem.*
- ¹³⁶Memo dated 28 April 1998. See continuation of article 'Mine houses sale halted', *Times of Zambia*, 30 April 1998.
- ¹³⁷Continuing benefits included a monthly allocation of mealie-meal, funeral assistance, security cover and other maintenance services. Transport assistance, as well as work-related bonuses were to be withdrawn.
- ¹³⁸Continuation of article 'Houses 'freeze' hailed,' *Times of Zambia*, 1 May 1998.
- ¹³⁹'300 former ZCCM miners lose jobs,' *Times of Zambia*, 13 March 1998.
- ¹⁴⁰Continuation of article 'UTH strike enters day 3 as magistrates give ultimatum', *Times of Zambia*, 10 June 1998.
- ¹⁴¹'Roan pays retirees K1bn,' *Times of Zambia*, 15 August 1998.
- ¹⁴²'Operations 'halted' at Luanshya mine,' *The Post*, 24 March 1999.
- ¹⁴³'Ex-RAMCZ workers demonstrate,' *The Post*, 30 March 1999.
- ¹⁴⁴'Opinion,' *Times of Zambia*, 21 March 1998.
- ¹⁴⁵Parliamentary Committee on Public Investments (1997), *Special Report on Privatisation*, presented before the House in December 1997. See also 'Parley endorses decision,' *Times of Zambia*, 29 November 1997.
- ¹⁴⁶ZPA (1993a), *Progress Report No. 2*, p. 23.
- ¹⁴⁷'Energy firm prunes 229,' *Times of Zambia*, 1 April 1998.
- ¹⁴⁸For example, see speech by the President to the 17th biannual conference of the Mineworkers Union of Zambia, held 22nd - 25th January, 1998.
- ¹⁴⁹*ESAC II R&R*, para. 49.
- ¹⁵⁰Employment (Amendment) Act (1997), section 19.
- ¹⁵¹*Ibid.*, section 21.
- ¹⁵²*Ibid.*, section 3.
- ¹⁵³*Ibid.*, section 7(1)(a).
- ¹⁵⁴*Ibid.*, section 13, under a new section 26B(4)(b) in the principal Act.
- ¹⁵⁵ICESCR, article 7.
- ¹⁵⁶ICESCR, article 7(b).
- ¹⁵⁷ICESCR, article 7(a)(i).
- ¹⁵⁸ICESCR, article 7(a)(ii).
- ¹⁵⁹See the Privatisation Act, section 21(1), especially subclauses (e) and (f).
- ¹⁶⁰Continuation of article 'Kansanshi mine shut,' *Times of Zambia*, 14 January 1998.
- ¹⁶¹'Bonus Strike Spreads,' *Zambia Today*, 13 January 1998.
- ¹⁶²Continuation of article 'Luanshya mine new owners win praise,' *Times of Zambia*, 16 February 1998.
- ¹⁶³Action commenced on 28 July 1998. See continuation of article '150 Scaw workers down tools over poor pay,' *Times of Zambia*, 31 July 1998.
- ¹⁶⁴'State promises to pay NCZ salary arrears,' *Times of Zambia*, 8 April 1998.
- ¹⁶⁵'NCZ workers, wives and children protest,' *Zambia Daily Mail*, 8 April 1998.
- ¹⁶⁶Afronet (1997), *The Human Rights Report 1997*, Chapter 3: The Labour Movement and Legislation.
- ¹⁶⁷*Idem.*
- ¹⁶⁸Respectively, Conventions Nos. 98, 151 and 154.
- ¹⁶⁹Afronet (1997), *The Human Rights Report 1998*, Chapter 5: Economic and Social Rights. Zambia ratified ILO Convention No. 144 on 4 December 1978.
- ¹⁷⁰'ZCTU affiliates to down tools over wage freeze,' *ZamToday: Electronic News from Zambia*, 13 January 1998.
- ¹⁷¹See 'IRC declares wage freeze illegal,' *The Post*, 17 June 1999; see also the article on the same topic in the *Zambia Daily Mail*, 17 June 1999.
- ¹⁷²The right of appeal to the Supreme Court is provided for under ILRA (1993), section 97.
- ¹⁷³Afronet (1998), *The Human Rights Report 1998*, Chapter 5: Economic and Social Rights.
- ¹⁷⁴'UTH strike enters day 3 as magistrates give ultimatum,' *Times of Zambia*, 10 June 1998.
- ¹⁷⁵ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ¹⁷⁶Continuation of article 'UTH strike enters day 3 as magistrates give ultimatum', *Times of Zambia*, 10 June 1998.
- ¹⁷⁷Afronet (1998), *The Zambian Human Rights Report*, respectively Chapter 5: Economic and Social Rights.
- ¹⁷⁸*Ibid.*
- ¹⁷⁹*Ibid.*
- ¹⁸⁰CEACR: Individual Observation concerning Convention No. 95, Protection of Wages, Zambia, 1999.
- ¹⁸¹For an account of the sale and negotiation process, see ZPA (undated), 'Privatisation program'.
- ¹⁸²For example, see ZPA (undated), 'Transparency in the privatisation programme: questions and answers,' question 7.
- ¹⁸³ZPA (1993a), *Progress Report No. 2*, pp. 22 - 23.
- ¹⁸⁴ILRA (1993), sections 63 ff. and 66 ff.

- ¹⁸⁵Unnamed investor, quoted in 'Miners fearing the unknown?' *Zambia Daily Mail*, 28 January 1998.
- ¹⁸⁶ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ¹⁸⁷'It's time to crucify workers exploiters, declares ZCTU,' *Times of Zambia*, 3 January 1998.
- ¹⁸⁸ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ¹⁸⁹'Trio killing raises more dust,' *Times of Zambia*, 10 February 1998.
- ¹⁹⁰'...But there are no jobs here - mine workers', *Times of Zambia*, 19 February 1998.
- ¹⁹¹For further information on the closure of small-scale operations at Kansanshi, see *intra* p.74.
- ¹⁹²'150 Scaw workers down tools over poor pay,' *Times of Zambia*, 31 July 1998.
- ¹⁹³'Kitwe miners' strike ends,' *The Post*, 5 November 1998.
- ¹⁹⁴ICESCR, article 2(1).
- ¹⁹⁵GC 1, para.3.
- ¹⁹⁶*Idem*. See Craven (1998), p. 117 for an interpretation of this obligation.
- ¹⁹⁷*Reporting guidelines*, Annex, Section B, Article 7 of the Covenant, paras. 2(b)(iii) and para. 3.
- ¹⁹⁸Ratified by Zambia on 19 August 1980.
- ¹⁹⁹Labour Administration Convention (No. 150), article 4.
- ²⁰⁰*Ibid.*, article 1(b).
- ²⁰¹*Ibid.*, article 6(1).
- ²⁰²*Ibid.*, article 6(2)(b).
- ²⁰³Privatisation Act, section 8(2)(c) and (d).
- ²⁰⁴*Ibid.*, section 49(h).
- ²⁰⁵ZPA (undated), 'Transparency in the privatisation programme: questions and answers,' question 7.
- ²⁰⁶*Ibid.*, questions 18 and 20.
- ²⁰⁷*Ibid.*, question 20.
- ²⁰⁸John Phiri, 'Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997.
- ²⁰⁹Stuart Cruickshank, quoted from the interview with John Phiri, 'Pitfalls of privatisation hearsay,' *Times of Zambia*, 3 December 1997.
- ²¹⁰See Section 3 for a critique of this. A performance study of companies sold, to include study of their staff levels and working conditions, is being planned, apparently backed by World Bank funding. To be credible, there must be wide consultation with affected groups and it is of the utmost importance that the findings are made public. It remains to be seen whether this will be the case.
- ²¹¹'Private consultant condemns speedy firm sales,' *Financial Mail*, 18 November 1997.
- ²¹²Parliamentary Committee on Public Investments (1997), *Special Report on Privatisation*, presented before the House in December 1997. See also 'Parley endorses decision,' *Times of Zambia*, 29 November 1997.
- ²¹³The Sole Expert is defined simply as ' a person appointed to resolve any difference of view or disagreement between the parties' who 'shall not be, or have been an employee of GRZ or Roan Antelope [the company] or any Shareholder or any of their respective Affiliates or any authority or corporation of GRZ.' It is assumed that this would exclude ZPA from acting in this capacity.
- ²¹⁴State House weekly briefing by the Minister for Mine and Mineral Development, General Christon Tembo, 26 November 1997.
- ²¹⁵In an early interview about the ZPA, its chief executive Valentine Chitalu, said 'I aim to work myself out of a job in a few years.' (Special Advertising Section of *Fortune Magazine*, 24 July 1995). That was in 1995. The view that the Agency will close once its portfolio of State owned enterprises is sold is reinforced by a second interview in 1997. See ZPA (undated), 'How far have Zambians participated in the privatisation programme?' question 20.
- ²¹⁶Industrial and Labour Relations Act, 1993, as amended by the Industrial and Labour Relations (Amendment) Act, 1997.
- ²¹⁷'The repressive onslaught on organised labour over the past decade or more has been so intensive that unions appear increasingly unable to respond to the challenges of the new labour management regime. The fear of losing one's job in the private sector, or being retrenched in the public sector, has evoked insecurity and caused anxieties that deeply undermine the confidence of unionised workers to initiate and sustain collective action....Problems of legitimacy, effective and democratic participation in decision-making, effective exercise of authority and peaceful resolution of conflicts continue to grow, spawning a pervading culture of indiscipline and violence at work places and in the wider society. These management problems suggest that the future of 'industrial peace' in many of the Anglophone African countries is rather uncertain.' Akwetey (1998), 'Changes in Labour Management Relations'.
- ²¹⁸Committee on Freedom of Association, Report No. 284, Case No. 1575, Recommendations, para. 920. (Hereafter *Zambia Complaint*).
- ²¹⁹Zambia ratified both the Freedom of Association and Protection of the Right to Organise Convention and the Right to Organise and Collective Bargaining Convention on 2 September 1996. Both Conventions enter into force twelve months after ratification. The first report for consideration by the ILO on each newly ratified Convention is requested twelve months after its entry into force. Zambia was therefore due to report to the Committee of Experts on the Application of Conventions and Recommendations in late 1998.
- ²²⁰*Zambia Complaint*, para. 902.
- ²²¹*Ibid.*, para. 903. The affiliation of a union or federation of trade unions with a body outside of Zambia is now decided by simple majority vote at the organisations general conference. See ILRA (1993), section 34(3).
- ²²²*Zambia Complaint*, para. 915.
- ²²³ICESCR, article 8(1)(c).
- ²²⁴ICESCR, article 8(1)(c).
- ²²⁵ILRA (1993), section 61.
- ²²⁶See, respectively, *ibid.*, schedule (c) and section 9(3).
- ²²⁷Respectively, *ibid.*, section 34(4) and section 28(3).
- ²²⁸*Zambia Complaint*, paras. 904 - 905.
- ²²⁹ILRA (1993), section 18(a).
- ²³⁰*Ibid.*, section 18(4).
- ²³¹*Ibid.*, section 30(3).
- ²³²*Ibid.*, section 7(1).
- ²³³*Ibid.*, section 9(1). The Minister retains powers to make regulations by statutory instrument for the purpose of giving effect to the provisions of the Act or to make regulations prescribing all matters required by the Act. (ILRA (1993), section 112 (a) and (b)).
- ²³⁴ILRA (1993), section 9(3).
- ²³⁵*Ibid.*, section 9(2).
- ²³⁶*Zambia Complaint*, para.901. In the ILRA, 1990, the registration threshold was set even higher at 100 members. The CFA drew on a prior decision as the basis for its criticism of this threshold. (*Digest of decisions and principles of the Committee on Freedom of Association*, 3rd edition, 1985, para. 256).
- ²³⁷ILRA (1993), section 12.
- ²³⁸See *Zambia Complaint*, para. 901; also Committee on Freedom of Association, *Digest*, 3rd edition, 1985, para. 489. Under the ILRA (1993), the

- grounds for cancellation include, *inter alia*, obtaining registration by fraud or mistake or if a union 'has wilfully violated any of the provisions of this Act.' Appeals against cancellation may be made to the Industrial Relations Court.
- ²³⁹ILRA (1993), section 12(4 - 5); also section 13.
- ²⁴⁰Ibid., section 5(a), (b) and (f).
- ²⁴¹Ibid., section 22.
- ²⁴²Committee on Employment and Social Policy, 'Preliminary report on a synthesis of ACC Task Force country employment policy reviews,' ILO Governing Body GB.268/ESP/2, 268th Session, Geneva, March 1997, para. 36.
- ²⁴³See ILRA (1993), Part VII - Recognition Agreements. Those employing twenty-five or more eligible employees are required to register for the purpose of entering into recognition agreements with a union, if any, to which employees belong. The Minister may prescribe that employers with fewer workers also register. See section 63(1).
- ²⁴⁴ILRA (1993), Part VIII - Collective Agreements, especially section 66(1). The negotiation of a new collective agreement is to take place at least three months before the expiry of an existing agreement and ought to be concluded within three months (section 69(a) and (c)). The ILRA provides for the extension of negotiations (section 73) or for the resolution of failed negotiations by the Industrial Relations Court or by strike action under section 78.
- ²⁴⁵ *Zambia Complaint*, para. 917.
- ²⁴⁶While those collective agreements that contravene Zambian law or do not contain statutory clauses on their entry into force, duration, their review and termination are to be mandatorily rejected, the Minister also seems to have discretion to reject collective agreements. A reason must be given if a collective agreement is returned by the Minister; however, it is by no means apparent that the grounds for rejection are limited to failure to meet the statutory requirements. It therefore seems entirely possible that policy considerations may enter into the Minister's decision to reject or approve an agreement. See ILRA (1993), section 71 and section 68.
- ²⁴⁷Ibid., section 66.
- ²⁴⁸'Stay on, pleads MUZ,' *Times of Zambia*, 20 September 1997.
- ²⁴⁹'More miners desert MUZ,' *ZamToday: Electronic News from Zambia*, 31 March 1998.
- ²⁵⁰Under the Industrial Relations Act (1971).
- ²⁵¹ILRA (1993), section 17(b - c).
- ²⁵²ICFTU (1999a), *Trade Union Rights Violations in Southern Africa*. The unions which left and rejoined the ZCTU are the Zambia National Union of Teachers (ZNU), the National Union of Building and Engineering Workers (NUBEGW), and the National Union of Commercial and Industrial Workers (NUCIW). For further information on the divisions within the trade union movement, see Afronet (1997), *The Human Rights Report 1997*, Chapter 3: The Labour Movement and Legislation.
- ²⁵³'ZCTU denies complicity in miners' wrangle,' *Zambia Today*, 24 February 1998.
- ²⁵⁴'Workers enslaved,' *The Post*, 10 March 1998.
- ²⁵⁵The view has been expressed that the ZCTU initially refrained from criticising the economic reform programme during 1992-1994 because of its political alliance with the MMD. This provoked dissension among rank and file members who suffered the impact of adjustment in terms of job insecurity, unemployment, declining pay. This discontent led to a power struggle within the Congress in 1994, since which time the organisation has been characterised as split and ineffective. (See Akwetey (1998), under 'Public Status of Trade Unions').
- ²⁵⁶Speech by the President to the 17th biannual conference of the Mineworkers Union of Zambia, held 22nd - 25th January, 1998.
- ²⁵⁷Speech by the President to the 17th biannual conference of the Mineworkers Union of Zambia, held 22nd - 25th January, 1998. The President has urged established unions to modernise and make a strong commitment to structural reform in order to 'to face the reality of the social and economic crisis they will go through if the collective representation of workers is to recover'.
- ²⁵⁸Afronet (1998), Chapter 5: Economic and Social Rights.
- ²⁵⁹Ibid.
- ²⁶⁰GC 3, para. 5.
- ²⁶¹ICCP, respectively articles 22 and 2(3)(a).
- ²⁶²ILRA (1993), section 84(1). This is in accordance with the Constitution which recognises the jurisdiction of the Industrial Relations Court in disputes concerning employment issues. See the Constitution of Zambia (as amended by Act No. 18 of 1996), Part VI, The Judicature, articles 91(1)(c) and 94(1).
- ²⁶³ILRA (1993), section 84 (4) and (7); also subsection (9).
- ²⁶⁴Respectively, *ibid.*, section 84(6) and section 97. The remedy offered by the Court may include, *inter alia*, the award of compensation, reinstatement, the confirmation of redundancy, or any other order or award as the Court sees fit. (Section 85).
- ²⁶⁵The allegation that the ILRA (1990) institutionalised a bias in the Industrial Relations Court was rejected by the CFA on the grounds that the court members, although appointed by the Minister, were suitably qualified and that other Court nominees were selected in equal part from among worker and employer representatives. See *Zambian Complaint*, paras. 856 and 918.
- ²⁶⁶ICESCR, article 8(1)(d). Lawful restrictions may be placed on the right to form and join trade unions or the right to strike of the armed forces, the police, or the State administration (article 8(2)).
- ²⁶⁷See, respectively, ILRA (1993), section 75 and section 76(a - b). The Minister selects a conciliator or the chairman of a conciliation board from lists provided by both parties when there is disagreement over who should be appointed (section 76(3)). When the dispute involves an essential service, the conciliation stage is by-passed and the matter is referred straight to the IRC for judgement (section 76(6)).
- ²⁶⁸ILRA (1993), section 78.
- ²⁶⁹The CFA concluded that the stipulation in law of a two-thirds majority for strike action was too high, constituting an intervention by the authorities in the right of unions to organise their activities without interference. (*Zambia Complaint*, para. 910). Under the revised ILRA (1993), the requirement is for a simple majority by secret ballot (section 78(3); also schedule (j)).
- ²⁷⁰ILRA (1993), section 78 (5).
- ²⁷¹Respectively, *ibid.*, section 78(5) and (6).
- ²⁷²Recorded in Afronet (1997), *The Human Rights Report 1997*, Chapter 3: The Labour Movement and Legislation, citing Ministry of Labour sources.
- ²⁷³ICFTU (1999a), *Trade Union Rights Violations in Southern Africa*. While the ILRA (1993), prohibits employers from exacting retribution against employees engaged in legal trade union activities (section 5(e) and (g); also section 37(1) and 78(11)), those engaged in illegal strikes are precluded from protection.
- ²⁷⁴ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ²⁷⁵ICFTU (1999a), *Trade Union Rights Violations in Southern Africa*.
- ²⁷⁶ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ²⁷⁷'Ndola Lime sacks 400 workers,' *Times of Zambia*, 22 October 1997; also 'Sacked Ndola Lime workers reprieved,' *Times of Zambia*, 23 October 1997.
- ²⁷⁸ILRA (1993), section 102(2). See *Zambia Complaint*, para. 911.
- ²⁷⁹ILRA (1993), section 107(10).
- ²⁸⁰See Afronet (1998), Chapter 5: Economic and Social Rights.

- ²⁸¹The definition in ILRA (1993), section 107(10)(f) relates to all services for the maintenance of safe underground working and drainage, shafts and shaft installations and machinery and plant.
- ²⁸²*Ibid.*, section 107(10)(g).
- ²⁸³ *Zambia Complaint*, para. 912.
- ²⁸⁴ILRA (1993), section 107(6). See also *Zambia Complaint*, para. 914, drawing on a prior decision of the CFA, *Digest*, para. 110, and 270th Report, Case No. 1444 (Philippines), para. 332.
- ²⁸⁵ILRA (1993), section 102.
- ²⁸⁶ *Zambia Complaint*, para. 913.
- ²⁸⁷ICFTU (1999b), *Annual survey of violations of trade union rights*, p.46.
- ²⁸⁸In its *Reporting Guidelines*, the Committee refers to the relevance of ILO Employment Policy Convention, 1964 (No. 122) to article 6. Information is sought on which persons, groups, regions or areas a State part considers particularly vulnerable or disadvantaged with regard to employment. Craven (1998) cites two occasions upon which a Committee member has sought to establish the existence of a policy to combat unemployment and policies directed at assisting vulnerable or disadvantaged groups, respectively E/C.12/1990/SR.40, para. 57 and E/C.12/1989/SR.6, para. 20. See Craven, *op. cit.*, p.208.
- ²⁸⁹ICESCR, article 6(2).
- ²⁹⁰UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, Chapter 3 Policies for full employment, Section 3.4 Major issues and policy lessons emerging from the country reviews.
- ²⁹¹Ministry mission statement, posted at <www.statehouse.gov.zm/ministries.html>.
- ²⁹²*Reporting Guidelines*, Annex, Section B, Article 6 of the Covenant, para. 2(e).
- ²⁹³Such instances are cited by Craven (1998), p.217, footnotes 186 - 188, respectively E/C.12/1987/SR.5, paras. 11 and 31; and E/C.12/1988/SR.3, para. 9.
- ²⁹⁴There are additional programmes, albeit of limited scope, aimed at school age children. The Ministry of Sport, Youth and Child Development is responsible for youth skills training centres are aimed at pupils of Grades 8 and 9, commonly between 14 and 15 years of age. They run courses in subjects such as carpentry, tailoring, design, mechanics, leatherwork, bricklaying and agriculture. Their scope remains limited. Nationwide, only thirteen such centres were operational in 1997 and were attended by 421 students, representing a decline in enrolment of over one fifth compared to the previous year because of reduced capacity. Donors contributed K237 million to the centres in 1997, to include capital sums earmarked for the reconstruction of buildings. The Government disbursed just K28 million to finance the operation of the centres. When calculated on an annual per capita basis, the Government's allocation amounts to K66,500 or \$50 spent on each place. Under a separate initiative, the Ministry of Science, Technology and Vocational Training opened a vocational training centre in Lusaka in 1997 teaching carpentry, bricklaying and car mechanics to Grade 7 and 9 school leavers. Another such centre is planned for Kitwe in the Copperbelt. See *ER 1997*, paras. 144 and 237; also 'Zambian Government Ministries' at <www.statehouse.gov.zm/ministries.html>.
- ²⁹⁵UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, Chapter 2 Country experience and policies, Section 2.2.1 Zambia. See, respectively, subheadings 'Employment and training policies' and 'Targeted programmes for vulnerable groups'.
- ²⁹⁶CEACR/IO/122/1993/Zambia, para.3.
- ²⁹⁷See STEP IN Programme (1997b), *STEP IN Quarterly Report*, January - April, para. 2.2.
- ²⁹⁸See STEP IN Programme (1997a), 'Integrated Skills Training for Employment Promotion: STEP IN Programme,' posted at <www.stepin.org.zm/stepin.htm>.
- ²⁹⁹The budget was increased from DM 1.9 million to DM 3.9 million by the German development ministry, BMZ, in the last week August 1997. The programme is delivered through GTZ, the German Agency for Technical Co-operation. See STEP IN Programme (1997c), *STEP IN Quarterly Report*, May - August, para. 3.
- ³⁰⁰Discussions with Vendor Desk at State House on how best to service the needs of street vendors were dropped in early 1998 due to budget constraints. (STEP IN Programme (1998a), *STEP IN Quarterly Report*, January - March).
- ³⁰¹STEP IN Programme (1997d), *STEP IN Quarterly Report*, September - December.
- ³⁰²Informal sector skills training programmes in agriculture, carpentry, and home economics are offered at a number of Provincial and District Community Development Centres which were rehabilitated in 1997 for the purpose. The scale of the initiative is very limited. Finance for the initiative in 1997 was worth only K131 million.
- ³⁰³See Augustin & Kuttub (1998a), 'Integrated Skills Training for Employment Promotion Programme (STEP IN)'.
- ³⁰⁴See Augustin & Kuttub (1998b), 'An Integrated Approach for Employment Promotion: An Experience from Zambia'. The consultants also recommended the setting up of apprenticeship schemes run by local craftsmen from the two trades training institutes in Lusaka but this has not reached fruition. See Augustin & Atallah (1998a); also STEP IN Programme (1998a), *STEP IN Quarterly Report*, January - March.
- ³⁰⁵STEP IN Programme (1998d), *STEP IN Quarterly Report*, October - December.
- ³⁰⁶Private sponsors include Barclays Bank, DHL, Zambia Breweries, Zambili Gallery D'Afrique/Traidcraft UK and the Holiday Inn. Agency support has come from YWCA/Irish AID, Catholic Secretariat, UNECA Informal Sector Program, Kara Counselling, and the Tourism Board of Zambia. The Ministry of Community and Social Services, the Ministry of Tourism and the Ministry of Local Government have all backed the project.
- ³⁰⁷A trust to administer the project now owns the land on a secure 99 year lease. The first construction began in October 1998 and a fund-raising event at the end of 1998 secured further finance. Agreement was also reached to open a business service centre at the site. See STEP IN Programme (1998a) - (1998d), *STEP IN Quarterly Reports*, respectively January - March 1998, April - June 1998, July - September 1998, and October - December 1998.
- ³⁰⁸See STEP IN Programme (1997c) and (1998d), respectively, *STEP IN Quarterly Reports*, May - August 1997 and October - December 1998.
- ³⁰⁹The Youth, Women and Child Development Association (YWCD) in Matero Compound was the single partner group selected for support. A revolving fund with a budget of 30 million Kwacha was set up and run through Progress Finance Limited, a commercial lending company. The plan was to recycle the 30 million Kwacha three times per year to YWCD members. See STEP IN Programme (1997c), *STEP IN Quarterly Report*, May - August 1997.
- ³¹⁰By the end of December 1997, 100 women YWCD members accessed loans of between K100,000 and K500,000 from PFL. The number of loans issued dropped to 78 by the end of December 1998. This, in part, was a result of the poor rate of loan repayment. In early 1998, the repayment rate less than 50 per cent. Lending was frozen in the period March to June 1998 since the repayment rate remained at less than 80 per cent. See *STEP IN Quarterly Reports* throughout 1997 and 1998.
- ³¹¹It was only in late 1998 that the issue of monitoring was broached with CARE/Irish Aid, but it remains unclear whether this has been undertaken. See STEP IN Programme (1998b) - (1998d), respectively, *STEP IN Quarterly Reports* for April - June, July - September, and October - December 1998.
- ³¹²STEP IN Programme (1998a), *STEP IN Quarterly Report*, January - March 1998.
- ³¹³STEP IN Programme (1998d), *STEP IN Quarterly Report*, October - December 1998, para. 2.1.A.
- ³¹⁴Known as TRIDENT. See *ibid.*, para. 2.1.A.
- ³¹⁵STEP IN Programme (1998a), *STEP IN Quarterly Report*, January - March 1998.
- ³¹⁶A new proposal has been presented to BMZ to support the programme until 2007. In a first phase to June 2001, the various activities initiated in Lusaka will be strengthened by interventions at three levels: at the macro level, support for the EISDU; at the meso level, continued backing for the

program planned with ZCTU; and at the micro level, the development of service centres in locations close to entrepreneurs. See STEP IN Programme (1998d), *STEP IN Quarterly Report*, October - December 1998.

³¹⁷An agreement has been signed between the STEP IN Program and DANIDA, the Danish Development Agency and main sponsor of the TEVET policy, in support of such an arrangement. See STEP IN Programme (1998b) and (1998c), respectively, *STEP IN Quarterly Report*, April - June and July - September 1998.

³¹⁸Development Agreement, clause 6.1; also Schedule 6, 'Training and Human Resources Management programme'.

³¹⁹Development Agreement, clause 23.1(a). The member from the Municipality (i.e., the local council) is only entitled to sit on the committee until it becomes the direct employer under clause 9(a)(iv) of Transferring Employees formerly engaged by ZCCM and then Roan Antelope in providing municipal services/administration.

³²⁰Development Agreement, clause 23.1(a).

³²¹*Ibid.*, clause 23.1(b).

³²²RAMCZ has pledged not to make compulsory redundancies for two years (clause 6.7). This arrangement is subject to alteration if prior agreement is reached with the Government. Furthermore, reducing the number of employees is explicitly discounted as a 'Major Change' to the agreement and Approved Programme of Mining Operations and thereby avoids the obligations on the company that such a change entails.

³²³Development Agreement, clause 6.2.

³²⁴*Idem.*

³²⁵Development Agreement, clauses 6.4 and 6.5.

³²⁶Ministry of Labour and Social Security (1995), *National Policy on Retrenchment* [draft], para. 17.

³²⁷STEP IN Programme (1998d), *STEP IN Quarterly Report*, October - December 1998.

³²⁸The Vice-president's Office, ministry mission statement, posted at <www.statehouse.gov.zm/ministries.html>.

³²⁹Lungu & Silengo (1997), 'The socio-economic assessment impact of privatization on the Zambian Copperbelt: the case of Mufulira and Konkola'.

³³⁰'True to the spirit of self reliance and industriousness the government had [sic] insisted that those settling in these schemes should find their own way there and through their own means clear the land on which they wished to grow food.' (Vice-president's Office, ministry mission statement).

³³¹UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, Chapter 2 Country experience and policies, Section 2.2.1 Zambia under 'Sectoral policies'.

³³²Study Fund (1997).

³³³Coulthard & Ngenda (1996), 'Urban Poverty on the Copperbelt'.

³³⁴*ER 1997*, para. 138.

³³⁵*Ibid.*, para. 139.

³³⁶*Ibid.*, para. 223. In addition, a National Fund for the Disabled which provided loans for income generation was suspended in 1997 because loans were not being repaid.

³³⁷Lungu & Silengo (1997), para. 8.0, Issue 1.

³³⁸*EDP SAR*, para. 5.5. The Government has recently established Zambia Enterprise Financing Limited, with the backing of the World Bank, in an attempt to tackle the lack of access to long-term foreign financing for exports in the private sector. Funds from bilateral and multilateral financial institutions will be made available through the domestic banking system to Zambian enterprises. In addition, the private sector arm of the World Bank, the International Finance Corporation, has agreed to provide initial funds for Finance Bank Zambia Limited to be on-lent to businesses. However, the initiative is of no direct relevance to most small scale entrepreneurs, especially those in the informal sector, as money will only be lent on a commercial basis to those who can demonstrate their ability to pay it back. It may, however, help medium and large Zambian firms expand and take on new employees.

³³⁹*EDP SAR*, paras. 5.14 ff.

³⁴⁰*Ibid.*, para. 5.19.

³⁴¹Total funding for the credit component is \$45 million with \$5 million from non-IDA sources. See *EDP SAR*, Annex H, 'Summary of Procurement Arrangements'.

³⁴²Study Fund (1997).

³⁴³*EDP SAR*, para. 5.5.

³⁴⁴*Ibid.*, para. 5.9 ff.; also Annex E, 'Matching Grant Scheme: Statement of Policies and Operating Procedures'.

³⁴⁵*EDP SAR*, para. 5.13; also Annex E, paras. 19 and 24.

³⁴⁶*ER 1997*, para. 141.

³⁴⁷CEACR/IO/122/1993/Zambia, para.3.

³⁴⁸CEACR/IO/122/1995/Zambia, para.1.

³⁴⁹CEACR/IO/122/1999/Zambia, para.1. An identical observation was issued by the Committee in 1997.

³⁵⁰CEACR/IO/122/1999/Zambia, para.3.

³⁵¹The Committee has revised the original reporting system. In the past, State parties were required to submit three reports, one every two years, covering articles 10 - 12 and articles 13 - 15 respectively. Overall, this arrangement meant that the Committee would consider the situation of all the rights in the Covenant in a particular country once every six years. This system has been replaced and the Committee resolved not to receive any old triennial reports after 1 January 1995. Each State party is now required to submit a single report covering all substantive articles of the Covenant within two years of its entry into force. After that, each State party must submit periodic reports every five years. Again, these cover all substantive articles. The Covenant entered into force in Zambia on 10 July 1984. The Government of the day submitted its initial report on articles 10 - 12 of the Covenant in October 1985, but no reports have been submitted since. Zambia's initial reports on other articles were due by June 1990, and its second periodic report was due in June 1995. The comprehensive report which is now required from Zambia is therefore considerably overdue.

³⁵²*GC 1*, para. 3.

³⁵³*Idem.*

³⁵⁴*PA*, Executive Summary, 'V. Priority Actions,' para. 69(2).

³⁵⁵*CAR*, para. 0.46.

³⁵⁶*CAS* (1996), para. 40.

³⁵⁷*GC 2*, para.9.

III. Access to land and the right to housing

Introduction

This section examines Zambian land and housing legislation, alongside allied Government policy. The purpose is to highlight those inequities in law and practice which are apparent in relation to the rights guaranteed under the Covenant. It will be divided into three major subsections. The first of these summarises recent changes in land law and housing policy. The second gives explicit consideration to how these changes have made it more difficult for the poor to gain access to land and diminished their enjoyment of the right to housing. The final subsection provides a brief account of the influence of the World Bank in shaping land law and Government policy in Zambia.

A. Recent changes in land law and housing policy

In 1975, the Kaunda Government introduced the Land (Conversion of Titles) Act which effectively precluded a market in land. A brief sketch of this background is useful in order to understand the fundamental change in attitude towards land ownership based on free-market principles ushered in by the MMD Government after its election to power in 1991. Underpinned by constitutional guarantees of the right to private property, the Lands Act (1995), in parallel with the National Policy on Housing, are the culmination of the MMD's drive to commodify land and housing. The immediate purpose of this subsection is to summarise the nature of this legislation and domestic housing policy in order to pave the way for a review of its impact upon the right to housing in the next.

1. The Land Act (1975) and amendments

In line with President Kaunda's Zambian Humanism - a broadly socialist doctrine - land law was extensively revised by the Land (Conversion of Titles Act) 1975. The Act framed three important principles: national patrimony was established over the land which belonged to the people of Zambia, held in trust on their behalf by the President; land was to be used to its fullest advantage; and land was not to be viewed as a commodity to be alienated for private gain. In short, the Act precluded the development of a free market in land.

Up until recently, three different types of land - reserves, trust lands and State land - have been recognised in Zambia under two broad types of tenure.¹ Land has either been leased directly or indirectly from the State or else, in the case of trust land and reserves, it has been allocated by local chiefs under customary tenure. Both types of tenure continue to form the basis of access to the land.

Following the 1975 Land Act, the ownership of all three types of land in Zambia was vested in the President. Although both reserve land and trust land continued to be administered by the chiefs, it was the State which gained the ultimate authority over all land transactions. An albeit limited number of freeholds were abolished altogether and replaced by statutory leaseholds. No land transactions of any type could take place without the consent of the President.² The State gained the power to fix the maximum sum to be received for land transactions which, in effect, set a maximum price for all land. The value of land was limited to 'unexhausted improvements' - in other words, money spent to improve the land in question - and its worth therefore bore no relation to the usual free market determinants: location, potential use, supply and demand.³ Accordingly, undeveloped land was given no value at all.⁴ Powers to cancel the lease on land which the leaseholder failed to develop was meant to ensure productive land was used to its potential while the valueless nature of land was meant to prevent speculation.⁵

After 1975, the basic system of land ownership in Zambia was, therefore, ostensibly clear-cut. First, both Zambians and foreigners could lease State land. However, each time a lease was granted, the consent of the President was required. Second, land could be allocated by the chiefs under customary tenure to Zambians on reserve or trust land, with the occasional grant of land to non-Zambians.⁶

The requirement of Presidential consent, delegated in practice to a department under the Commissioner of Lands, enabled the State to monitor all transactions and gave it a high degree of control over land transfers, ensuring that each was in accordance with the national land policy.⁷ Yet the system, in the absence of guidelines as to when consent should

be granted or withheld, was criticised for its incoherence, its potential for arbitrary decisions and a lack of accountability.⁸ Population growth fuelled demand for land. At the same time, the Land Act 1975 did not preclude non-Zambians from owning land and permitted the President to make grants of land. In 1985, a public outcry over the grant (later rescinded) of a large tract of 20,000 hectares to a foreign-owned company on which to grow wheat compelled the Government to introduce an amendment to the Land Act.⁹ This made it illegal for non-Zambians to be granted or leased land. Exceptions were made for certain organisations - *inter alia*, charitable, religious, educational, philanthropic - but, due to the necessity to attract foreign businesses to Zambia, approved foreign investors were also allowed to hold land with the written consent of the President. This measure was criticised for curtailing free, unfettered investment in Zambia while simultaneously placing autocratic powers in the hands of the President in determining which investors were granted land.

2. Housing and land as commodities under the MMD Government

A number of wider objectives are woven through the MMD Government's reform of land law in Zambia and its introduction of a National Policy on Housing. First, the fostering of private sector investment in the economy, in particular foreign direct investment, is a primary concern. Investment which requires land, to include mining and export-orientated agriculture, requires stability and guarantees in respect of the ownership or use of such land. The MMD Government has therefore (a) bolstered the protection of land as private property under the Constitution and has guaranteed protection of land from State expropriation under the Investment Act and the Mines and Minerals Act. These moves are precursors to (b) the Lands Act (1995) proper which has sought to establish a free market for land in Zambia. Second, under the rubric of the rolling back of the State, there has been a concern with encouraging self-reliance and individual responsibility for many aspects of social provision, and with harnessing the private sector to provide public goods. (c) The MMD Government's National Housing Policy, launched in 1996, reflects this manifesto. It aims to assist in the provision of adequate, appropriate and affordable housing for the majority of Zambians.¹⁰ The policy has been implemented primarily by transferring the ownership of former State housing stock to tenants and by seeking to involve the private sector in financing and building affordable housing. At the same time as the sale of State owned houses has generated revenue, it has also allowed the Government to withdraw from subsidising council and parastatal housing whose financing and upkeep are now the responsibility of each new owner. Furthermore, the long-standing obligation on employers under (d) the Employment Act to provide worker housing has been ended.

The Committee acknowledges that a State may employ both public and private sector measures to realise the right to housing provided that the combined measures deliver the right for everyone in the shortest possible time and reflect the use of maximum available resources.¹¹ Regardless of the state of development of a country, certain steps to realise the right to housing must be taken immediately: due priority must be given to social groups living in 'unfavourable conditions' and, correspondingly, policies and legislation should not be designed to benefit already advantaged social groups at the expense of others.¹²

The Zambian Government is therefore required to ensure that its drive to open up a free market in land and to shift the provision of housing from the public to the private spheres is compatible with its obligation to give priority consideration to the majority of Zambians living in poverty. The right of investors to own land under secure tenure must not be achieved by a denying the right to housing to squatters who have no choice but to reside upon land they do not own because of their poverty. When seven out of ten Zambians are poor, without the means to cover the cost of essentials other than food, then the allocation of land and housing by criteria other than market position is essential to safeguard those without the means to purchase property. The withdrawal of the Government from providing and maintaining public housing requires a reinvestment of the revenue realised in housing infrastructure if its overall obligation to allocate the maximum of its available resources to realising the right to housing is not to diminish. Furthermore, the disposal of public housing - which belongs ultimately to the people of Zambia - must be carried out fairly and without discrimination. The end of the domestic obligation upon employers to provide tied housing requires the Government, in conjunction with employers, to ensure that workers are paid a fair wage which enables them to afford decent housing.

a. Protection of the right to housing and land through the prism of private property: the Constitution of Zambia, 1991

Over the span of the First, Second and Third Republics, no version of the Zambian Constitution has explicitly protected the right to land. Neither has it entrenched a right to housing. This is in contrast to the constitutions of comparable African countries, some of which offer squatters limited protection from the violation of their rights.¹³ In Zambia, the ownership and use of land is interpreted solely through the prism of the constitutional right to private property. Article

16(1) of the Constitution of Zambia (1991) guarantees the protection of private property and prohibits its compulsory acquisition unless by Act of Parliament and with the payment of adequate compensation. The 1991 Constitution does thereby increase the protection afforded private individuals and investors over the ownership of assets. An amendment to the previous constitution had stipulated that compensation for the acquisition of property was to be fixed at an agreed level by the National Assembly.¹⁴ This situation is reversed and, once again, the level of compensation is now ultimately determined by the courts, opening the way for claims at a level which will effectively preclude widespread compulsory acquisition of land by the State.¹⁵

The exceptions to the protection offered from the deprivation of private property are listed in the Constitution. For example, the situation is envisaged where undeveloped land can be compulsory acquired without compensation.¹⁶ Furthermore, the constitutional protection of private property cannot be used to thwart the implementation of a comprehensive land policy.¹⁷

b. Additional protection for investor-owned land: the Investment Act and the Mines and Mineral Development Act

i. The Investment Act (1993)

An Investment Centre was established in Zambia as a 'one-stop support facility' to assist investors in complying with relevant licensing arrangements and negotiating red tape.¹⁸ Under the Investment Act (1993), the Centre will help an investor in applying for land in accordance with established procedures.¹⁹ Providing land has not already been allocated, and has been demarcated for the purpose applied for, 'the authority responsible for the allocation of land shall, upon payment, by the investor, of the prescribed fees, charges, or rates, allocate the land to the investor...'. Registration and issuance of title follows.²⁰ The Investment Act also affords protection from the compulsory acquisition of investor property by the State.²¹ The only exception is when acquisition is carried out for public purposes by an Act of Parliament in which case compensation must be paid at market value in the currency in which the investment was originally made.²²

ii. The Mines and Minerals Act (1995)

The Mines and Minerals Act (1995), regulates both the exploration for, and the extraction of, minerals. It provides for both prospecting licences and mining licences. In respect of the former, an application for a license must be accompanied by a general description of the area to be prospected. A prospector need not acquire the land in question. Any holders of the land, although they may seek arbitration if they dispute the application, cannot block the grant of a license: ultimately, all land in Zambia is vested in the President.

In order to begin to extract minerals, a mining concern must obtain a mining license. The license is valid for twenty-five years and allows the holder use of the land above and below ground to extract minerals in the demarcated area (the Mine License Area) provided that land owned by others is not disrupted without their consent.²³ However, if this consent is unreasonably withheld, then the Director of Mines can intervene and adjudicate. Once a mining license has been issued, grazing and farming is permitted within a wider locality (the Mine Surface Areas), but not the building of houses and other structures by other parties. Mining companies will normally seek to acquire title to both the land to be mined and land surrounding the mine.²⁴

When an existing ZCCM mine is purchased, the transfer of land title to the new owner is unproblematic. In the case of new mines, or the extension of those that already exist, an application for certificate of title must be made to the Commissioner of Lands. The land in question must be surveyed and demarcated.²⁵ If the land is unalienated State land, the alienation procedure is the same as that governed by the circular currently in force for all such transfers: please refer to subsection B(a).ii. This procedure has been recently revised in the interests of investors. The local council will decide the application and the Commissioner of lands will issue a 99 year statutory lease.

Where the land required is held under customary tenure, the consent of the local chief is required before the land can be converted to statutory leasehold and transferred to the mining company.²⁶ However, if this consent is withheld, the Mines and Minerals Act provides for Government intervention to decide the outcome. Moreover, the interests of a local elite around the chief may not necessarily coincide with those of subsistence farmers and other land users.

While the Mine and Minerals Act is designed, *inter alia*, to facilitate the purchase and use of land by mining companies and to ensure that they can do so without hindrance, an operator is required to act responsibly. A license holder is

obliged to exercise his rights ‘reasonably’ and ‘except to the minimum extent necessary, for the reasonable and proper conduct of the operations concerned, shall not affect injuriously the interest of any owner or occupier of the land over which the rights extend.’²⁷ Mining companies are to pay fair and reasonable compensation if mining operations damage crops, trees, or buildings belonging to others.²⁸ However, the wholesale alienation of large tracts of land to a mine owner in the first place virtually eliminates the need to accommodate the interests of others on the land in question.

c. The Lands Act (1995)

The right to housing derives from the inherent dignity of the human person and ‘should be seen as the right to live somewhere in security, peace and dignity.’²⁹ The Committee has therefore determined that it should be ensured to everyone without discrimination and regardless of economic status.³⁰ Neither should the right to housing be interpreted narrowly in terms of physical shelter nor should such shelter be viewed ‘exclusively as a commodity.’³¹ In contrast, the commodification of land and housing lies at the centre of the Lands Act. While clearly the realisation of the right to housing is far from precluded by the development of a free market in land, its full enjoyment is threatened when the majority of the population is impoverished and when there are few safeguards in place to allow those with limited resources to gain access to secure tenure.

The 1995 Lands Act was introduced to create a free market in land and abolish all obstacles to the sale, purchase and ownership of land. Under the Act, foreign companies are free to own land; land is accorded a value as determined by the market; transactions are streamlined by making Presidential consent a formality; restrictions on the conversion of customary tenure to leasehold tenure are removed; land leased by the Councils, with certain exceptions, reverts to the State; a Land Tribunal is set up to determine disputes over land; yet, at the same time, stark reference is made in the Act to the illegality of squatting and the likelihood of eviction.

Under the Lands Act (1995), all land remains vested ‘absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.’³² The question of absolute ownership, is not, therefore, of the greatest importance to Zambians and foreign investors alike; rather, concern centres upon the way in which the right to occupy and use land is determined by the law. The President may alienate land to any Zambian.³³ However, for the first time, it is a requirement under the 1995 Act that money must be paid for land when it is alienated.³⁴ The only exceptions to this are when land is to be used for a public purpose or when a person with customary tenure converts it to statutory leasehold, in which case no consideration is required.³⁵ In the absence of a fixed Government price or stipulations that undeveloped land has no value, it is left to the market to determine the price of land. The fact that all land, including undeveloped land, has a value may intrinsically restrict the power of the Commissioner of Land to repossess undeveloped land as the title holder may have a claim to compensation.³⁶

The onerous task of obtaining Presidential consent for each and every land transaction becomes little more than a formality under the 1995 Act. While land cannot be sold or transferred or assigned without consent of the President, if consent is not granted within 45 days of filing an application, then it is deemed to have been granted.³⁷ In effect, consent becomes automatic. In transactions where permission is withheld, reasons must be given for refusal and there is a thirty day right of appeal to the Lands Tribunal.³⁸

The significance of the move to market pricing and the *de facto* lifting of the requirement for Presidential consent for each land transactions is to encourage private sector investment, including that from overseas. The new Act sweeps away barriers to foreign ownership by explicitly providing for the alienation of land to non-Zambians.³⁹ Under previous legislation, such ownership was, with certain exemptions, prohibited. Even those exempted, including favoured investors, required the written permission of the President. The new Lands Act allows many categories of non-Zambians to own land and obtaining permission for them to do so from the President is no more than a formality.⁴⁰ Most importantly, in the context of economic liberalisation, land can once more be bought freely by non-Zambian investors and registered commercial banks.

d. The National Housing Policy

The Government’s National Housing Policy (NHP), launched in 1996, addresses a housing crisis in Zambia of enormous magnitude. Its goal is to provide adequate and affordable housing for all income groups in Zambia.⁴¹ The report in which the NHP is framed calculates that the country requires 846,000 homes to clear the backlog in housing caused by past population growth, homelessness and the need to replace substandard structures. Taking into account future population growth, a building rate of more than 110,000 units per year for the next decade is required.⁴² Seventy per cent of the existing housing stock is informal and poorly serviced or not serviced at all. Almost two thirds of

Zambia's housing is in rural areas where the dispersed settlement pattern makes service provision difficult. Yet, in urban areas, dwellings are equally poorly serviced.

The Committee endorses whatever mix of public and private sector measures considered appropriate to satisfy a State party's obligations in respect of the right to adequate housing:⁴³

'In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.'

In 1996, when the NHP was launched, eighty per cent of housing was owned by individuals and seventeen per cent by the State.⁴⁴ Sixty-nine per cent of housing was classified as informal. Once more, in parallel with the impetus within the Lands Act to encourage investment in land and its development, the market is to play a prominent role revitalising the housing sphere in Zambia. The delivery of housing is to be achieved by 'stressing private initiative whilst strengthening Government's role as the provider of [a] requisite enabling environment for sustainable housing delivery.'⁴⁵ A key concern is the degree to which private sector initiatives encouraged within the NHP are proving sufficient to provide adequate housing for all in the shortest space of time. In reality, it would rather appear that a shift from public to private housing in many Zambian towns and cities has diminished enjoyment of the right to housing.

In order to achieve the goal of affordable housing for all, the NHP outlines seven objectives: to attain the allocation of fifteen per cent of budget expenditure on housing development; to make serviced land available and streamline land allocation; to reduce burdensome building standards and regulations; to increase the use of local building materials; to assist the poor to acquire decent shelter by tackling the problem of affordability; to foster housing areas which are functional, healthy and pleasant; and to prepare a national housing policy implementation strategy.

In outlining the framework by which these objectives are to be implemented, the tendency within the NHP is to restate the objectives themselves. Nevertheless, a number of the Government's priorities and principles are apparent. First, there is recognition of the need to secure access to finance if new houses are to be built. The NHP seeks to mobilise private and public money, using the latter as seed capital. A market in housing requires not only a supply of property but also a secondary mortgage market. Second, the Government's strong support for the principle of home ownership and private sector housing is emphasised. A specific measure outlined in the NHP is to achieve the removal of rent controls in order to stimulate the private rental market and encourage investment in property. Likewise, the NHP seeks to remove the obligation in law upon employers to provide tied housing. The Employment Act was subsequently modified in accordance with this aim. Under the rubric of both home ownership and land delivery, site and service schemes are to be supported. The Housing (Statutory Improvement Areas) Act governing existing council site and service areas is earmarked for reform to allow the private sector to play its role in delivering market-orientated housing schemes. The upgrading of squatter settlements through community participation is given recognition within the NHP, but the Government qualifies its approach as 'discretionary'. Third, the Government affirms its belief that the development of infrastructure and services - from water supply, through sanitation to lighting and roads - will encourage housing development in the public and private sectors. Finally, as part of the overall NHP, the Government outlines a policy on rural housing.⁴⁶

In reality, the policies promised in the NHP have not even begun to be delivered. The Government itself acknowledges that the NHP has made insignificant progress in its first three years in countering inertia in the building industry and admits that the housing sector is dormant.⁴⁷ In 1996, official records show that the total number of houses built by local authorities and the National Housing Authority was a mere 290 units.⁴⁸ The acute shortage of serviced land remains, building costs and finance charges are prohibitive, and housing finance is severely limited with only three established building societies issuing less than one hundred mortgages countrywide in 1997.⁴⁹ Property prices have continued to outstrip any rise in income in an economy where the majority of people work in the informal sector.

As if this stasis was not bad enough, there is evidence that progress towards the goal of adequate, affordable housing for the vast majority of Zambians has actually been reversed. Beyond reform in land law - the adverse consequences of which are discussed in their own right, but which are part and parcel of the NHP - the one housing policy which has been vigorously pursued is that of home ownership through the sale of Zambia's stock of in the region of 138,000 State-owned units houses and flats.⁵⁰ Parastatal, council, and government properties, which used to be maintained by the company or relevant authority and let to tenants and employees, are all up for sale. Yet because of the failure to deliver on other components of the NHP or else because of incompatible policies, the sell-off has proved a debacle in which the right to housing is frequently violated. The adverse consequences of the sale of public housing is examined in subsection B.3(b).

To revitalise the National Housing Policy, the President announced a new Housing Initiative in 1998. Once more its objectives - to revive housing construction, to upgrade unplanned settlements, and to create employment - while they remain laudable, are only meaningful if achieved. The initiative is based upon a familiar raft of measures which include

the use of local resources in building, the mobilisation of local finance, full cost recovery and partnership with the private sector. A unit within the National Housing Authority will aim to source and access housing finance to create a revolving fund. The plan is to use this money to construct new houses across all seventy two district councils, to create more serviced plots and to upgrade those unplanned settlements that are recognised under the Housing Statutory and Improvement Areas Act. As of January 1999, the only concrete progress had been the launch of a pilot project to develop housing in Lusaka through a public/private partnership.⁵¹

e. The Employment Act and worker housing

It has been a requirement in Zambia that an employer must make provision for housing and welfare. The President has described this as ‘a heavy obligation’ which has had the effect of fostering the dependency of workers on employers. Under the revised Employment Act, worker housing and welfare are now negotiable matters. Unless housing, or loans and mortgage guarantees to buy housing, are agreed in advance in a collective agreement, an employment contract or in the general conditions of service, an employer has no legal duty to provide them.⁵² In the same way, the provision of medical services must be agreed with each employer who has no obligation to supply such services in law.⁵³

In order to realise the right to housing under the Covenant, a Government is not, of course, required to ensure that employers, whether in the private or parastatal sector, provide homes for their employees. However, in a situation when the cost of housing, formerly met by the State through parastatal ownership of Zambian industry, has been transferred to employees, there is a case to be made that the Government has an obligation to ensure that transitional arrangements are in place to protect employees from a deterioration in respect of their right to housing. The Committee has determined that steps should be taken by State parties to ensure that the percentage of housing costs is commensurate with income levels.⁵⁴ The Government has stated that worker conditions in privatised firms must be the same or better under new ownership. However, the development agreements which determine the parameters under which such conditions, to include housing subsidies, are safeguarded do not adequately protect employee interests. There have already been instances in which attempts by the management of privatised firms to withdraw housing subsidies have sparked unprecedented social unrest on the Copperbelt - please refer to Section 2(IV) for further details.

B. Changes in land law and housing policy: repercussions for the realisation of the right to housing

Introduction

A critique of reform must be based upon how well laws and Government policy in support of a free market also protect or promote the right to housing and access to land for all. In a country where the vast majority of people are extremely poor, the allocation of land and housing cannot be based solely on market position and there must be protection of the rights of the vulnerable, including squatters. It will be argued that aspects of the Lands Act and the Government’s National Housing Policy actively threaten the full realisation of the right to housing. There is also culpability by omission through the failure to tackle existing inequality.

Article 11(1) of the Covenant refers to the right to *adequate* housing. The particular significance of the concept of adequacy is recognised by the Committee and certain aspects of the right must be taken into account when determining whether housing is adequate and, ultimately, in determining a State’s compliance or non-compliance with the Covenant.⁵⁵ These include legal security of tenure, essential infrastructure, affordability, habitability and cultural adequacy.⁵⁶ Housing and land must be accessible to all those who are entitled to it and the targeting of provision to disadvantaged groups is emphasised.⁵⁷ Housing must be in a viable location with access to local services and employment⁵⁸.

The analysis which follows draws upon many of these requirements *vis-à-vis* the realisation or denial of the right to housing in Zambia. Access to land in the context of the transition to a free market is the subject of a first subsection. Consideration is given in a second subsection to the related issue of security of tenure. A third subsection examines two further aspects of the right to housing: the extent to which housing in Zambia is habitable and supported by adequate services and infrastructure; and the affordability of housing in the context of the Government’s sale of all State-derived housing stock.

1. Access to land

Under article 11(1) of the Covenant, everyone has the right to housing which, *inter alia*, must be accessible to those who are entitled to it with some degree of priority consideration given to vulnerable groups in law and policy.⁵⁹ Under the rubric of accessibility, the Committee determines that 'within many State parties increasing access to land by landless or impoverished members of segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.'⁶⁰

For the vast majority of Zambians who cannot compete effectively in the market place, such provision is crucial. In this respect, access to land through customary tenure is important, as is the extension of limited security of tenure to poor urban residents under the Housing (Statutory Improvement Areas) Act and to rural settlers under the Land Control, Agricultural Development and Agricultural Lands Act. Yet the Lands Act (1995) undermines customary tenure and a revision bought in by the MMD Government to the land alienation procedure discriminates against the poor when it comes to acquiring title to land. In respect of the sale of State houses, a person's place on the employment ladder or their purchasing power have become the prime determinants of allocation. There is an absence of primary legislation to define entitlement or guide priority consideration, and the whole process has become mired in inequity and malpractice.

a. Opening up customary areas to the market

i. Introduction: the need for a differentiated critique

According to the World Bank, over ninety-three per cent of available land in Zambia is held under customary tenure. Securing appropriate land for investment on the remaining seven per cent of State land in Zambia was described by the Bank as 'difficult and cumbersome.'⁶¹ The solution in the view of the Bank and MMD Government has been to allow for the conversion of customary tenure into 99 year statutory leaseholds which offer security of tenure and can be transferred through the market. This creates an immediate tension as long-standing customary rights to land can be converted by an individual and sold once and for all. It is therefore recognised that 'the reforms have the potential to undermine traditional land tenure, thereby affecting a whole range of interconnected rights.'⁶² It is for this reason that the Lands Act (1995) has proved so controversial in Zambia.⁶³

The intention here is not to forward a blanket defence of customary tenure in Zambia in relation to human rights. Neither is the intention to dismiss customary tenure as antithetical to the human rights of certain disadvantaged groups. On the one hand, customary tenure can offer reasonably equitable access to the land for subsistence farmers based on other criteria than their position in the market place and their ability to pay. There is increasing recognition that the transformation of customary tenure is not always appropriate or welcome; that there are positive aspects to such tenureship in terms of the promotion of social responsibility and decentralised and locally-accountable decision making; and that communal land management can offer better protection of the environment as a single unit rather than its piecemeal erosion under individual titles.⁶⁴ Some African countries - for example, Uganda - have given constitutional protection to customary tenure.⁶⁵ There is recognition of customary tenure in certain international human rights instruments.⁶⁶ On the other hand, custom can also exclude certain groups from access to land or decisions over its use, offer limited security of tenure, and can restrict the inheritance of land to kin groups at a time of rapid population growth. At a time when traditional farming systems are breaking down, such customary tenure may be perceived as inflexible and as offering little incentive for the improvement of land or innovative management.⁶⁷

Customary tenure covers diverse arrangements for access to land and its management which are administered by the chiefs in Zambia. The following is a general depiction of customary tenure in Zambia:⁶⁸

'land is the property of a community that is administered by a socially legitimated authority, often a chief, as a trust. Land rights under customary law are capable of being passed on as an inheritance, yet at the same time, they are only temporary and in the end subordinate to the communal title. They can be transferred, or alienated, only to families, and alienation to someone outside the group is allowed only with the consent of the group. These traditional land rights can also be taken away by the chief. In principle, this would occur mainly as a sanction for certain drastic offenses by a member against the community (leading to the member's expulsion) or in the context of a dispute over land brought before the chief. But in practice this right of the chief can be indirectly misused to discipline disloyal members of the community — a by no means rare occurrence.'

To conclude anything meaningful about customary tenure *per se* in respect of human rights would require a level of detailed examination which is beyond the scope of this submission. The onus is therefore placed upon the degree to which land law in Zambia is suited to the protection of the interests of disadvantaged groups in the conversion of customary tenure. Three points are pertinent. First, customary tenure is itself undergoing modernisation and, when necessary, those aspects of custom which reinforce discrimination ought to be open to challenge in the courts.⁶⁹ Second, experience suggests that where customary tenure is being converted to western-based tenures, the interests of women are given scant consideration and are frequently undermined. Where the transition is to a free market in land with minimal regulation - as is the case in Zambia - then the rights of women and the poor tend to be directly and negatively affected. Third, and in addition to scrutinising equality in customary tenure, domestic land law should, of itself, offer certain safeguards that require consultation with all affected groups, especially those who are disadvantaged, and a mandatory consideration of the implications of conversion. The Lands Act and the associated statutory instrument on the conversion of customary tenure singularly fail in this regard.

ii. The Lands Act (1995) and the conversion of customary tenure

The Lands Act (1995) through repeal of existing legislation, abolishes the two categories of reserves and trust lands which are now both classified as 'customary areas'.⁷⁰ Landholdings within customary areas are given recognition.⁷¹ The Act makes it clear that the rights enjoyed under customary tenure will continue to be protected despite the repeal of the existing dedicated legislation.⁷² At the same time, the Act allows for the conversion of customary tenure into statutory leasehold.⁷³ Formerly, Reserves or Trust Lands under customary tenure could be transferred to statutory leasehold with the prior consent of the chief and the local authority. The requirement of consent remains under the Lands Act (1995) and, ostensibly, little has changed. On a closer reading of the new Act, this is categorically not the case.

While the Lands Act (1995) explicitly recognises the specific right of a person in possession of customary tenure to apply for conversion,⁷⁴ it also envisages the general case of a grant of leasehold on customary land. The section of the Act which vests all land in the President includes a subsection which lays down general provisos which must be adhered to before land under customary tenure can be alienated.⁷⁵ The implication is that, provided these provisos are met, then land under customary tenure can be converted to statutory leasehold and then alienated to anyone, to include developers and foreign investors.

The preconditions, specified in respect of an application for conversion require that the President must take into consideration local customary law on land tenure and must consult the chief and the local authority and 'any other person or body whose interest might be affected by the grant.'⁷⁶ The applicant for a leasehold must also have obtained the prior approval of the chief and local authority.⁷⁷

To implement conversion as envisaged by the Act, a new Statutory Instrument 89 [hereafter 'SI 89'] has been introduced together with a new Lands Circular to inform councils and civil servants of the simplified conversion procedure.⁷⁸ There are two distinct mechanisms.

The first relates to an application to the chief from those with a right of customary tenure, or those using land in a customary area and who intend to settle for at least five years, to have his or her tenureship converted to a statutory leasehold title.⁷⁹ The chief may give or withhold consent.⁸⁰ Reasons for refusing consent must be communicated to the Commissioner of Lands.⁸¹ When the chief gives consent, he sends a form to the local Council confirming both the applicant's status and that the rights of others are not infringed.⁸² The Council reviews the application to convert *vis-à-vis* customary law and the Lands Act and makes a recommendation for acceptance or rejection to the Commissioner of Lands.⁸³ The Commissioner has the power to decide whether or not to accept the Council's recommendation and, ultimately therefore, whether or not to grant or refuse the application for conversion.⁸⁴ In practice, however, the decision of the Council is unlikely to be overturned. Overall, the conversion process is expedited, although the consent of the chief remains crucial.⁸⁵

Of potential significance is the way in which SI 89 implements a second alienation mechanism by which a local council may apply to the Commissioner of Lands to convert customary land into leasehold tenure if it considers this to be 'in the interests of the community.'⁸⁶ It is assumed that this will encompass the situation where a leasehold is required by a developer who may approach a council to instigate conversion. While there is a requirement to consult the local chief and ascertain family or communal interests or rights, no reference is made in SI 89 to prior consent; however, as has been noted, the underlying Lands Act (1995) does specify that the chief's approval is required before land can be alienated.

iii. Conversion as a threat to access to land

There are three interrelated facets to the conversion process under the Lands Act (1995) which are cause for considerable disquiet: who has ultimate approval over conversion; the value of land as an incentive to convert; and the degree of consultation with affected persons.

1) The final decision on conversion

A crucial question is whether the local chief and/or council have an absolute veto over transactions of which they do not approve. A close reading of the Lands Act (1995) confirms that they do not. Any person aggrieved by a decision to refuse an application for title may appeal to the Lands Tribunal.⁸⁷ This has powers of decision over specific disputes and a power of adjudication on any matter affecting land rights or obligations under the Act, subject only to appeal to the Supreme Court.⁸⁸ The likelihood of a State-backed appeal is confirmed by the then deputy Minister of Lands: '[I]f a chief rejected the allocation which Government wanted, the matter would be referred to the land tribunal to determine.'⁸⁹

While all land in Zambia is ultimately vested in the President, the State's right to alienate land is subject to the Lands Act (1995). Yet it is reiterated within the Act that all land is 'controlled and administered by the President for the use or common benefit, direct or indirect, of the people of Zambia.'⁹⁰ If the State felt that the conversion of customary tenure and the sale of land to an investor was in the interests of the country, then clearly this would conflict with the power conferred on a chief under the Act, if so minded, to refuse conversion. Furthermore, and notwithstanding constitutional protection of private property, the President has constitutional powers to administer or dispose of property in implementation of a comprehensive land policy or in implementation of a policy designed to ensure that statute law or 'doctrines of equity' are applied with substantial uniformity throughout Zambia in relation to interests in or rights over land.⁹¹ When interpreted in the light of the Lands Act (1995), which emphasises individual ownership and removes bars to foreign ownership by investors, it is apparent that this clause may provide a basis to curtail the rights of those resisting the conversion of customary tenure if this was deemed to run contrary to a comprehensive land policy and undermine the principle of uniformity.

Of course, these fundamental issues are likely to be considered and decided in the course of deliberations by the Lands Tribunal and ultimately, perhaps, by the Supreme Court. The view has already been expressed that '[o]bjections to a possible withholding of consent take place before a land tribunal dominated by the State.'⁹² For a fuller discussion of the operation of the Lands Tribunal, please refer to subsection 2(d).

2) Conversion motivated by profit

To concentrate exclusively on who has the final power of consent over conversion is, perhaps, to miss the point: the fact that powerful investors, with significant clout in the market, may legally acquire land, coupled with a situation in which local chiefs or individuals with extensive customary rights may be motivated by profit to convert tenure, raises the possibility of large tracts of land being held by private developers or commercial operators while the customary rights of local people to farm and use the land are effectively ended. Furthermore, the previous limit of 250 hectares on conversion of land for agricultural use is abandoned.⁹³ This limit constituted advice from the Minister of Lands but was not statutory; hence, it was exceeded. Nevertheless, the fact that no limit is envisaged under SI 89 must smooth the way for the acquisition of large tracts of land. The World Bank, notwithstanding its extensive backing of land reform, concedes the overall danger of conversion motivated by profit:

'...unless carefully handled and closely monitored, the acceleration of the conversion of customary land to leasehold could result in the loss of land rights by smallholders, as influential individuals living under customary tenure extend their boundaries, proceed to obtain leasehold tenure, and possibly sell the leasehold to prospective developers.'⁹⁴

The wider fear is that the existing socio-cultural system based upon communal rights and respect for the authority of the chiefs will be undermined by this market economy. What was a collective right or family right is converted by an immediate seller who may not represent the collective interest. Furthermore, 'the individual seller cannot represent the legal claims of future generations of the collective, rights which are enshrined in customary land tenure.'⁹⁵ Once land is converted and sold, former rights in perpetuity are lost.

3) A failure to consult affected people

While the chiefs, councils, applicants and the State all have statutory powers, however determined, to influence conversion, ordinary Zambians whose interests are threatened need only be consulted. Furthermore, below the level of

the Act, no procedure is laid down for this consultation. Hence the process will invariably be dominated by a local elite and the views of affected people who hold little sway - smallholders, poor settlers, women - are unlikely to be taken into consideration.

In contrast, expert opinion suggests that modern land law ought to provide legally-binding procedures for the registration and titling of customary rights which require the interests in land held by women in the household to be accounted for. There should be legally-binding procedures in the approval of sales which require attention to the impact of sale upon women and their children. There is recognition that land management and dispute mechanisms should be as decentralised and democratised as possible. Finally, the law ought to place limitations upon the power to alienate or expropriate land without proper hearings which should be directed to take special note of the rights of women in the area, and to compensate accordingly.⁹⁶ These benchmarks can be applied equally to protect the interests of other disadvantaged groups and the poor in general. The Committee itself has determined that the right of tenants and community-based groups to freedom of expression and the right to participate in public decision-making is 'indispensable if the right to adequate housing is to be realized and maintained by all groups in society.' In practice, and given existing hierarchies in Zambia, it is unlikely that such consultation will be meaningful, if it occurs at all.

b. Discrimination against the poor in the allocation of land and housing

General Comment 4 determines that, because the right to housing derives from the inherent dignity of the human person, it should be ensured to everyone irrespective of income or access to economic resources.⁹⁷ The existing mechanism by which land is allocated in Zambia has increasingly made it difficult, if not impossible, for poor people to gain full and immediate title to land.⁹⁸ When interpreted alongside the stipulations in the Lands Act (1995) that all land has value and the requirement that this value must be realised in the alienation of State land, then it is readily apparent that an ability to pay becomes the basis upon which most statutory leases are acquired. In respect of housing *per se*, there has been a rapid change in Zambia from a situation where the housing needs of a sizeable number of urban residents were met and subsidised directly or indirectly by the State to a situation where council, government and former parastatal housing is now up for sale. The problem is that the mechanisms used for disposing of this Government derived housing stock have been riven by inequity and have left many unable to pay the prices demanded or unable to access suitable finance without going into debt or, in the case of employees, trading away their terminal benefits and future livelihood.

i. The Procedure on Land Alienation

A *Procedure on Land Alienation* governs the allocation of leaseholds on plots of new land which a local council has demarcated for development, whether this is land adjacent to a town or city or is 'unscheduled' agricultural land - further details are given in the attached supplement. The alienation procedure, in line with the policy of decentralisation and 'the principle of participatory democracy,' effectively empowers District Councils to process applications and select who will be allocated a plot. Development plans for new stands are drawn up by the District Council, scrutinised by the Land Commission, then surveyed and divided into plots. The Council advertises the availability of the plots then selects successful applicants before making its recommendations to the Land Commission. Although the final decision on each council recommendation rests with the Commission - which issues the certificate of title - it is stipulated that council recommendations 'will be invariably accepted' unless unjust or contrary to the national interest.⁹⁹

When the alienation procedure was introduced in 1985, the Land Act (1975), as amended, was in force. Hence undeveloped land had no value and all land had a maximum value. Although lease and development charges were always a factor, the fact that a large consideration *per se* was not required to secure a lease meant that those with less money, even if not the poorest, could acquire title. However, under the MMD Government, and prior to the introduction of the Lands Act (1995) the alienation procedure was revised to the detriment of poorer applicants. The focus here will be upon the inequity of this procedure; however, it is prudent to acknowledge that the origin of many land disputes lies as much in previous *ad hoc* allocations by ward councillors and local politicians - that is, in a failure to follow procedure - as it does in the application of unjust procedure. Misallocations and political interference is publicly acknowledged as the root cause of many disputes over land.¹⁰⁰ A case in point is the recent dispute over land on the Chichele plantation, Ndola, summarised in the text-box overleaf.

ii. Revision of the Land Alienation Procedure

Widespread public concern over the speed and fairness of the allocation system caused the entire land alienation procedure to be suspended in November 1991.¹⁰¹ Delays in issuing title prevented successful applicants from using acquired land as collateral against which to borrow money for its development and the misallocation of land to those with purely speculative interests resulted in land remaining unused at a time of a shortage. The cost of renting land

escalated as a result. There was evidence of corruption and malpractice by officials and councillors in the District Councils and civil servants within the Department of Lands itself: 'some officials under the present system would receive bribes for facilitating the allocation of land to those who want to jump the queue or those who may not have adequate financial means to develop the plots within the stipulated period.'¹⁰²

The Government adopted a revised land alienation procedure in April 1992. Despite the subsequent introduction of the Lands Act, (1995), it would seem that this is still in effect.¹⁰³ A recent 1998 review of land law, contained within a study of land tenure insecurity by Oxfam GB in Zambia, confirms the continued application of this amended *Procedure on Land Alienation*.¹⁰⁴ Indeed, it is stressed that the overall alienation procedure, dating back ten years, 'is not known by either the general public or even by many officials involved in land administration.'¹⁰⁵

The amendments made in 1992 do seek to curb speculation by imposing time-limits on land development,¹⁰⁶ but they do not tackle malpractice or corruption. Public opinion is of the view that the wealthy continue to circumvent land allocation procedures.¹⁰⁷ Nor, given the dire shortage of council funds and the failure to allocate increased resources to the Surveys Department, do the revisions offer real solutions to the delays in obtaining title.¹⁰⁸ The revisions have, rather, made it much more difficult for the majority of poorer Zambians to acquire title on State land. District Councils are required to insist on proof of the ability of applicants to undertake the immediate development of any land before making their recommendation. Instead of the Commissioner of Lands moving straight to issuing an actual offer of land to an applicant, an offer in principle, valid for one month, is made. This requires the applicant to submit evidence that they have sufficient funds to develop the land as intended. In addition to proving their access to the necessary finance, applicants for unscheduled agricultural land are also required to provide a recommendation from an Agricultural Officer or similar official ascertaining that they are a *bona fide* farmer with the necessary tools and implements at their disposal. Failure to develop the land results in its forfeiture to the State.¹⁰⁹

The Chichele plantation land dispute

200 families illegally occupying plots on the Chichele plantation near Ndola finally faced eviction in June 1997 following the loss of their appeal to the High Court against the order. The land had been allocated by the Council on 99 year leases in 1992 to 104 other applicants.¹¹⁰ In August, the squatters assaulted court officials visiting the area to assess whether the land had been voluntarily vacated.¹¹¹ The dispute became highly politicised. The local MMD constituency chairman advised the squatters to defy the High Court ruling while the provincial MMD chairman argued that the law should be upheld while reconciling both parties. The Copperbelt Minister favoured an amicable solution outside of the courts.¹¹² An attempt to evict the squatters in November was aborted because the under-sheriff at Ndola conceded that there was nowhere to resettle those affected until plots in a nearby Forest Reserve were officially degazetted.¹¹³ In March 1998, Ndola City Council appeared to capitulate: a local ward councillor issued a statement that the NCC had agreed to formally offer the land to the settlers while finding alternative land for those with title deeds to the plots.¹¹⁴ However, this was denied by the NCC which maintained it had no legal powers to reverse the award of leaseholds made by the Commissioner of Lands. A decision was, however, reached to give the squatters land near the Dag Hammarskjöld memorial site.¹¹⁵

iii. The allocation of land in rural settlement schemes

A subset of legislation aimed at controlling access to larger blocks of State land in rural areas exists. The Land Control, Agricultural Development and Agricultural Lands Act allows the Minister of Agriculture to designate State land for agricultural settlement schemes.¹¹⁶ Land earmarked in this way - known as scheduled land - is then subdivided by the Department of Agriculture into administrative 'economic agricultural units'. People may apply for the leasehold title to plots which are allocated on the basis of recommendations from the local Agricultural Lands Board. Recommendations are then acted upon by the Commissioner of Lands who issues the formal offer and certificate of title. Leases used to run for 30 years before renewal was necessary. Under the Lands Act (1995), the shorter leases have been replaced by the standard statutory 99 year lease. Once more, the better connected a person is, and the better able they are to demonstrate that they have the means to develop and farm a plot, the more likely they are to be successful in their application. Should the land be deemed to have been abandoned - that is, it remains occupied or the farmer fails to achieve a reasonable standard of production for three years - notice may be served by the Agricultural Lands Board and the land grant forfeited.¹¹⁷

iv. Implications of the Lands Act (1995) for the allocation of land

The Lands Act (1995) must impinge upon the way in which land is allocated under existing alienation procedures. It is a requirement under the Act that money must be paid for land when it is alienated.¹¹⁸ The only exceptions to this are when land is to be used for a public purpose or when a person with customary tenure converts it to statutory leasehold, in which case no consideration is required.¹¹⁹

In the absence of a fixed Government price or stipulations that undeveloped land has no value, it is left to the market to determine the price of land. This has at least two implications. First, in the allocation of State land by District Councils, leaseholds will have a market value and the ability of applicants to pay must become the prime consideration. This runs contrary to the requirement under the Covenant that the right to housing is ensured to everyone irrespective of their wealth. Second, the fact that all land, including undeveloped land, has a value may intrinsically restrict the power of the Commissioner of Land to repossess undeveloped land as the title holder may have a claim to compensation.¹²⁰ This may render as problematic steps under the revised procedure to prevent developers from holding undeveloped land while continuing to discriminate against those with limited financial resources at the outset. Far from the poor being accorded access to affordable land and housing and the vulnerable being given priority consideration, allocations of land with secure title are made solely on the basis of ability to pay on the open market.

2. Security of tenure and protection from forced eviction

Security of tenure which guarantees protection against forced eviction is one of the factors identified by the Committee which must be taken into account in determining whether or not a person enjoys the right to adequate housing under the Covenant.¹²¹ This security extends to those occupying vacant land or living in informal settlements. Domestic law and policy in Zambia is seen, increasingly, to run contrary to this requirement. (i) The Land Act (1995) introduces a section which reinforces the illegality of squatting in a country where there is no constitutional protection of a right to housing or basic squatters rights. (ii) Provision which has been made to accommodate squatters under previous administrations through the Housing Act (Statutory and Improvement Areas) and through the degazetting of Forest Reserves affords inadequate security of tenure and is undermined by subsequent law and practice. (iii) An increase in the disconnection of essential services, intimidation and evictions by local authorities is a reality as homes becomes unaffordable in the wake of liberalisation and privatisation. Furthermore, there have been instances of the mass forced eviction of squatters living in shanty townships built on urban and peri-urban land - land which now has commercial value. (iv) In relation to the sheer number and complexity of disputes over land, the newly established Lands Tribunal appears entirely overwhelmed and ineffective.

Forced evictions have also been planned and carried out by parastatals and the new owners of recently privatised businesses. However, a consideration of these violations is postponed until Section 2(IV) when both the State obligation to protect human rights is reviewed alongside the argument that such companies have a direct responsibility to observe human rights standards.

a. The illegality of squatters

The Committee, in its interpretation of the right to housing, lists a variety of tenures, *inter alia*, informal settlement, including occupation of land or property:¹²²

‘Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees protection against forced eviction...States parties should...take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.’

The contrast with the Lands Act (1995) which prohibits the unauthorised occupation of land, is stark.¹²³

- (1) A person shall not without lawful authority occupy or continue to occupy vacant land.
- (2) Any person who occupies land in contravention of subsection (1) is liable to be evicted.

Those people who occupy vacant land over which others have title - whether this is unalienated State land, State land over which others have been granted a lease, Forest Reserves or other protected land, or customary areas where others have tenure - do so illegally in respect of Zambian law. People living in such squatter settlements have no title, little or no protection under the law and, indeed, are liable to eviction. The Lands Act (1995) not only omits to protect an

inherent right to housing but places undue emphasis, at the level of primary legislation, on the unlawful occupation of land. This is not counteracted by the Zambian constitution which affords no protection of the right to housing or access to land, nor does it offer basic protection of squatters rights. Indeed, previous legislation offering limited protection from eviction is repealed.¹²⁴ Yet, at the same time, it is a fact that many Zambians must live in squatters settlements if they are to survive at all.

b. Degraded security of tenure

In the urban setting, within Statutory Improvement Areas (SIAs), insecurity is manifest in the degraded tenure offered to residents. Furthermore, a clause in the Lands Act (1995) may restrict or even preclude the designation or expansion of SIAs. In respect of encroachers in rural and peri-urban areas into Forest Reserves, the barriers to security of tenure and protection from eviction are almost insurmountable. A strictly controlled programme of degazetting exists, but, in any case, this represents only a first step prior to applications for individual title through the Procedure on Land Alienation.

i. Statutory Improvement Areas

The Housing (Statutory and Improvement Areas) Act was introduced in the first place to accord squatters some degree of security of tenure and limited protection from eviction. Yet the right to adequate housing is far from guaranteed in council areas because of a complex system of tenureship which encompasses significantly different levels of security and insecurity. Often people, including many poorer urban residents, believe they own full title to land when this is not the case.

The type of title offered and the security of tenure conferred depend upon whether residents live in areas designated by the Council as Statutory Areas or whether they live in Improvement Areas. In the former, the Council may let land to residents and their *bona fide* dependants.¹²⁵ Statutory Housing Areas tend to be established settlements, somewhat better served by infrastructure and amenities. This is reflected in the type of tenure accorded: residents may, eventually, be issued with a council certificate of title to their property. However, the reality for most residents is one of delay, frustration and ultimate confusion over their status.

Improvement Areas cover less well developed council land which is earmarked for gradual upgrading.¹²⁶ People may use land and build their own houses provided they have been issued with an occupancy licence by the Council.¹²⁷ The maximum length of an occupancy title is fixed at thirty years, but they are commonly of much shorter duration.¹²⁸ In the Copperbelt, occupancy licences are issued for ten years and authenticated by Land Record Cards. In all cases, occupancy licences offer little legal protection against eviction or the demolition of homes because neither searches into the underlying ownership of the land have been undertaken nor the boundaries legally defined. As a consequence of this degraded legal status, land or housing under occupancy titles is not recognised by banks as collateral.¹²⁹

Even in Statutory Areas, tenure is far from secure. The council's certificate of title, even though it is valid for 99 years, remains of limited legal value because, once more, full searches are not undertaken by the council nor boundaries defined by a detailed survey.¹³⁰ The council's certificate of title should not be confused with the certificate of title for full 99 year statutory leaseholds which give the greatest security of tenure under Zambian law. These can only be issued by the Registrar and Commission of Lands once the ownership of the land in question has been ascertained, the plot has been demarcated and surveyed in accordance with the Land Survey Act, and has been allocated a registration number.

ii. Forest Reserves

The Forests Act empowers the Government to set aside land to create Forest Reserves. These areas allow for conservation and the controlled development of forest resources for the benefit of the nation. The Forest Act provides for the establishment and management of National and local Forests, for the conservation and protection of forests and trees, and for the licensing and sale of forest produce. People are not permitted to settle in Forest Reserves and the use of forest resources, in particular the trees themselves, is strictly controlled. There is limited provision for the protection of individual rights in recognition of long-standing human activities in the forest.¹³¹ However, it is acknowledged that the existing Act does not allow for public or community participation to encourage better local level management of reserves.¹³² The basis for a new Forest Act was prepared in 1999.

Pressure for land in Zambia has inevitably meant that people have encroached into Forest Reserves and the problem is particularly severe along the line of rail provinces, including the Copperbelt.¹³³ The underlying fear of eviction remains, as recently manifest in the Copperbelt communities of Kamfinsa, Sakania, Mpima, Mwekela over the impending eviction of hundreds of peasant farmers who have settled in Forest Reserves on the Zairian border near Mufulira for

many years.¹³⁴ Some squatters in rural or peri-urban areas may benefit from moves by certain local authorities to get such reserves degazetted, thus allowing for the official demarcation of plots and settled agriculture.

The President is vested with powers to de-gazette Forest Reserves for the purposes of human settlement, but the mechanism for doing so is drawn-out and strictly controlled.¹³⁵ From the standpoint of conserving natural resources, this is understandable; however, this must be balanced against the fact of encroachment which is itself the result of landlessness and impoverishment¹³⁶. Local officials often make the request for degazetting. In the first instance, their recommendation that an area be degazetted is heard by the Council and representatives from the local Department of Agriculture. If the recommendation is approved, a resolution is forwarded to the Provincial Permanent Secretary and the Provincial Forestry Officer. Their recommendations are sent to the Department of Forestry which in turn forwards its opinion to the Minister through the Permanent Secretary. The Minister takes the final decision on whether an area should be degazetted. If the request is granted, the President gives formal consent and a statutory instrument is issued to remove the status of a forest reserve.¹³⁷

The Permanent Secretary in the Ministry of Environment has conceded that a lack of funds and unwarranted claims for land by non-squatters descending on an area in a rush for land has disrupted resettlement schemes in degazetted Forest Reserves.¹³⁸ It also must be noted that, despite the length of the procedure, degazetting is only a necessary first step in obtaining title to land. People must then apply for title and negotiate what, for the many poor settlers, must seem the almost insurmountable hurdles given effect through the *Procedure on Land Alienation*. An abortive attempt in 1995 to assist local councils in the demarcation of plots showed the impossibility of sustaining such a programme in the absence of adequate finance.¹³⁹

c. Council evictions, intimidation, the disconnection of essential services in violation of basic human rights

The threatened or actual violation of the right to housing and other basic human rights by local councils is manifest in three ways: first, in the disconnection of essential services and the threat or practice of eviction in order to collect desperately needed revenue from unpaid rents and rates; second, in the particular problems caused by the non-payment of outstanding balances on council houses sold under the Government's drive to private home ownership; and third, in forced evictions arising as the result of urban development and the enforcement of planning regulations. Recent instances of these evictions are documented in the accompanying text boxes.

Disconnections and evictions in respect of unpaid arrears

The milieu in which parastatals such as ZCCM are considered as an extension of Government and thereby came to administrative understandings with the local councils is rapidly altering as the mines are privatised - please refer to Section 2(IV) which considers this transition. Local councils are in urgent need of finance to pay not only for existing service provision, but also for the added burden of their new responsibilities. Beyond the implications for habitability and the adequacy of essential services and infrastructure, this circumstance also leads to an increased incidence of disconnections and the actual and threatened eviction of residents who fail to pay service charges which they cannot afford.

Extensive strikes in twenty towns and cities in early 1997 by council workers over disputed pay demands threatened to paralyse the country. In Kitwe, the City Council passed a resolution to embark on mass evictions and disconnections in an effort to raise revenue to meet its employee wage bill.¹⁴⁰ The Town Clerk admitted in a consultative meeting held to find solutions to the problem of disconnections and evictions that an outbreak of cholera in the town could not be avoided unless almost half of the K7.4 billion owed in water rates was collected from defaulters.¹⁴¹ Water treatment chemicals were predicted to last a further six days and the council opened a cholera centre in anticipation of an epidemic. The meeting had been convened by local MMD district officials after receiving persistent complaints from residents that the council had served warrants of distress on those defaulting on the payment of rates to enable bailiffs to collect the monies owed and had disconnected water to Ndeke township in an effort to force payment.

Chingola Municipal Council issued a final warning to residents to pay outstanding bills or face civil action in the form of warrants of distress and eviction orders. The Council confirmed it had formed a task force to collect arrears and had already embarked on a disconnection exercise against those failing to pay water charges.¹⁴² In May 1998, Ndola City Council began large-scale evictions to recover millions of Kwacha in long-standing arrears from tenants in council-owned properties not earmarked for sale. Ten families, owing K50 million, were evicted from the Masala Chinese Complex by council and State police. Others in Itawa Flats faced similar action.¹⁴³

It must be reiterated that whether the right to housing is enjoyed or denied depends upon the availability of essential services including safe drinking water, sanitation, and energy for cooking, heating and lighting.¹⁴⁴ The deliberate disconnection of services - especially water supply - must constitute not only a violation of the right to housing, but also the right to health. It even threatens the right to life, for example by increasing the vulnerability of residents, and especially infants and young children, to diseases such as cholera and dysentery.

The Committee has determined that ‘instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.’¹⁴⁵ The Committee has provided clarification of what constitutes legal protection against forced eviction. Of concern here are those requirements of particular pertinence to the prevailing *de jure* and *de facto* situation in Zambia. A State party should adopt laws which provide the greatest possible security of tenure - in this essential respect, as has been documented, the Zambian Government has neither provided such protection for sitting tenants nor for squatters in urban or peri-urban areas.¹⁴⁶ A State party shall also ensure the right to adequate compensation for loss of real or personal property for those affected by evictions.¹⁴⁷ Furthermore, recourse to the law and procedural protection of those served with eviction orders should be provided.¹⁴⁸

As a corollary, it is important to recognise that not every eviction constitutes a forced eviction in violation of the right to housing depending upon whether or not these safeguards are in place:¹⁴⁹

Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.¹⁵⁰

The problems created by the sale of council houses

The council housing stock, which local authorities have been obliged to sell under the national policy of home ownership, no longer yields a rental income. Furthermore, a new phenomenon is the increasing number of evictions of council tenants who have exercised their right to buy, often paying an initial deposit, but who have then defaulted on subsequent payments. Councils are pursuing defaulters for payments of arrears in the form of rent in lieu of debt and are threatening to evict those unable to pay.

On 20 May 1997, Lusaka City Council (LCC) announced that tenants buying council houses would be given to the end of the month to clear arrears or else be charged rent on their homes. 390 residents of Libala township had paid a ten per cent deposit on houses costing between K2m - K3m but could not pay the balance because many had not received Government or company retrenchment packages. Only a few buyers employed in stable businesses had access to company loans. Residents requested an extension of the repayment period to four years, but the LCC ruled this out. Fears abounded that council rents could double in order to claw back arrears.¹⁵¹

In the same month, Chingola Municipal Council announced that it would take action against tenants who had not responded to the offer to buy their homes yet were no longer paying rent to the council.¹⁵² A flood of disputed claims over the sale of council houses prompted Kitwe City Council to issue a thirty day ultimatum to residents to either reoccupy a property or else forfeit it to the sitting tenant. This announcement threatened a wave of intimidation and extrajudicial evictions.¹⁵³ In Mongu, 266 houses were offered for sale to sitting tenants. All took up their purchase option; yet, by the end of April 1997, almost a year later, only 56 buyers had paid in full and had been offered certificates of ownership.¹⁵⁴ In Livingstone, by the same date, 6500 out of 7000 houses had been sold. However, the Town Clerk confirmed that not only had no deposit or payment been received for 500 properties, but that others, after making a downpayment, had not made further required contributions in lieu of rent.¹⁵⁵ Out of 229 houses offered for sale by Solwezi council, 44 houses built before 1959 attracted a 100 per cent rebate and were transferred to the tenants. The Town Clerk confirmed in court in April 1997 that, in respect of the remainder of the sales, eighteen buyers had not paid in full, although six of them had paid deposits.¹⁵⁶ A number of tenants had not responded to the offer of sale. Twelve repossessions had already been carried out.

In a number of other towns, for example, Kabwe and Chongwe, local councils threatened mass evictions and repossessions of property where sales had not been completed by the specified deadlines at the end of 1997.¹⁵⁷ Many civil servants living in council houses, unable to secure promised Government loans, found themselves faced with such action. The Ministry of Local Government, at the behest of the Civil Service Union of Zambia, issued a directive to local councils to extend the payment period, but the underlying problem of finance provision remained unresolved while, at the same time, local authorities continued to be starved of funds.¹⁵⁸ The saga continues and, while it does so, there is no security of tenure for those affected. In May 1998, Ndola City Council was once more urging tenants buying their houses to pay the balance owed to the council by the August deadline or face eviction.¹⁵⁹

There are grounds for arguing that local councils in Zambia have been engaged in forced evictions in violation of the right to housing. In respect of those evicted for the non-payment of rent, rates, service charges and purchase balances, there are specific circumstances which, when allied to the prevalence of widespread, extreme poverty, constitute reasonable cause. The fact that local authorities are compelled by Government policy to dispose of their housing stock means that council tenants may no longer rent and have therefore had little choice but to purchase homes which they cannot afford. Many householders are reliant upon their terminal benefits or upon Government finance to purchase their homes and are placed in a highly vulnerable position when payment is not made. For detailed consideration of the compatibility or otherwise of the arrangements for the sale of State-derived housing stock with the right to housing under the Covenant, please see subsection 3(b) below.

In respect of the mass eviction of residents and the demolition of property which has taken place in urban and peri-urban land in Lusaka earmarked for improvement or development, this has taken place without due legal process. The procedural protection which must be applied in relation to forced evictions, should, *inter alia*, include an opportunity for genuine consultation with those affected, to include the exploration of feasible alternatives to eviction with a view to avoiding, or at least minimising, the need to use force.¹⁶⁰ It should also provide for adequate and reasonable notice for all affected persons prior to the scheduled date of eviction.¹⁶¹ Furthermore, procedures should be in place to ensure that the authorities or third parties supply timely information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used.¹⁶² Finally, the provision of legal remedies to those served with eviction notices is essential:¹⁶³ where possible, legal aid should be made available to enable persons to seek redress from the courts.¹⁶⁴ The reality is that most Zambians are simply too poor to pay legal costs or else are unaware of how to seek an injunction and judicial review. The alternative means of redress - the Lands Tribunal - is reviewed in the next subsection.

Urban development and the demolition of illegal structures

A number of illegal structures have mushroomed in Lusaka's Kanyama, John Laing, Ngombe, Misisi, George, Chawama, and Kalingalinga townships. In an effort to control and contain a situation which is seen as discouraging commercial investment while threatening public health, the Zambian authorities have succumbed to the use of forced evictions in the past and have been criticised by the Committee in this regard.¹⁶⁵

In an event likened to the razing of newly constructed squatter housing during the MMD's first week in government in 1991, Lusaka City Council carried out demolitions and the forceful eviction of squatters from an area adjacent to Kalingalinga township in Lusaka in September 1996.¹⁶⁶ Within a year later, people were again erecting structures on plots which the vice-chairman of the Kalingalinga Resident's Development Committee claimed had been allocated to the community by the council after being repossessed. They were unable, however, to furnish documentation to support their claim, prompting their local MP to urge for the education of people on land issues so that they knew that the only way to obtain legal title was through certificates of occupancy or statutory leasehold. The LCC responded that it had not allocated any residential plots in the areas concerned and that any illegal structures would be demolished.¹⁶⁷

In April 1997, the LCC served eviction notices on squatters living on allocated commercial land in a corridor along the Kafue Road in Lusaka's hinterland.¹⁶⁸ In the following month, the Council was ordered by the Lands Tribunal to complete the eviction and demolish illegal structures within three months.¹⁶⁹ The squatters claimed that they had been allocated the land by an official in the former UNIP administration. In the same month, the City Council began night operations to burn down the stalls of unlicensed street vendors in the city. The area targeted was between Chelston and Northmead on the Great East Road, but similar action was to be undertaken by the Council throughout Lusaka.¹⁷⁰

Lusaka City Council has accused politicians of lacking the will to deter illegal development while blaming the Council in public for carrying out evictions.¹⁷¹ Indeed, many believe that vested political interests lie at the heart of the problem of unplanned settlements when local cadres and MPs make unofficial land allocations to garner support. The Council remains chronically under-resourced. In March 1999, it announced that it was effectively bankrupt, owing creditors K20 billion while it debtors owed the Council K20 billion.¹⁷² It has a plan to expand Lusaka through the purchase of farmland around the city, but has no funds whatsoever to compensate the landowners who hold 99 year leases. In terms of staff, the LCC has only three qualified planners against the nineteen it requires and a chronic shortage of transport which has prevented them from doing their job effectively.¹⁷³ In response to this situation, the Council has called for legislation to enable land to be delivered quickly to people in peri-urban areas and for the removal of tax on building materials. Imaginative solutions need to be found to the vicious circle in which impoverished residents either refuse or are unable to pay for inadequate basic services which deteriorate further as a consequence of the lack of available funds for reinvestment.

d. The Lands Tribunal

For the first time, a Lands Tribunal, made up of land professionals and presided over by a High Court judge, is established in Zambia under the Lands Act (1995).¹⁷⁴ The Tribunal has powers to inquire into and make awards and decisions in any dispute relating to land under the Act, including the determination of compensation.¹⁷⁵ Beyond specific disputes, it may also generally inquire and adjudicate on any matter affecting land rights and obligations.¹⁷⁶

Appeals to the Lands Tribunal are initiated by a person who is aggrieved by a directive or decision of a person in authority.¹⁷⁷ The Act defines such a person in authority as the President, Minister or the Registrar.¹⁷⁸ To lodge an appeal, a person needs the date, reference number and particulars of the decision or directive and a description of the land in dispute, including, where appropriate, a plan identifying the land.¹⁷⁹ The question that a person wants determined by the Tribunal and the grounds of their appeal must be stated.¹⁸⁰ This is important because, once a hearing has begun, the grounds of appeal cannot, generally, be changed.¹⁸¹ Under most circumstances, the Tribunal meets in public.¹⁸² Anyone appearing before the Tribunal may do so in person or through an appointed legal representative at their own expense.¹⁸³ Evidence is presented orally or, with Chair's consent, by affidavit.¹⁸⁴ Any person aggrieved by a decision of the Tribunal may appeal, within thirty days, to the Supreme Court.¹⁸⁵

The practical barriers which prevent many Zambians from gaining access to the Lands Tribunal are numerous and considerable. Not least is the fact that very few Zambians know if the Tribunal is of relevance to their claims to housing or land or if it is accessible to them. This notwithstanding, the Tribunal conceded in November 1997, after only one year in operation, that it was overwhelmed by the number of cases before it given its level of resources. By that time, the Tribunal had received 83 complaints. Of these, 51 cases were still pending, 10 cases had been settled amicably, and 8 cases had been dropped. The Tribunal had therefore reached judgement on only 14 complaints in twelve months. Practical barriers, including lack of transport, and the failure of lawyers or parties to the proceedings to appear at the designated time were blamed for hampering the Tribunal in its attempt to expedite proceedings.¹⁸⁶

The Tribunal meets at places and times determined by the Chairperson.¹⁸⁷ In practice, it has met in mainly in Lusaka. This makes it very difficult for people from many other parts of the country to attend because of the time and expense involved, even though a determination may be made and costs may be awarded in their absence.¹⁸⁸ Where redress mechanisms are centralised, women and other disadvantaged groups find it difficult to get access to the forum and, as a consequence, their claims are not heard and their rights are given less consideration.¹⁸⁹ The majority of impoverished Zambians are faced with a daily, all consuming struggle to make a living. Although the Tribunal is meant to resolve disputes at minimal cost, most people, when faced with the choice of making an appeal themselves or through a lawyer, will either balk at the first option or will not have the necessary funds to hire representation.¹⁹⁰

In respect of the rulings of the Lands Tribunal, it is beyond the scope of this report to determine their likely impact on the realisation of the right to housing in Zambia. However, it is pertinent to note that all Tribunal decisions will be arrived at within the parameters of Zambian law, in particular the Land Act (1995) which is itself antithetical to the aspects of the right to adequate housing. Attention is drawn to one recent ruling.

In May 1997, the Lands Tribunal ordered Lusaka City Council to demolish houses and evict 92 squatters from land allocated to a commercial developer in Misisi township, situated along the Kafue Road in Lusaka.¹⁹¹ The squatters claimed that the land had been allocated to them by a UNIP official in the Second Republic, yet a search revealed that there was no record of title deeds having been issued. The LCC director of planning stated that the council had never approved residential plots in the township, but was criticised by the Tribunal for allowing the problem to escalate by not taking action earlier over the illegal occupation of the land. However correct in the context of Zambian land law, such decisions by the Tribunal do little to address the underlying problem whereby poor residents are misallocated land, often paying corrupt officials in the process, then reside in an area for years in the mistaken belief that they possess security of tenure.¹⁹² Others may settle on land in the full knowledge that they do so illegally, but their poverty leaves them with little or no choice.

3. Housing in Zambia

This subsection is itself divided into two main parts corresponding to distinct aspects of the right to housing. First, consideration is given to the state of Zambia's housing stock: whether homes are habitable, connected to essential services and infrastructure, and are within reach of schools, clinics and other social amenities. Second, and in the context of the Government's policy of selling all parastatal and public housing, attention is focused upon the issue of affordability.

Adequate housing must be in a location that allows access to employment options, health-care services, schools, child-care centres and other social facilities.

[General Comment 4, *The right to adequate housing*, para. 8(f)]

Access to employment

Between 1992 and 1997, Government statistics show that 80,000 jobs have been lost during liberalisation, privatisation and reform of the public sector. Most formal sector employment, and hence recent job losses, are concentrated in urban centres in Lusaka and the Copperbelt.

Under the World Bank backed Public Sector Reform Programme, the intention is to shed no fewer than 57,000 jobs - a staggering 40 per cent of the public sector work force. Over 15,000 casual daily employees were retrenched from the civil service in 1997/98.

The vast majority of Zambians earn their living in the informal sector. In the region of 3 million people, or 80 per cent of the economically active workforce, now earn their living or supplement their income by working in the informal sector. A recent survey of informal trading in Kitwe in the Copperbelt estimated that the rate of entry into informal sector trading increased by 400 per cent between 1991 and 1995.

Few of those earning a living in the informal sector do so out of choice. In a survey of traders, of those who gave a reason for starting up a small business, less than two in every ten said that they had done so because they actually preferred to work in the informal sector. Indeed, 65 per cent of informal sector workers in Lusaka have never experienced formal sector employment.

Most informal traders come from shanty settlements and live in high density housing. The majority of informal traders are women and a disproportionate number of female divorcees and widows appear in the surveys. Hence a sizeable proportion of female headed households make a living in this way.

“The compound was rife with testimonies of firings, sudden lay-offs by local industries and mass retrenchment, leaving an impression of a compound confronting the harsh realities of structural change in the economy very abruptly, with little time to adjust.”

[Observation on Chipulukusu shanty, Ndola, World Bank, *Poverty Assessment*, 1994]

Overall access to services

Poor people are deprived of access to services and have few household assets. The World Bank set out to examine the extent of this deprivation. It chose sixteen essential areas including: access to social services; to information; to potable water; to education; the availability of electricity; the ownership of household goods; income; shelter; and access to sanitation. On average, all Zambians were denied access to eleven out of sixteen of these essentials. In the Copperbelt, people fared better and, on average, were denied access to eight - or about half - the services or assets examined in the study.

The study shows a significant level of deprivation in all Zambia's provinces. The Copperbelt fared slightly better because of the paternal attitude of ZCCM which supported services and welfare measures in the past. With privatisation, this situation is likely to change for the worse. ZCCM has traditionally serviced not only its own compounds, but has also entered into informal arrangements with town councils to provide basic amenities to other residents. There is strong evidence that the new private sector owners will not take on these responsibilities in the longer term with the result that service provision in the Copperbelt towns will inevitably get even worse for the urban poor. Most poor residents in the Copperbelt are now found in unplanned squatter settlements on the periphery of urban centres where they lack legal status and therefore any service provision.

“It has often been assumed, given the “urban bias” in Zambia's development, that urban populations have been better served by health and education services. Declining revenues and increasing population pressures during the 1980s mean that if this was once the case it is certainly not the current situation....the urban poor are either under-served or, in illegal settlements, not served at all.”

[World Bank, *Zambia: Poverty Assessment*, 1994]

Too many different actors - central government ministries, local council departments, parastatals and the private sector - are involved in supplying urban services with the result that nobody is sure who is responsible for which areas of provision. This creates ideal conditions for a ‘two tier’ system in which the poor lose out. Overall, simply too few resources and too little money is devoted out of Government spending to providing services for the poor.

Transport

Most urban compounds in which the poor live are without transport services altogether. Bus and taxi firms avoid certain areas because the roads are unsurfaced and peppered with potholes and because the customer base is small. This is not because poor city dwellers do not need transport - on the contrary, they require access to central markets, jobs and services - but because they cannot afford high fares. Where services do exist, on top of the expense, they are often irregular and overcrowded.

Six out of every ten residents indicated that cost was the biggest constraint on their use of urban transport. The result is that nine out of ten people living in the compounds and shanties walk to fetch water, to local markets, to the clinic, to school or into the town centre itself. The situation is so bad that even arranging transport for funerals is very difficult.

The poor state of transport, together with restrictive land use zoning, makes it difficult for local people to develop a business in the compounds.

Inadequate roads and lack of transport is a problem not only within Zambia's cities, but it also a problem which exists both between cities themselves and between towns and the surrounding countryside. It makes it difficult for farmers to get their produce into the markets. Removal of transport subsidies and Government marketing services has made the problem worse. Once middle men have shipped produce to market and taken their cut, farmers get less and the urban poor pay more for their food.

Furthermore, the inadequacy of communications severely restricts the mobility of labour. For example, the privatisation of ZCCM may create pockets of expansion - although this is by no means guaranteed - but even then it is difficult to see how people will be able to commute from nearby towns to take advantage of any new opportunities. Their only option will be to uproot and many may not be able to afford to do so, especially since significant numbers of people will have sunk their money into buying a home.

“In real terms, urban transport costs have risen out of all proportion to incomes. For those using transport, costs consume an average of 17 percent of non-food expenditure. In Chawama, 71 percent of the very poor cannot afford to use transport services at all.”

[World Bank, *Zambia: Poverty Assessment*, 1994]

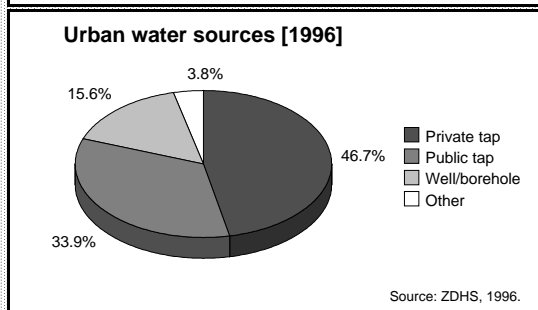
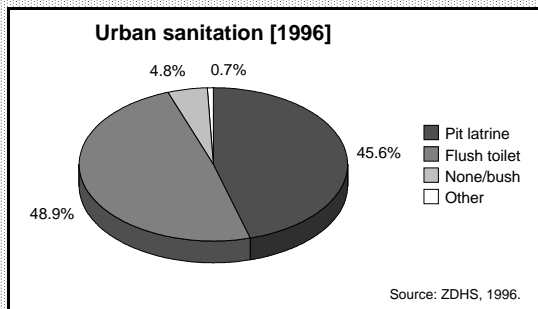
An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

[General Comment 4, The right to adequate housing, para. 8(b)].

Water & sanitation

While better than in the countryside, overall access to water supplies and sanitation in urban areas in Zambia has deteriorated over the last twenty years.

- In the early 1970s, 86% city dwellers had access to safe water.
- The World Bank recorded that access had fallen to 66% in 1990, although Government estimates for recent years put the figure at around 75%.



- In rural areas, 30 to 40% of the population have access to safe drinking water.
- Latest Government figures for 1997 indicate that 12% of urban residents, 30% of those living in peri-urban areas and 88% of those in rural areas do not have access to adequate, safe, convenient sanitation.

Water and sewerage infrastructure in many Copperbelt towns was installed up to three decades or more ago to serve a small urban elite. It cannot meet the needs of the large numbers of poor people in the cities of today and is falling into disrepair. This lowers its capacity still further.

The proportion of households who now depend on unprotected wells and boreholes in Copperbelt towns has more than doubled since the 1970s and around a fifth of people now draw their water from these unprotected sources.

The contrast is not only between urban areas and rural areas: there is also significant variation in the quality of water supply depending upon where you live within a town or city. The neighbourhoods in which more affluent residents live are the best served. The number of properties with piped water and flush toilets in these areas makes the overall statistics on urban water supply and sanitation appear more respectable. In contrast, low income urban areas are officially served by standpipes serving up to 25 households, but the World Bank confirms that field visits show many of these to be out of operation. Indeed, real levels of access to safe water and sanitation to the urban poor are largely unknown, especially when considering provision in the shanty compounds. It is people living in these settlements, classed by the authorities as illegal, who suffer the worst deprivation. As a consequence, there is no obligation on the local authorities to provide services as a matter of course.

- In an area like Chawama - a poor but legal residential area of Lusaka - 80% of residents are dependent on public taps and 95% use latrines or buckets.

- In George Compound, Ndola, where the City Council deems most settlement to be illegal, a

study by the development agency CARE in 1995 revealed that four households share each well and five households share each pit latrine. People are well aware of the risks associated with makeshift provision.

This situation of inadequate water supply and sanitation has a severe impact on the poor:

- An increase in the incidence of water borne diseases in Zambia has been described as one of the 'most glaring outcomes of the decay in urban infrastructure'. Lack of access to, and the quality of, water supply and sanitation has led to an outbreak of cholera in George Compound in 1991 and there have been other serious outbreaks of cholera in recent years, notably in Kitwe and Lusaka.
- Women are frequently responsible for providing the household with water, so they suffer the most when it comes to ensuring a decent supply. Even if, for the majority of urban dwellers, water sources are less than one kilometre away, queuing for water and carrying it back home still takes up valuable time. The frustration and demands on women are compounded by the fact that supplies are often erratic or even out of order.
- While official service charges set by the local council have, in the past, been nominal, recent trends suggest that:

⇒ Prices are on the increase. In Kalingalinga compound, water charges increased from K10 per household to K300 per month in 1991. Charges on non-communal taps, at K3000 per month, were ten times the standard price.

⇒ Private landlords often charge inflated prices for access to water and other services.

⇒ As the system deteriorates, and because local councils do not have the resources for repairs, people are paying more for failing service. In the case of Kitwe Council, in 1994 it officially supplied just over 18,000 low cost houses. Numerically, these units make up two-thirds of its revenue base for water charges, although rates for high cost housing and commercial properties are higher. Some residents are now refusing to pay while others are too poor to pay. Hence the base from which local councils get their revenue is falling and in the following year they have even less to spend on basic services. The cycle of decline begins again.

⇒ The water sector has been opened up to commercial operators under the recent Water Supply and Sanitation Act of 1997. Local councils will be responsible for the overall management of water and sewerage provision, but will contract out the actual running of services to commercial companies. Commercial provision has begun in Lusaka. In the Copperbelt, the first phase of a pilot project on the Copperbelt has seen eight town councils form three joint companies to run water and sewerage services. The ultimate aim is to share-out the cost of provision in rural areas, but recover costs from consumers in urban centres. In the absence of due safeguards, the realisation of the basic right of all, including the urban poor, to adequate, serviced housing will be jeopardised. The National Water Supply and Sanitation Council (NWASCO), the body responsible for regulation of the sector and the setting of tariffs, is not yet operational. (For further information, please see Section 2(IV)).

"In Chipulukusu, people attributed the outbreaks of diseases such as cholera and dysentery to the dirty water from the wells, which they understood were infused with the dirt from the latrines close by."

[World Bank, *Zambia: Poverty Assessment*, comment on Chipulukusu compound, one of the poorest areas of Ndola]

"The department is not getting any returns on its water services extended to squatter compounds. This goes also with low cost housing areas."

[Report of the Acting Director of Water and Sewerage Services, Kitwe, 1994]

a. Denial of the right to housing: habitability, location, services and infrastructure

i. Declining housing conditions vis-à-vis the obligation to take steps

For the right to housing to be realised, the Committee has determined that homes must be in a location which allows for access to employment and services and that the house itself should contain basic facilities essential for health, security, comfort and nutrition. The contrast with the inadequacy of housing in Zambia, as evidenced by the indicators and accounts given in the accompanying boxes, is stark. The overriding conclusion must be that the vast majority of people in Zambia do not enjoy a right to adequate housing.

The key question is whether the Zambian Government is meeting its obligations under the Covenant by ensuring that the right to housing is *achieved progressively*, and *without discrimination*, by *taking steps* to see that this is the case to *the maximum of its available resources*.¹⁹³ The Committee has determined that the obligations under the Covenant apply despite externally caused problems ‘and are perhaps even more pertinent during times of economic contraction.’¹⁹⁴ Specifically in relation to the right to housing:

‘..a general decline in living and housing conditions, directly attributable to policy and legislative decisions by State parties, and in the absence of compensatory measures, would be inconsistent with the obligations under the Covenant.’¹⁹⁵

The indicators cited appear to record a general decline in living and housing conditions *vis-à-vis* habitability and availability of services. The datum against which the current legislative changes and policy initiatives of the MMD Government can be judged has its origins in previous decades under the UNIP administration. An acute shortage of low-cost housing in the 1960s prompted the Zambian Government to instruct all local authorities to plan thirty per cent of housing as site-and-service schemes.¹⁹⁶ The councils were to provide water, sanitation, and roads to demarcated plots upon which residents would build their own houses. However, the costs on both sides proved to be prohibitive. As a result, unauthorised squatter settlements grew. In response, the Government of the day introduced the Housing (Statutory and Improvement Areas) Act in 1974. This remains in force and is accommodated within the Lands Act (1995).¹⁹⁷ Under the Housing Act, the Minister of Lands may confer the status of a Statutory Housing Area or an Improvement Area on land owned by the Council on the basis of an approved plan.¹⁹⁸ Within these designated areas, the Council may subdivide land, erect buildings and improve services.¹⁹⁹ The council is empowered to issue certificates of title and occupancy titles to plots upon which residents have built their own houses.²⁰⁰ This brings settlers, by degree, within the protection of the law. A critique of the tenureship offered within SIAs has already been made; here the immediate focus is upon how the MMD’s revisions to the Lands Act and how its National Housing Policy have so damaged local government finance as to render the delivery of adequate services by local councils almost impossible.

ii. The National Housing Policy and its detrimental impact on local government finance

The Covenant requires a State party to take necessary steps to achieve the full realisation of the right to housing. Such steps ‘will almost invariably require the adoption of a national housing strategy’ which matches resources to housing objectives and sets out the responsibilities and time-frame for the implementation of the necessary measures.²⁰¹ Furthermore, the Committee has determined that: ‘...steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies...with the obligations under article 11 of the Covenant.’²⁰²

In contradistinction, there has been no meaningful attempt by the MMD Government to reconcile its objective of home ownership as a central plank in its National Housing Policy with the desperate need of local authorities to maintain their financial base to pay for local services. In the opinion of the Auditor-General, the decision of central government to dispose of local authority housing stock to sitting tenants ‘deprived the council[s] of the necessary revenue to meet the cost of their operations.’²⁰³ Income from the rental of houses has been an essential component of council budgets. As soon as the directive to sell council houses was issued, council tenants took this as a signal to stop paying rent. As houses are actually sold, they are removed forever from the rental revenue base. The downpayments realised from the sales, representing only a small proportion of the money owed, is nevertheless exceptional income which has been diverted into the Housing Trust Fund controlled by central Government. Those who have exercised their right to buy are in debt, unable to pay the outstanding balances on their homes. There is virtually no access to mortgages or suitable finance. Councils, with no money to meet operational costs or even pay staff, have therefore renewed their efforts to collect rents in lieu of payments for council houses or to recoup monies owed from those who have not paid their rates. Impoverished residents in many towns and cities - Lusaka, Kitwe, Ndola, Chingola, Kabwe, Chongwe *et cetera* - have been served with warrants of distress allowing bailiffs to enter their homes, or have been disconnected from essential services. Many have been served with eviction orders. This wave of civil action and repossessions completes a vicious

circle in which the security of tenure offered by home ownership has been subverted, so that those exercising their right to buy are now evictees. The fact remains that people had no choice but to attempt to buy what they could not afford. Government policy dictated that the houses must be sold, if not to sitting tenants, then to any other person in the market place.

The Government's response to this self-created crisis in local government finance has been heavily criticised by the Auditor-General. The Local Government Act of 1992 allows the Minister to make grants to local councils for the discharge of their functions. The Act also requires that an audit is undertaken and that each council is furnished with a copy of the resulting report. In the financial year 1996, the Government earmarked K2bn in funds for local councils. However, the money was to be allocated on the basis of an audit which was designed to establish the level of indebtedness of each council and furnish them with a bankable business plan to streamline their operations and reduce their claims on central government. The grant did not, therefore, represent cleared funds as it was to be used to repay existing local authority debts to Government.

In a review of the exercise, the Auditor-General raises serious concerns over how the consultant auditors were hired, how they were paid, and how they conducted the actual audit. Contrary to Financial Regulations, payments from the account were made on the basis of the signature of one official. Indeed, the account was under the control of very senior staff in the Loans and Investment section of the Ministry of Finance instead of regular office staff. This arrangement side-stepped effective controls. An unauthorised payment was made to an individual with no apparent involvement whatsoever in the exercise.²⁰⁴ No accounting books, including cash books, were maintained nor were reconciliations carried out. The consultants were paid fees and a 2 per cent commission on the savings made to central government by furnishing business plans which resulted in reduced council claims. Yet the apparent saving of K1bn declared by the consultants was net of statutory payments and was therefore incorrect and significantly overstated. No independent evaluation of the feasibility of the business plans was carried out by the Ministry of Local Government and Housing. Most damaging to the credibility of the exercise was the fact that '[e]nquiries revealed that, the plans were in most cases prepared without the involvement of the councils making it doubtful as to whether the plans would be accepted by the final users.'²⁰⁵ The Auditor-General concluded that '[a]lthough an amount of K2 billion was made available to clear the indebtedness of councils, it is doubtful whether the intended objective of improving the operations of the councils was realised.'²⁰⁶

iii. The diversion of land-derived income from local councils to central government

The Land Act (1995) is likewise implicated in the failure of central government to reconcile its free-market agenda of land and housing reform with the requirements of local government. The Act alters the basis upon which the ground rent from leaseholds is collected. Ground rent is payable to the President on all land alienated by the State.²⁰⁷ A stipulation is introduced whereby all land leased by a Council is surrendered to the President and, where a council is subleasing land to others, their lease is automatically switched to the President, under the same terms as before.²⁰⁸ Annual ground rent, set at a rate to be prescribed by statutory instrument, is now paid to the President.²⁰⁹ This change will have an adverse impact upon local government finance and the ability of councils to provide services at a time when their burden of responsibility is increased given inevitable moves by private sector companies to withdraw from providing services which once fell squarely within the remit of parastatals.

While this surrender of Council land and ground rent does not apply to areas leased for the Council's own use or to land held under the Housing (Statutory Improvement Areas) Act, these poor areas do not constitute a significant revenue base.²¹⁰ Overall, the new Lands Act (1995), by channelling ground rent to central Government, precludes the redistribution of money from richer to poorer areas within a town or city. Furthermore, provision made within the Act for the establishment of a Land Development Fund for the opening up of new land for development does not offset this criticism.²¹¹ The Land Development Fund is made up from three sources: money earmarked by Parliament; three-quarters of the money realised by the sale of State land under the Act; and half of the ground rent collected from all land.²¹² The remaining half of money collected from ground rents is automatically subsumed into the Government's coffers and is thereby lost in respect of the development of local services. This may be compensated for by an initial influx of funds from the sale of State lands, but, as with the sale of any state asset, it is of paramount importance that money in the Fund is properly accounted for.²¹³ Councils wishing to develop land in their locality must now apply for money to the which is controlled by central Government.²¹⁴ This reverses the principle of decentralising the power to raise finance and advance local-level decision making, as championed under other aspects of the reform program in Zambia; and it places the Ministry of Lands as a gatekeeper on funds.

b. The sale of State-owned housing

The Government's objective, as part of its National Housing Policy, to stimulate private ownership is being implemented through the sale of almost the entirety of its State-owned housing stock. Zambia's public housing falls into four categories: approximately 78,000 council houses;²¹⁵ housing for Government workers numbering some 9000 units;²¹⁶ 40,000 ZCCM houses; and 10,000 houses belonging to other parastatals.

Overall, the drive to home ownership has been characterised by a disregard for the social dimensions to the sale and has thereby diminished enjoyment of the right to housing in Zambia. The chaos which has reigned in the sale of all types of public housing stems in part from (i) the absence of a legal framework or due process. (ii) At the procedural level, the rules devised for determining who does and who does not have a right to buy have been grossly unjust and open to abuse. There has been extensive violation of the overarching principle of non-discrimination. In practice, the sale of parastatal, ZCCM, council and Government pool houses has been so characterised by inequity, malpractice, corruption and even intimidation resulting in the forced eviction of *bona fide* tenants, that the President has been forced to intervene to suspend the sales on more than one occasion. (iii) Furthermore, the transition from public to private housing on such a scale warrants a significant degree of preparation which has been almost entirely lacking in the Zambian context. Even when offers to buy are made and accepted, certain groups are denied access to the necessary finance while others are promised the use of Government loan facilities which have failed to materialise. This has resulted in a situation where even those who have been successful in exercising their right to buy are saddled with debt while those unable to pay have been caught up in a wave of secondary evictions. (iv) The sales have been an economic and social fiasco. Neither the pledges made to reinvest the sale proceeds in improving housing nor the obligation to target resources at housing provision for the vulnerable have been fulfilled.

The house sales are considered under the rubric of accessibility and affordability *vis-à-vis* the right to housing as well as other aspects of a State party's obligations in realising this right: due legal process and the overarching principle of non-discrimination.

i. The absence of a primary legal framework

The Committee has determined, in the context of measures designed to satisfy a State parties obligations in respect of the right to adequate housing, that while many of these will involve resource allocations and policy initiatives of a general kind, nevertheless 'the role of formal legislative and administrative measures should not be underestimated....'.²¹⁷ Furthermore,

'The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to...allegations of any form of discrimination in the allocation and availability of access to housing...'.²¹⁸

A former Legal Affairs minister has called upon the Government to introduce a Housing Act as a legal basis for the implementation of its housing empowerment policy.²¹⁹ Urgent guidance from Parliament and the courts is needed to determine a just definition of a sitting tenant; the categories of Zambians who are or who are not entitled to buy the housing units; the position of non-Zambians in the process, especially those who are established residents, refugees or long serving expatriate public officers; and to address the issues of pricing and conveyancing. The process as implemented was viewed as so tainted by irregularity and so lacking in transparency that its suspension by the President was predicted.

At a press conference on 13 March 1996, the President intervened on the issue of housing, decreeing that all council houses and government pool houses should be sold to sitting tenants. In response to claims that the prices set by council's when selling houses were too high, the President embarked on a tour of major towns. Opposition parties accused the President of cheap politicking and gerrymandering, using the sale of council houses to buy votes in advance of the 1996 parliamentary and Presidential elections.²²⁰

The Presidential decree on the sale of council houses has been described as an arbitrary assumption of power and authority by the President.²²¹ The Local Government Act recognises the autonomy of councils: it has been argued that the intervention of the President over the sale of council houses contravenes this principle. Under section 67 of the Act, a council is entitled to dispose of its property. Once a council has met and reached its decision confirming its intention to sell, it is required to seek the approval of the Minister of Local Government and to submit a valuation report. This procedure accords a council the autonomy to decide whether it wishes to dispose of property and to initiate the process. In order to implement the President's decree, a circular dated 2 May 1996 was issued by the Ministry of Local

Government to all councils. This constituted both a directive to offer for sale all council houses and guidance on how the purchase price should be determined, together with terms and conditions governing the sale. A number of councils subsequently met to adopt the circular by resolution and requested the formal approval of the Minister of Local Government, as advised in the circular.²²² However, this post-dated approval of the circular has no bearing on the fact that councils had no choice but to comply with the Presidential directive and were required to offer their entire housing stock for sale at prices determined by central Government.²²³

According to the Presidential decrees and Cabinet decisions authorising the sale of state-owned houses, sitting tenants are to be accorded the right to buy. However, in the absence of dedicated legislation to guide the conduct of the sales, this principle has frequently been disregarded. The sale procedures drawn up in respect of both ZCCM and Government pool houses have given priority to direct company employees and existing civil servants over workers falling into other categories, even when they are a sitting tenant. The Lusaka High Court determined in July 1998 that those wishing to be afforded the right to purchase Government houses must be both a sitting tenant and a Government employee. The case had been bought by UN employees occupying Government houses who had been denied the right to buy and threatened with eviction orders instigated by the Housing Committee at the Ministry of Works and Supply. The defence had argued that the guiding principle in law and practice in Zambia was that a sitting tenant had the right of first refusal. The court ruled that the Constitution did not prohibit any person, the Government included, from dispensing of property in the manner they saw fit.²²⁴ An appeal against the decision was filed in the Supreme Court. At the same time, the Lands Tribunal was asked to consider whether it had jurisdiction to intervene in the case.²²⁵

ii. Discrimination and inequity in the sale procedures

Once the President had decreed that all council, government and parastatal houses and flats were to be sold to tenants, a number of agencies were tasked with drawing up modes of sale for the different categories of houses. Local authorities began to sell their housing stock in the same year. At the same time, modalities for the sale of Government pool houses were put in place and the actual sales commenced in 1997. The Zambia Privatisation Agency, as part of its mandate to conduct the sale of State owned enterprises, is responsible for the sale of parastatal housing. In contrast, reaching the decision to sell ZCCM houses proved to be more complex. An initial plan to sell mine houses to the incoming buyers met with immediate resistance from the Mineworkers Union of Zambia. In keeping with the decision to sell other Government-derived housing stock to sitting tenants, the President finally announced that ZCCM houses should be sold to miners. Typically, ZCCM, and not the ZPA, has handled its own houses sales.

Irrespective of the agency involved, little or no guidance has been given by central government over how the house sales are to be conducted with the result that each organisation has devised its own procedures. This has resulted in both stark internal injustices in the way in which the sales have been handled and in obvious inequities between the different systems. In reviewing the sale of all categories of housing stock, it is paramount to recall the Committee's application of the principle of non-discrimination to the right to housing:

‘The right to adequate housing applies to everyone....In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.’²²⁶

Discrimination is prohibited in respect of, *inter alia*, social origin, property or other status. The Committee has further determined that the full enjoyment of other human rights, *inter alia*, the right to participate in public decision-making, is indispensable if the right to adequate housing is to be realised by all groups in society.²²⁷ Yet, in Zambia, the procedures to sell the State's public housing stock have been unilaterally determined by the agencies concerned to the benefit of privileged parties and to the detriment of minority groups who have not been consulted over the mode of sale. While ‘States parties should...take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups’ the modes of sale adopted in Zambia have undermined the rights of sitting tenants and heightened insecurity.²²⁸ States are obliged to guarantee legal protection against forced eviction, harassment and other threats.²²⁹ In contrast, the sale of all categories of public housing in Zambia has been conducted in an atmosphere of intimidation. The threat and use of eviction against sitting tenants has been commonplace.

1) The sale of council houses

As has been noted, the decision to sell the entire housing stock of local councils was taken by the President without consultation in a way which undermined their autonomy under the Local Government Act to dispose of their assets. The adverse consequences have been twofold. First, council income has been reduced in both the short and long term, thereby diminishing the resources available for the upkeep of essential local services. Second, the intervention of the President has created inequity in that different prices have been set for broadly similar homes.

Certain cash-strapped councils, on a piecemeal basis, had already begun to sell a small part of their housing stock to raise vital revenue. Several examples can be cited.²³⁰ In Livingstone a prior programme existed to sell 8.5 per cent of council houses. The decision to sell part of the housing stock was taken to counter a severe financial crisis faced by the council. The council had not considered selling all houses, only enough units to raise the funds immediately required. Solwezi council had prior plans to sell 35 houses to clear outstanding debts. Kitwe council had passed a resolution in 1993 to sell part of its old housing stock to raise funds to build new houses and develop the city. The council wished to sell just 5 per cent of its stock of 13,000 houses in a pilot scheme.²³¹ It must be noted that such existing programmes to sell selected houses were small-scale, designed to meet specific funding objectives, and were instigated at the local level. Other councils, such as the authority at Mongu, had no intention of selling council houses.²³²

In the limited number of cases where local authority houses were already being sold to tenants, the prices asked had been determined by the valuation department.²³³ For the most part, application of the circular and directive significantly reduced the purchase price through the application of discounts and rebates. Under the new arrangements, the houses were to be valued by the Government valuations department using a number of criteria including the age of the property, its physical condition, any structural defects, a discount for maintenance or repairs carried out by the tenant, and the forces of supply and demand.²³⁴ Substantial discounts, ranging from 20 per cent to 100 per cent for low cost houses depending on the date of their construction, were to be applied to this valuation.²³⁵ Additional discounts were offered to tenants with a long history of occupancy and a good tenancy record. To cite the example of Yeta compound in Mongu, houses built between 1971 and 1980 were valued on a block basis at K2.2 million.²³⁶ After applying the discounts in the circular relating to age and length of tenancy, the price was reduced to K1.1 million. A further 20 per cent reduction for prompt payment within 60 days brought the price down further to K900,000. However, each house was eventually sold for considerably less as a direct result of the President's pre-election tour.

In the short term, the house sales have failed to generate revenue for use by the local councils in furthering social development, for example, by improving municipal services or by investing in new housing schemes for the poorest.²³⁷ The Government's intervention in the sale of council houses, in addition to its perceived populist appeal, can be interpreted as a move to control and capture some of the revenue generated from the sales. Early in 1997, the Minister for Local Government and Housing, acting on information that money had been used in other ventures, warned councils to pay the proceeds from the sale of council houses into the Housing Trust Fund, as specified in the sale procedure issued by central Government.²³⁸

The Government circular set out terms under which tenants, after the payment of an initial 10 per cent deposit, were to be given eighteen months during which to pay the balance of the purchase price. During that time the council was to be prohibited from charging rent *per se*: rather payments were to be collected and the amount received subtracted from the outstanding balance. This arrangement has, of course, had an immediate and adverse impact upon council income. The town clerks of several major councils are on record verifying that one of the main components of council revenue prior to the sell-off was rent.²³⁹ Overall, the sale of houses has permanently removed this source of long term sustainable income, making the councils reliant upon Government grants, rates, personal levies, and trade licences for their funding. Furthermore, despite the price reductions and the grace period, a significant number of residents have not been able to make payments or settle their debts. In a certain cases, as has already been noted, this had led to evictions.

There is undoubted merit in setting prices at an affordable level. However, it must be iterated that the blanket discounts fixed by central Government in the circular related primarily to the age of housing and not to principles of social justice; rather the Presidential directive and further personal interventions have created inequity. For example, the President visited Mongu in September 1996 and pegged the price of all houses at K750,000.²⁴⁰ No other valuation took place: the new prices were described as a 'pronouncement'. When the discount was applied, the price was further reduced to K600,000. The President's intervention must represent a clear breach of an already questionable procedure. Council residents in Kitwe was visited on more than one occasion by the President, both before and after the circular of 2 May 1996 was issued. As a result of the President's tour, tenants channelled complaints to the council which resulted in the purchase price being lowered. The Town Clerk verified that the council was happy with this arrangement; however, it would have been politically difficult for the council to reject an appeal which had Presidential backing.

The Presidential directive has also created legal confusion. Prior to the directive, certain council tenants in a number of towns had already signed deeds to purchase their homes at a higher price, raising the question as to whether there was a legal basis upon which the agreed price could be changed.²⁴¹ The Town Clerk for Kitwe, when asked if those sold houses earlier at higher prices had complained, replied that the council had explained the situation and had not been sued by anyone. The decision of residents not to sue is likely to reflect the difficulty and expense in bringing a case to court.

2) *The sale of Government pool houses to civil service employees*

The sale of Government houses was approved by Cabinet in April 1996 and a Committee of Permanent Secretaries was appointed to work out the modalities of sale to civil servants. By mid-September 1996, a valuation of the housing-stock was underway prior to an announcement on how the sales were to be conducted. The rules, when they were announced, favoured currently employed civil servants over other categories of sitting tenants. Although the Minister of Works and Supply reassured recently retired civil servants that they would be eligible to participate in the sales, this raised uncertainty for retirees of longer-standing still occupying Government houses. At the same time, an initiative to identify State-owned houses currently occupied by parastatal employees so that these could be sold to civil servants provoked considerable anxiety.²⁴² Civil servants on transfer feared that they would lose out on buying houses in good repair which they currently occupied.²⁴³ The Government did agree to provide loans to all civil servants at predetermined interest rates to enable them to buy or build houses.²⁴⁴ While this was, of course, welcomed by Government workers, it was perceived as unjust by those buying parastatal or council houses who had little or no access to loan facilities.

The sales rapidly created great uncertainty amidst accusations of serious malpractice. It became apparent that the majority of the offers of sale had been made in Lusaka itself and unscrupulous officials in the Ministry of Works and Supply were alleged to have initiated the unjust eviction of sitting tenants, including unpaid and underpaid retirees, so that they themselves could prosper from the sale of the vacated houses. In the office of the Copperbelt Province Permanent Secretary, a racket was exposed in which favoured junior civil servants were being offered houses while senior colleagues were not accommodated.²⁴⁵ The Civil Service Union of Zambia had earlier iterated that those in the higher echelons of power did not have an exclusive right to buy houses at the expense of all other civil servants. It now charged that senior civil servants had been instigating the eviction of juniors while the National Union of Public Service Workers wrote to the President expressing its concern over how the house sales were being conducted. On 26 June 1997, the President suspended the sale of Government houses because of widespread malpractice, corruption and the harassment of sitting tenants.²⁴⁶ It was subsequently alleged that MPs had become tenants of houses they did not occupy, in apparent contravention of the Parliamentary and Ministerial Code of Conduct Act.²⁴⁷ Opposition politicians even accused MMD ministers of prospering from the sales.²⁴⁸ Meanwhile, both civil service unions, together with the Zambia Congress of Trade Unions, welcomed the suspension of the sales while seeking reassurances that the offers of sale made to *bona fide* tenants would stand.²⁴⁹

The Government house sales recommenced under revised rules, but the process remains dogged by controversy and inequity. In May 1998, the Government issued eviction notices on sitting tenants in Mpika District Council pool houses, giving them two weeks to vacate their homes. Those affected were former classified daily employees (CDEs) retrenched in the previous year. Such workers, although sitting tenants, were denied the right to buy under rules drawn up for the allocation of pool houses to civil servants.²⁵⁰

3) *The disposal of ZCCM housing*

In 1996, the plan was simply to sell mine houses to the private sector buyers of ZCCM.²⁵¹ As late as February 1997, the decision still had not been taken whether or not to give employees the opportunity to purchase their houses as sitting tenants. The MUZ expressed anger that, in its view, a management briefing had implied that mine houses would not be sold to occupying tenants but that the issue would be decided by the prospective buyers.²⁵² The MUZ foresaw the new owners engaging in speculation by selling the housing stock at unaffordable prices. The accusation was even voiced publicly that prohibitive pricing would be used in order to establish exclusive white suburbs.²⁵³ The announcement that all ZCCM houses would be sold to miners and other tenants was made in early July 1997:²⁵⁴ given the MMD's wider home ownership policy, and the stance of the MUZ, it is difficult to see how miners could have been excluded from the sale.

In light of the fact that negotiations over the privatisation of ZCCM has not been conducted by the ZPA, it is not altogether surprising that the sale of 40,000 mine houses is being handled directly by the company. It is, however, regrettable that the sales have not been implemented by an independent body nor handled in the same way as those concerning other parastatals. ZCCM's announcement in December 1997 of the schedule of sale and order of priority for the disposal of houses caused immediate anxiety and consternation among employees of subsidiary companies and teachers occupying mine houses.²⁵⁵ The policy was, first, to award houses to ZCCM employees as sitting tenants; second, to source and sell properties to unhoused ZCCM employees; and, finally, to give consideration to employees of subsidiary companies and other interested parties. This ran counter to the Government's policy of giving sitting tenants first refusal to buy their homes. Some sitting tenants, despite a Presidential statement warning against eviction or victimisation, have been threatened with, or suffered, forcible eviction from their homes amid accusations of ZCCM employees attempting to buy more than one property. Teachers and employees of ZCCM subsidiaries have proved particularly vulnerable in this regard as a result of the policy adopted by the company in prioritising the sale of houses to miners.²⁵⁶ The Zambia National Union of Teachers immediately issued an appeal to the President to intervene in the

sale of ZCCM houses so that teachers in mining communities would not be deprived of their homes. The inequities in ZCCM's stated policy were stark: in the case of subsidiaries, many were one hundred per cent owned by ZCCM and many employees had been transferred from ZCCM mining divisions in previous years, taking with them existing housing entitlements and conditions of service. Accusations were made that earmarked properties were offered to senior officials at ZCCM Corporate Head Office in Kitwe.²⁵⁷

The potential for further inequity and conflict is created by the circumstances of those who have retired, or else were retrenched several years ago, but who remain in company houses. They were either never afforded the opportunity to purchase their houses or else offers of sale were never honoured, yet many such people now constitute sitting tenants. Any lump sums or terminal benefits that retirees or retrenched once had have been eroded by successive devaluations of the Kwacha and most have no money left to buy their houses, even were they afforded the opportunity to purchase them. A case in point are the ex-miners and their families at Bwana Mkubwa faced with eviction from houses which many have occupied for more than twenty years as ZCCM seeks to allocate their homes to existing miners.

In March, ZCCM sold nearly 2000 houses without informing the sitting tenants of houses at Bwana Mkubwa in Ndola.²⁵⁸ As a result, 200 existing residents - most of them ex-ZCCM miners who had worked at the Bwana Mkubwa Mine prior to its closure in 1983 - were faced with eviction by the new homeowners.²⁵⁹ Many residents had letters dating back to 1993 when ZCCM, keen to rid itself of the liability of deteriorating housing stock which had been condemned by the council for demolition, agreed to sell houses to their existing tenants. Many of those faced with eviction had rented their homes for more than twenty years and most had maintained their homes following the assurance of sale given to them by ZCCM.²⁶⁰ The company responded by reiterating its policy of allocating property rented to non-miners to those existing miners who were not currently housed by the company.²⁶¹

During April 1998, the new owner of the Kansanshi prospect, Cyprus Amax of the USA, were implicated in the dispute over the allocation of houses. The local branch of the MUZ accused ZCCM of disregarding the Presidential directive over the sale of houses and of depriving miners of the opportunity to purchase their homes. It was alleged that ZCCM had issued letters offering the houses to miners and had signed contracts, but then had sat on the paperwork because the new owner of the mine, Cyprus Amax, had directed the company to reserve all habitable houses for their use as part of the purchase.²⁶² The miners themselves had all been retrenched at the beginning of the year. Forty-two almost completed houses were subsequently demolished by Cyprus Amax on the grounds that they were poorly built, located in a mining area and liable to collapse due to the use of explosives in exploration for copper. This episode is reviewed in more detail in Section 2(IV) which considers the actions of private companies *vis-à-vis* the Covenant.

In Kitwe, there were reports of many families living in former ZCCM houses facing immediate eviction because of their inability to pay the high rental charges of up to K400,000 (circa. \$280) per month demanded by new landlords.²⁶³ Yet to accord with the principle of affordability under the right to adequate housing, the Committee has determined that tenants should be protected by appropriate means against unreasonable rent levels or rent increases.²⁶⁴ In some instances, senior officials from ZCCM and subsidiary companies had bought the houses ahead of sitting tenants.²⁶⁵

In mid-April 1998, the first cases involving disputed claims over ZCCM houses were filed before the Lands Tribunal and injunctions were issued restraining ZCCM from prematurely and wrongly denying tenants an offer of sale before the tribunal reached its determination.²⁶⁶ On 29 April 1998, the Minister for Mines and Mineral Development announced the suspension of the sale of all ZCCM houses with immediate effect and ordered ZCCM to halt the eviction of all sitting tenants. The suspension would remain in force until ZCCM management adopted 'correct and acceptable procedures'. The Government was forced to act having been inundated with complaints about the inequity of the policy adopted by ZCCM and amidst repeated allegations that ZCCM and MUZ officials had engineered the sales to allow them to buy more than one house. The vested interest of the higher echelons of the MUZ is apparent by their immediate and unequivocal opposition to the Government's suspension of the house sales. The MUZ President went as far as to challenge the authority of the Minister to halt the process, arguing that the current system of allocation had been agreed after negotiations between the MUZ and the company.²⁶⁷ President Chiluba had reassured the MUZ at its annual conference at the beginning of the year that it would continue to be actively involved in implementation of the programme to sell ZCCM houses.²⁶⁸ The suspension was not retroactive and therefore did not apply to completed transactions. The MUZ claimed that eighty per cent of the contracts of sale had already been signed. In contrast, opposition parties and the breakaway Zambia National Union of Skilled Mineworkers (ZNUSM) welcomed the Government's decision and condemned the MUZ for its opposition to the suspension.²⁶⁹

4) ZPA and the sale of parastatal housing

The ZPA concedes that it has received no detailed guidance from Government over how to dispose of the stock of parastatal housing beyond an indication that 'as a general rule, houses should not be included in the privatisation of companies.'²⁷⁰ Social housing attached to parastatals has been treated solely on the basis of a financial asset on a

company's balance sheet. Whenever possible - that is when a company is solvent - the ZPA has therefore split the houses from the core business in each sale and retained them so that they can be sold to sitting tenants.²⁷¹

There are, however, many instances where the ZPA has not been able to achieve this objective. Without their housing stock, certain companies would have a net negative worth, and hence, to make their privatisation viable, requires selling the core business and houses as a single package.²⁷² An increasing number of parastatals fall into this category. Where a parastatal is insolvent, any attempt to sell capital assets such as housing may prompt a legal claim by the company's creditors. As of July 1998, ZPA named fifteen companies where houses would need to be sold at their full market value in order to pay creditors.²⁷³ If such houses are to be sold at a discount to sitting tenants and employees, the ZPA warned that money would be needed from the Treasury to achieve this.²⁷⁴ Some State owned enterprise, such as ZIMCO, UBZ and Zambia Airways, have been placed under receivership, in which case their residential housing stock is not being sold by the ZPA at all, but by liquidators who are required to realise the highest value possible to meet creditor claims.²⁷⁵ The implication is that certain ex-employees and sitting tenants must compete with third parties to buy such houses and may not, therefore, be able to meet the asking price.²⁷⁶ Finally, even when a company is solvent, the housing stock may be jointly owned by private shareholders or else have been pledged to secure a loan and will not, therefore, be available for sale by ZPA unless the loan is first repaid.²⁷⁷

Whereas ZCCM houses and Government houses have been sold at discounts in order to mollify powerful vested interests close to Government and neutralise wider political opposition,²⁷⁸ ZPA is required by law to sell parastatal housing at market value.²⁷⁹ This is inequitable and, understandably, has created resentment and the continual challenges of valuations by tenants. Establishing the market value of houses is far from clear-cut and is undermined by random Presidential determinations which skew market forces.²⁸⁰ Vested interests within individual parastatals have sought to use the concept of market value to their own advantage. In late August 1997, following an injunction against Zambia Railways to stop them carrying out evictions, the High Court ordered the company to sell houses to retrenched sitting tenants. However, it was reported in the press that the Zambia Railways management began to carry out evictions in November 1997 in defiance of this ruling. The company returned deposits to those sold houses at a price determined by a Government valuer and demanded payment at a 'market price' decided by the company.²⁸¹ Yet any action by the Government to reduce the price of the remaining parastatal housing stock would create its own problems and therefore seems most improbable. Not least of these would be the loss of revenue to the Government and the requirement that an agency mandated to sell at a discount be set up outside of the ZPA. Furthermore, those in housing belonging to insolvent parastatals would still be required to pay market value and those who have already done so would feel doubly aggrieved.²⁸²

While many companies have been sold and transferred to their new owners, the houses associated with them have not been sold and thus have 'an undefined status' because of the Government's failure to reach a decision on their disposal. ZPA's view on the property management arrangements is that they are 'unstable and should not be allowed to continue.'²⁸³ In most situations the houses are still occupied by employees who have been unwilling or unable to pay the already sub-economic rentals. The privatised companies have no motive to maintain properties they do not own and the housing stock is deteriorating due to uncertainty over who is responsible for their upkeep.

iii. The inadequacy of transitional arrangements

In defining its adequacy, the Committee has determined that housing should be affordable and subsidised where necessary to make it available to the poor.²⁸⁴ There is a case to be made in the Zambian context - which has seen a shift from direct and indirect State subsidy for council and parastatal housing to a situation in which the cost of housing now falls squarely on owner-occupiers - that the State has a twofold obligation: first, to ensure that transitional arrangements are in place to cover the transfer of the cost of housing from the State and parastatal employers to former tenants and employees; second, to use the resources freed from house sales to subsidise housing for vulnerable groups. The former obligation is given immediate consideration while the question of social assistance in the context of the drive to home ownership is examined in a final subsection on the house sales debacle.

For those people in Zambia living in tenured accommodation, most have either benefited from housing provided by Government or parastatal employers or else have paid rent on a council home. These arrangements are of long-standing. Hence the shift to an ethos of home ownership requires a change in the mind-set of tenants. It requires informing people about their new responsibilities to repay loans, to maintain housing, and, in some cases, to take over the payment of rates which have previously been met *en bloc* by parastatals. It also requires ensuring that arrangements are in place to allow tenants access to the finance needed to buy their homes and ensuring that alternative provision is made to fund local councils as their revenue base is undercut by the loss of rental income from council housing.

A citation from a report which examines the socio-economic impact of the privatisation of ZCCM encapsulates all of these problems. Parallel observations would apply to the sale of council and other parastatal houses.

While the sale of mine houses may allow former miners to survive in [a] familiar environment, the nominal rents they were accustomed to will be replaced by rates and other utility bills which are alien to them. The result would be people living in houses without electricity and water because they will fail to pay for these services. Where there are no proper finance agreements for employees, experience has shown that former tenants have opted to sell the houses and relocate to 'shanty' townships....The question of who takes over provision of social services when the housing stocks are sold is also important to address. The idea that the council would absorb these responsibilities is farfetched. This is because the councils are completely incapable of taking on these extra responsibilities of supplying water, collecting refuse and maintaining roads.²⁸⁵

Preparation for a transition of this magnitude from public to private housing in Zambia has been totally inadequate. In the context of affordability, the focus here is upon the actions and omissions of the Zambian Government in respect of the arrangements which have been put in place to allow people to pay for houses. A consideration of whether sufficient preparations have been made for the running of essential local services is deferred until Section 2(IV). In the rush to sell, privatisation threatens to precipitate a crisis in social provision in many towns because of the failure to disentangle parastatal from municipal services and to plan, where necessary, for the transfer of responsibilities.

1) *An inability to pay*

The reference to adequacy under article 11(1) requires that housing is not only accessible to those who need it but is also affordable:

*'State parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.'*²⁸⁶ [Emphasis added].

The Government has frankly acknowledged that the reality in Zambia has been very different:

*'a large majority of the Zambian people cannot afford to pay the economic rent or price for a decent house;...only a few employers have availed [sic] house loans at subsidised interest rates and only to their own employees;...the slow land delivery system for housing has prevented private sector finance houses from releasing loans to the sector at acceptable rates;...there is no housing finance capital market to ensure [an] easy flow of key requisites for house building or home ownership; and the Government has played an insignificant role in the mobilisation of housing finance.'*²⁸⁷

It is precisely these and related problems that the National Housing Policy has sought to rectify. It is therefore regrettable that the MMD Government has been unable to deliver on its pledges. Rather, its policies to encourage housing finance have foundered at the same time as the President has pressed ahead with a drive to home ownership. The result has been a scramble for housing in an environment without available finance. These mismatched policies have, in combination, proved antithetical to the realisation of the right to housing and it is inevitable that those with the least money or influence have lost out. The vast majority of tenants in parastatal or government pool housing simply cannot afford the cost of purchasing a house at market value due to a lack of cash. The solutions which are on offer may place people in a highly vulnerable position. They fall into two broad categories: first, arrangements whereby a Government employee's terminal benefits or retirement package is used to offset the purchase cost of a house; second, a very limited number of home loans are available.

2) *Using terminal benefits in lieu of a cash payment*

The Government has a vested interest in reaching an accord whereby terminal benefits may be applied towards the purchase price of a house as it forestalls the need to find cash sums to finance a redundancy or retirement package now or in the future. This mechanism has also been used extensively to fund house purchases in ZCCM and a multitude of other parastatals. Retrenchees often have little or no option in accepting such an arrangement and may be coerced into buying a house whose true market value is difficult to determine, in an area where employment prospects are most likely bleak. Furthermore this ad hoc system, such as it is, presents a multitude of problems.

The overriding difficulty is that many retrenchees, whether Government or parastatal workers, have simply not been paid the terminal benefits owed to them. ZPA concedes that, in certain instances, the entire package of terminal benefits payable to a retrenchee will fall short of the asking price for the house in which they are a tenant.²⁸⁸ Sometimes a temporary solution can be found. For example, an agreement was reached between the board of the Zambia Revenue Authority and the Government to halt the mass eviction of former Customs and Excise workers from ZRA houses. The

workers had been transferred to the ZRA but many, on losing their jobs, had not been paid their terminal benefits and hence were unable to complete the purchase of Government pool houses.²⁸⁹ However, on many occasions when retrenchment packages are delayed or insufficient, those owning the properties - to include councils, liquidators, and other Government agencies - are insisting on payment for houses. Retrenchees and retirees are being threatened with repossession or even evicted from their homes in an atmosphere of confrontation. A ZPA brief speaks of the problem of the 'dislocation of sitting tenants' without the cash to buy. It concedes that external financing is not available and that limited ZPA finance is determined on a case by case basis.²⁹⁰

3) *The chronic shortage of housing finance*

The Government promised an overhaul of the housing finance sector in its National Housing Policy.²⁹¹ It is now three years since this was launched. Within such a time-frame, it is unrealistic to expect that the many deep-seated barriers to creating a viable system of housing finance in Zambia would have been overcome. The Government has not been able to create the economic conditions of low inflation and low interest rates to enable private banks and building sector to supply relatively cheap loans. The mortgage market requires a large deposit base and a sophisticated banking system which can balance short and long-term maturities and hence is virtually non-existent in Zambia.

However, the MMD Government can be criticised for the lack of initial progress and it ought also to be censured for its irresponsibility in launching a drive to home ownership by disposing of its public housing stock in the absence of any developed mortgage system. In 1997, the Zambia National Building Society issued mortgages worth a paltry K359m to just ninety-two successful applicants.²⁹² In order to place this dearth of housing finance in perspective, it must be recalled that in excess of 130,000 state-owned houses are up for sale. In the period from the launch of the Government's home ownership scheme in 1996 to February 1999, the ZNBS lent money to just 410 sitting tenants to enable them to acquire houses in Lusaka. Those paying into a regular savings account with the society are eligible for a mortgage loan. However, the system is all but irrelevant for most home buyers as monthly payments of K50,000 must be made into the account for two years before the society will lend. Most formal sector employees, let alone the vast majority working in the informal sector, cannot afford to contribute this amount each month. As one civil servant commented: 'My salary is K100,000. What will my family eat if I pay ZNBS K50,000 every month?'²⁹³

The Government has failed to make public finance available for housing loans or to persuade employers to initiate their own schemes. The managing director of one of Zambia's few building societies has noted that 'only a few employers have availed subsidised house loans to their employees, even though they have been willing to provide heavily subsidised housing to the same employees.'²⁹⁴ In the public sphere, there are stark inequities in who is and who is not eligible for State-backed finance. The arrangements for selling houses to civil servants include the provision of Government loans whereas no such facilities are made available to teachers wishing to purchase their homes.²⁹⁵ The Zambia National Union of Teachers has estimated that over ninety per cent of teachers have been unable to secure loans to build or buy a house.²⁹⁶ In reality, teachers and civil servants alike have found themselves in a similar position. The Government has not been able to deliver on its agreement to make loans available to civil servants, leaving many in the position where they have paid a deposit on their homes but now cannot find the money to pay the balance of the purchase price. Those civil servants who are sitting tenants in houses owned by local authorities have been particularly hard hit as councils, desperate for revenue, have sought to extract rent in lieu of outstanding payments.

In November 1997, Kabwe Municipal Council threatened mass repossessions of council houses whose purchase by tenants, including many civil servants, had not been completed. The Permanent Secretary for Central Province intervened, asking for an extension of the sale deadline.²⁹⁷ The Council, while recognising that the Government's failure to deliver loans to civil servants to enable them to buy their homes was the root cause of the problem, insisted it could not delay completion. Civil servants faced the same situation in Chongwe where the absence of a Government loan facility threatened to prevent them buying their homes by the December 1997 deadline. A Cabinet circular of 15 August 1997 had assured civil servants that loans would be forthcoming, yet local authorities were adhering to their original timetable because they had not received notification from the Ministry of Local Government to do otherwise.²⁹⁸ The Civil Service Union of Zambia (CSUZ) won a reprieve for its members and the Ministry of Local Government issued a directive ordering local councils to extend the deadline and stop evictions. However, the CSUZ remained locked in negotiations with the Government to secure vital loans to allow civil servants to pay for their homes.²⁹⁹

In the parastatal sphere, the situation is no better. According to ZPA, 'every effort is made to allow employees and retrenched employees to purchase the houses.'³⁰⁰ Yet ZPA has sold only a very a limited number of houses - less than 200 by August 1997 - through its own mortgage plan. However, this is predicated on purchasers finding 35-40 per cent of the purchase costs in cash or as an offset against redundancy payments.³⁰¹ ZPA suggests extension of this scheme because it allows the Government to realise the full value of housing over time while enabling tenants to afford the purchase price. Furthermore, it puts tenants of houses belonging to unencumbered companies, as well as those in houses owned by insolvent companies, on a broadly equal footing as the latter can compete to meet the market asking price.³⁰²

However, the shortcomings are readily apparent. First, the scale of the scheme is totally inadequate given the number of people requiring finance. Second, initial repayments are designed to be 'slightly more than the market monthly rent'.³⁰³ ZPA concedes that many people cannot pay their existing rent: they certainly will not be able to do so should they lose their jobs. Third, the scheme fosters indebtedness. The vast majority of tenants will be required to use their terminal benefits as a down-payment. Even so, many will not be able to find the initial cash consideration for the deposit. Finally, the mortgage term is massively compressed and the balance of the sale price must be paid within six years.

iv. The lack of a social dimension to the sales in respect of the right to housing

While a figure for the total worth of Zambia's public housing stock is not readily available, it is possible to arrive at an estimate. The ZPA calculated in mid 1997 that the inventory of parastatal housing which it had sold or was in the process of selling was worth \$20-30m equivalent.³⁰⁴ Extrapolating from this figure - and assuming the parastatal stock is made up of a broadly equivalent cross-section of properties - then a reasonable estimate of the average value of each property in 1997 was equivalent to \$2500. Hence the total value of the entire Government-derived housing stock would have been in the broad region of \$250 to \$350 million before the application of discounts.

Once more, the Government's stated rationale for the sale of housing-stock is portrayed as suited to promoting social objectives. First, to create large-scale home ownership and a capital base for future generations; and, second, to use the sale proceeds and repayments to fund water, sewerage, and other improvements in all urban areas.³⁰⁵ Given the inequity cited above, there is little to suggest that large-scale home ownership is, of itself, meeting a social objective. On the contrary, the process has been discriminatory and many home buyers are in debt. Furthermore, there is little evidence to back the claim that the sale proceeds are being earmarked for spending on social infrastructure.

The amount of revenue collected from the sale of government and council houses is many magnitudes lower than the sum that might be expected. The application of discounts and rebates, especially in the sale of council houses, does not explain the shortfall. The figures are, however, extremely sketchy and it is incumbent upon the Government to furnish full information. In October 1996, the Government announced that 5,045 council houses had been sold by local authorities since January of the same year.³⁰⁶ The proceeds realised from these sales amounted to K667 million (circa. \$530,000). By February 1997, K2 billion (circa. \$1.5 million) had been collected. The announcement of this figure was accompanied by a warning from the Minister of Local Government and Housing warning councils not to divert sale proceeds into other ventures.³⁰⁷ From the sale launch in September 1996 until its suspension in June 1997, 1259 offers to buy Government houses had been made to civil servants. By that time, only 47 purchasers had paid for their houses in full while 323 more were paying by instalment through salary deductions.³⁰⁸ Financial arrangements to cover the bulk of the sales were not, therefore, in place. Figures detailing the amounts realised from this sale of Government pool houses are sketchy: by June 1997, K416m had been released from the sale of such houses in Lusaka. Payment in full had netted just K390 million (circa. \$312,000).³⁰⁹

Arrangements for the use of revenue from the sale of parastatal or ZCCM housing have, by design, all but precluded their use in social funding. Proceeds from the sale of parastatal houses handled by ZPA should be paid into the Privatisation Revenue Account. Even if this were the case, it is inconceivable that such funds would be used to improve or subsidise housing for vulnerable groups. Privatisation proceeds have largely been reabsorbed in the running of the ZPA or else have been diverted into other Government accounts. They have not been used for social ends. Furthermore, the ZPA claims success 'in most cases' in excluding the housing stock from the sale of the core business, thus freeing homes for sale to employees and tenants; yet, by the end of 1997, the Agency had sold no houses direct to employees or sitting tenants but had rather cashed in or otherwise used their asset value.³¹⁰ Out of fifty-six privatised parastatals listed by ZPA in an annex to its housing report, only in 12 cases can the houses be sold unencumbered as opposed to a total of 44 instances where either insolvency forced an asset sale or else the houses could not be sold separately because of prior claims or because the viability of the sale was dependent on the asset value of the housing stock.³¹¹ In the case of ZCCM, the proceeds from house sales have been set against liabilities owed as terminal benefits and pension payments or else any cash generated has been reabsorbed into the company's account. On the one hand, while using proceeds from the sale of social housing to pay off liabilities may meet an economic rationale, on the other hand, and in rights terms, the practice must be highly questionable. It represents a sleight of hand in which those occupying houses are required to subsidise company liabilities in order to make the sale of a company attractive to investors or else pay off creditors in the case of liquidation.

The social promise of providing people with a source of private capital through home ownership and of using the sale proceeds to fund infrastructure improvements in all urban areas has not been fulfilled. In August 1997, the ZPA warned that 'these opportunities will only be realised if Government takes appropriate steps to capture and reinvest these funds. Unless Government immediately takes steps to grant ZPA or a suitably designated and professionally staffed Government organisation to take control of the parastatal housing stock, the opportunity will be forgone [sic] forever. Once the control of the houses is secured the future uses of the capital can be decided by Government, but there may be

little housing capital left if delays are allowed to continue.³¹² The Agency's bleak vision has been realised. A parallel conclusion applies to the sale of council and government houses.

C. The influence of the World Bank upon land reform and housing policy

Introduction

The Bank claims that land reform is part of the strategy for alleviating poverty in Zambia. Reform is premised on a 'market-orientated system for land tenure' and the Bank's prime concern is that 'securing appropriate land for investment remains difficult and cumbersome'.³¹³ For the millions of Zambians who live in informal settlements or who are subsistence farmers with little or no cash income and who are denied credit, access to land with secure title and to affordable housing is unlikely to be achieved in a free market. At issue is not the principle of the market, but rather whether its operation is accompanied by appropriate safeguards to protect the right to housing of those without market power and by regulation to ensure equity in the housing sector. In the absence of such balancing measures, the Bank/MMD agenda on land reform offers greater opportunities for those with economic power to gain security of tenure over land while reducing access to land for the poor and protection of the rights of those forced to occupy land illegally in order to survive. The Bank and Government must both be made answerable for this situation.

Under article 22 of the Covenant, as determined by the Committee, it is incumbent upon the Bank to consider the advisability of its assistance in contributing to the effective progressive realisation of economic and social rights. It was therefore negligent of the Bank to use adjustment lending to support and actively advance land and housing reform before it had satisfied itself that measures were in place to ensure the right to housing of all Zambians, including the poor and disadvantaged, was protected and advanced. Two aspects of the Bank's operations are reviewed. The first concerns its pursuit of an agenda of land reform in Zambia. The second focuses on specific action to foster a private market in housing.

1. The use of Bank conditionality to advance land reform

Land reform, culminating in the Lands Act (1995), has been pursued by the Bank through agreements with the MMD Government across three adjustment credits and one sector investment program. The aspects of the Lands Act (1995) which diminish protection of the right to land and housing for the majority of poor Zambians are manifold: the conversion of customary tenure without due safeguards to protect the rights of those in local communities and smallholders; reinforcement of the illegality of squatting; and further undermining of local authority finance and autonomy by diverting ground rent to the centre. Once more, detailed stipulations and conditions in a number of loan agreements provide grounds for concluding that the Bank is culpable alongside the Government for certain aspects of land law reform which have resulted in the violation of economic and social rights.

The component of PIRC II designed to promote a framework for private sector development required, amongst other actions, a Government review of land ownership in Zambia and the adoption of a plan to develop a properly functioning market for commercial land. This was made a condition of third tranche release.³¹⁴

The land reform agenda was carried forward under ESAC which '...sought to develop a more liquid market for Government-owned land while building up the institutional capacity to carry out longer-term (and more politically charged) reforms of the lands held by tribes and local authorities'.³¹⁵ The Government faced concerted Parliamentary opposition to what the Bank's Operations Evaluation Department has described as 'an overly ambitious and controversial land reform package' which went further than 'the more modest proposal that had been expected during credit appraisal and negotiation'.³¹⁶ It was the proposed amendments to land law to allow for the conversion of customary tenure to leasehold tenure which could then be held by, amongst others, foreign investors, which met with the greatest opposition. Given the political resistance to this aspect of reform, the Bank granted a waiver so that second tranche ESAC funds could be released.³¹⁷ It acknowledged that fulfilling tasks and meeting deadlines that involved a 'third party, such as parliament,...proved difficult to implement. in a timely fashion'.³¹⁸ In other words, parliamentary democracy posed a problem to the Bank in driving through project implementation. Further action on land legislation was therefore to be supported under the Bank's Agricultural Sector Investment Program. This saw the controversial Lands Bill through to its enactment.

Under the rubric of ‘fostering private sector growth,’ the Bank set out an agenda under its ESAC II credit for the implementation the Lands Act (1995). Substantial progress in this regard was made a condition of second tranche release of the credit.³¹⁹ Specific requirements included reducing the backlog of applications for numbered plots and speeding up the issuance of leases which was characterised by the Bank as ‘stifling the market and hampering the development of the private sector.’³²⁰ A further stipulation was the functioning of the Lands Tribunal.³²¹

A positive development sought by the Bank under ESAC II was for the recognition of informal settlements in urban areas and their full legalisation.³²² The Government was supposedly ‘to take all actions in its power to move forward with the process of recognition and declaration of informal urban settlements as a condition of the Second Tranche Release.’³²³ However, there is no evidence that the Government action plan for the regularisation of informal settlements referred to in the appended Letter of Development Policy has been developed or implemented.³²⁴

The Bank, having used extensive conditionality under successive credits to advance land reform, was nevertheless fully aware of its dangers. It has acknowledged that the changed legislation could result in powerful individuals extending their customary rights before converting land to leasehold tenure to be sold on to developers.³²⁵ In the process, smallholders and poor settlers would lose their access to land. The Bank puts its faith in the Lands Tribunal to safeguard against the possible loss of rights. However, it is of the utmost importance to emphasise that the process the Bank outlines is entirely legal under the Lands Act (1995). Indeed, the *raison d'être* of the Act was to facilitate a free market in land by accelerating conversion and facilitating access to land by investors. The Lands Tribunal can only address inequity in the application of the law; it cannot remove inequity inherent within the legislation.

2. Bank measures to foster a private housing market

The requirements in Zambia for employer-provided housing and other mandated fringe benefits are viewed by the Bank as impeding labour mobility and discouraging the development of private housing. In its *Letter of Development Policy* appended to ESAC II, the Government agreed, in the context of its National Housing Policy, to work out modalities for the disposal of its housing stock in 1996.³²⁶ Furthermore, ESAC II supported the revised Employment Act which repealed the requirement on employers to provide housing or a housing allowance to employees.³²⁷

Once more, criticism of centres on the failure by the Bank to consider the consequences of these reforms. It should have taken steps - perhaps through technical assistance - to ensure that preparations were in place to safeguard equity and the right to housing. It is inconceivable that a transition of such magnitude was driven through in the absence of an equitable sales mechanism and before a system of affordable finance to allow council tenants and employees to purchase their homes was in place.

Action which has been taken by the Bank has proved misguided. The Bank acknowledges that ‘under ESAC, the Government approved in-kind payment (in the form of government owned houses, vehicles and land) as part of severance packages, to reduce the cash outlay associated with retrenchment.’³²⁸ Yet the use of parastatal assets to compensate workers in lieu of terminal benefits has proved catastrophic and socially irresponsible. For the most part, this practice has involved selling houses to workers and offsetting the value of a property against terminal benefits. This has resulted in situations where employees are presented with no alternative but to purchase a house, often in areas where employment prospects are bleak; it has left some retrenchees virtually destitute, with little or no cash element to their retrenchment package; others are left in negative equity when the worth of their entitlement does not cover the purchase price of a house; yet more - especially the employees of subsidiary companies and community teachers - have been forcibly evicted from their houses as company employees are installed in houses according to arbitrary and grossly unjust rules imposed by the management of parastatals such as ZCCM. The fact that such action is ultimately predicated on the terms of a loan agreement serves to underline the Bank’s complicity in a policy which has led to untold misery and the widespread violation of the right to housing.

Notes

- ¹ Independent Zambia inherited three categories of land from the colonial system. First, reserve land was set aside for African residents. Access to this land was on a communal basis and was administered by the tribal chiefs who allocated land under customary law. Reserve land accounted for thirty-six per cent of land in Zambia. Second, trust land was also settled by Africans, but on a non-tribal basis. Furthermore, land under this type of tenure could be set aside for public use and land grants made to non-Africans on a limited basis. Trust land accounted for fifty-eight per cent of land and was, once more, administered and allocated by the chiefs. The third type of land was State land. This constituted six per cent of all land and was administered by the State through the Commissioner of Lands. Titles for plots of State land were granted as leaseholds or, less often, as freeholds.
- ² Land (Conversion of Titles) Act, 1975, section 13(1): 'no person shall subdivide, sell, transfer, assign, sublet, mortgage, charge or in any manner whatsoever encumber or part with possession of the land...without the prior consent in writing of the President.'
- ³ 'Unexhausted improvements' was deemed under the 1975 Land Act to exclude non-recoverable service charges and surveyor fees.
- ⁴ The principle that land had no intrinsic market value caused two problems. First, two prices were paid for prime land: that determined by the Government; and a much higher price, paid unofficially to a seller. Second, the lack of a formula to determine the value assigned to land by the Government led to malpractice. On occasion, the Minister used his sweeping powers to intervene to change the price recommended by the government's own valuers in certain transactions. See Kaunda (1989-92), 'Ownership of Property Rights in Land in the First Two Republics of Zambia: An Evaluation of Restrictions on Free Alienation and Some Lessons for the Future'.
- ⁵ The power of the State to cancel tenure on undeveloped land was augmented by section 15 of the Lands Acquisition Act of 1970 which allowed the compulsory acquisition of underdeveloped land without compensation.
- ⁶ There was also provision for Zambians to apply to the President for the leasehold to land in customary areas, provided this met with the approval of both the chief and the local authority.
- ⁷ Under Statutory Instrument No.7 of 1964, the Commissioner of Lands is empowered by the President to make dispositions and grants of land (subject to special directions from the Minister of Lands). The Procedure on land alienation under Land Circular No.1 of 1985 passes these powers to the District Councils who are made responsible for processing applications, selecting suitable candidates and making recommendations.
- ⁸ Kaunda (1989-92), p.68. There was no channel within the 1975 Land Act to appeal against the decision of the Commissioner of Lands in refusing applications for land, in preventing certain transactions, or in determining the value of land. Furthermore, obtaining consent for each and every transaction through multiple layers of centralised bureaucracy, coupled with the need for Government valuers to determine the worth of each parcel of land in the absence of a market, caused inevitable delay.
- ⁹ Land (Conversion of Titles) (Amendment) (No.2). For an account of its introduction, see Kaunda, (1989-92).
- ¹⁰ Ministry of Local Government and Housing (1996), *National Housing Policy*. [Hereafter *NHP*].
- ¹¹ *GC 4*, para. 14.
- ¹² *GC 4*, paras. 10 and 11.
- ¹³ For example, the right to land is protected in the constitutions of South Africa and Uganda. Furthermore, the South African Constitution stipulates that squatters cannot be removed without a court order and until alternative land has been found for them.
- ¹⁴ Constitutional (Amendment) (No.5) Act No.33 of 1969, new article 18, permitted the compulsory acquisition of abandoned or undeveloped land relating to absent or non-resident owners.
- ¹⁵ Constitution, 16(3).
- ¹⁶ Constitution, 16(2)(j).
- ¹⁷ Constitution, 16(2)(y).
- ¹⁸ The functions of the Investment Centre are defined in the Investment Act (1993), section 5.
- ¹⁹ Investment Act (1993), section 32 (1).
- ²⁰ *Ibid.*, section 32 (2).
- ²¹ *Ibid.*, section 35 (1).
- ²² *Ibid.*, section 35 (2).
- ²³ For example, the Mines and Minerals Act (1995) specifies the distance which workings must be from land or buildings belonging to others.
- ²⁴ A mining concern which holds certificate of title to land may still only carry out extraction in the specified Mine License Area. Titled land beyond this in the Mine Surface Areas may be used for mine buildings, processing facilities, mining townships, spoil heaps and mine tailings. However, existing mines in the Copperbelt often have very extensive Mine Surface Areas which encompass tracts of agricultural land and bush.
- ²⁵ When land has not been surveyed, a 14 year lease can be issued.
- ²⁶ Mines and Minerals Act (1995), section 56(1)(c).
- ²⁷ *Ibid.*, section 57.
- ²⁸ *Ibid.*, section 61.
- ²⁹ *GC 4*, para. 7.
- ³⁰ *Ibid.*, para. 6.
- ³¹ *Ibid.*, para. 7.
- ³² Lands Act (1995), section 3 (1).
- ³³ *Ibid.*, section 3 (2).
- ³⁴ *Ibid.*, section 4 (1).
- ³⁵ *Ibid.*, section 4 (1) re waiver of payment for conversion; section 4 (2) re public purpose.
- ³⁶ If the right of title holders to compensation, under these changed circumstances, were to be established, this would prove so expensive as to render compulsory acquisition of undeveloped land impractical. See Hansungule, Feeney, & Palmer (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.20. In contradistinction to Hansungule et al., the Lands Acquisition Act, 1970, which is not repealed by the Lands Act (1995), allows in section 15 for the compulsory acquisition of undeveloped land without compensation. However, this legislation was enacted when undeveloped land had no market value. Article 16(2)(j) of the 1991 Constitution also excepts, in accordance with the law, abandoned, unoccupied, unutilised or undeveloped land from protection under the right to private property and compensation.
- ³⁷ Lands Act (1995), section 5 (1) and (2).
- ³⁸ *Ibid.*, section 5 (3) and (4).
- ³⁹ *Ibid.*, section 3 (3).
- ⁴⁰ Lands Act (1995). Sub-clauses under section 3 (3) (a) - (k) allow, *inter alia*, non-Zambian residents, registered non-Zambian cooperatives and companies meeting certain share-ownership conditions, and foreign non-profit making organisations to own land.
- ⁴¹ *NHP*, para. 4.1.
- ⁴² *Ibid.*, para. 3.2(a) - (e).
- ⁴³ *GC 4*, para. 14.
- ⁴⁴ State-derived housing covers that owned by central Government (5 per cent of total stock), District Councils (6 per cent), and parastatals (6 per cent). See *NHP*, para. 3.2.
- ⁴⁵ *NHP*, para. 1.0.

- ⁴⁶ The rural housing policy seeks to develop skills in villages for upgrading houses, to provide basic services and infrastructure, to run demonstration programmes to popularise new types of housing, and to produce guidelines on decent housing for employees on commercial farms. See *NHP*, para. 5.7.
- ⁴⁷ Speech by the President on the occasion of officially launching the Presidential Housing Initiative and commissioning the demonstration project at Chainama, Lusaka, January 1999.
- ⁴⁸ *ER* 1996, p.82. Of the total, 250 were built in a local authority scheme in Ndola and 40 more by the National Housing Association.
- ⁴⁹ Pan-African Building Society, Finance Building Society, and Zambia National Building Society. The figures for mortgages are given in the *ER* 1997, table 3.2, p.75.
- ⁵⁰ The figure of 138,000 is derived from ZPA figures on the number of parastatal (including ZCCM) houses to be sold - a total of 50,000 - to which must be added in the region of 88,000 council and government houses. The latter figure is based on percentage estimates given in the 1996 *National Housing Policy* for council houses; and the number of government pool houses to be sold to civil servants, as cited in 'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
- ⁵¹ A first phase of the Housing Initiative seeks to commission housing for demonstration projects at three sites in Lusaka. Development of a total of 4000 homes is planned at Chainama, on degazetted land in the Lusaka North forest, and on a site between the Kafue road and Copper Chalice Road in the south of the city. Private sector contractors have been invited to build affordable housing using materials sourced as cheaply as possible from participating suppliers. The results of the pilot project will determine how new homes will be built under the Housing Initiative. See Speech by the President on the occasion of officially launching the Presidential Housing Initiative, op. cit.
- ⁵² Employment (Amendment) Act 1997, section 19.
- ⁵³ *Ibid.*, section 21.
- ⁵⁴ *GC 4*, para. 8 (c).
- ⁵⁵ *Ibid.*, para. 8.
- ⁵⁶ Respectively *ibid.*, para. 8, subclauses (a) - (d) and (g).
- ⁵⁷ *Ibid.*, para. 8(e).
- ⁵⁸ *Ibid.*, para. 8(f).
- ⁵⁹ *Ibid.*, para. 8(e). Among others, the Committee draws attention to the elderly, children, the disabled, the terminally ill, those who are HIV positive, and the mentally ill. Yet everyone who is poor is vulnerable and, invariably, many of the disadvantaged groups mentioned are concentrated within the ranks of the poor.
- ⁶⁰ *GC 4*, para. 8(e).
- ⁶¹ *PIRC & ESAC PAR*, para. 1.12.
- ⁶² 'The goal of the reforms is to make undeveloped land more accessible to foreign and local investors and to give commercial farmers greater security in their ownership rights...Thus, one has to view the new law and its goals in the context of economic liberalization. Yet the reforms have the potential to undermine traditional land tenure, thereby affecting a whole range of interconnected rights.' (Schmid (1998), 'Controversial New Land Reform Law in Zambia').
- ⁶³ For a summarised account of the controversial passage of land reform, see Schmid (1998).
- ⁶⁴ Wiley (1998a), 'Implications of the Uganda Land Bill 1998 for customary tenure'. See, in particular, Section 7 - Customary ownership is a valuable tenure system in modern Africa.
- ⁶⁵ Article 237, Constitution of the Republic of Uganda, 1995.
- ⁶⁶ See, for example, the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107), especially articles 11, 12(1) and 13; ILO Indigenous and Tribal Populations Convention, 1989 (No. 169), especially articles 14 and 17. The UN Draft Declaration on the Rights of Indigenous Peoples (E/CN.4/Sub.2/1994/2/Add.1) also recognises the right to customary tenure. In particular, see articles 10, 25 and 26.
- ⁶⁷ *PSHDZ*, pp. 28 - 29.
- ⁶⁸ Schmid (1998).
- ⁶⁹ 'In light of the fact that much discrimination arises through customary practice, make it unlawful for any practice in land ownership which discriminates on the basis of gender. This is one of the most important foundations for prompting improved customary practice in matters of land rights.' Wiley (1998b), 'Implications of the Uganda Land Bill 1998 for Women,' Section 2 - Expected provisions in a modern agrarian land law, subsection on specific provisions, 1 (c).
- ⁷⁰ As defined in *ibid.*, Section 2.
- ⁷¹ Continued recognition and protection against infringement is given both to land holdings under customary tenure (Lands Act (1995), section 7 (1)) and to the rights and privileges of persons under such tenureships (section 7 (2)).
- ⁷² In particular, The Zambia (State Lands and Reserves) Orders, 1928 to 1964; and The Zambia (Trust Lands) Orders, 1947 to 1964.
- ⁷³ Lands Act (1995), section 3 (4) and section 8.
- ⁷⁴ *Ibid.*, section 8(1): conversion may be by leasehold grant by the President, other title grant by the President or by any other law (section 8 (1) (a) - (c)).
- ⁷⁵ *Ibid.*, section 3 (3) re alienation to non-Zambians; subsection (4) on fulfilment of general conditions for the conversion of customary tenure.
- ⁷⁶ *Ibid.*, section 3 (4) (a) (b) and (c).
- ⁷⁷ *Ibid.*, section 3(4)(d). Section 8 (2) specifies that land may only be converted after the approval of the chief and local authorities, or the Director of National Parks and Wildlife Service in the case of a game management area, and when identified on a map showing the exact extent of land to be converted. The only valid titles are those confirmed by the chief and granted by the President (section 8 (3)).
- ⁷⁸ The Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument 89 of 1996. The new Lands Circular, dated 12 April 1996, updates that part of the original *Procedure on Land Alienation*, Lands Circular No.1 of 1985, (as amended) dealing with the conversion of customary title.
- ⁷⁹ SI 89, section 2(1).
- ⁸⁰ *Ibid.*, section 2(2).
- ⁸¹ *Ibid.*, section 2(3).
- ⁸² *Ibid.*, section 2(4).
- ⁸³ *Ibid.*, section 3(1) - (2).
- ⁸⁴ *Ibid.*, section 3(3).
- ⁸⁵ Under the previous Land Circular No.1 of 1985 (as amended), a person with customary rights or using customary land applying for conversion required both the written consent of the Chief in whose jurisdiction the land is located and the consent of the District Council to the proposed change of status. If either the chief or District Council withheld consent, the application could not proceed. The recommendation of the District Council, together with its authenticated minutes, the chief's letter, and approved layout plans for the plot in question, were then forwarded to the Commissioner of Lands for final approval. A recommendation of the District Council was to be 'invariably accepted' by the Commissioner of Lands.
- ⁸⁶ SI 89, section 4.
- ⁸⁷ *Ibid.*, section 6.
- ⁸⁸ Lands Act (1995), section 22 re powers of the Lands Tribunal; see section 29 re appeal to the Supreme Court.
- ⁸⁹ Deputy Minister of Lands Edward Shimwandwe, cited in Schmid (1998).

- ⁹⁰ Lands Act (1995), section 3 (5).
- ⁹¹ Constitution, article 16(2)(y).
- ⁹² Schmid (1998). The quotation continues: 'The influence of the chiefs is confined to the phase of conversion into leasehold. The possibility apparently exists that the chiefs could be included in the tribunals. But they are not explicitly mentioned in the law. The system of checks and balances ends here. Much will be dependent on the rules of evidence that will be specially developed by the chief justice for these land tribunals, and on actual implementation.'
- ⁹³ Land Circular No.1 of 1985 (as amended), Section D(v).
- ⁹⁴ *ESAC II R&R*, para. 53.
- ⁹⁵ Schmid (1998).
- ⁹⁶ Abstracted from Wiley (1998b), 'Implications of the Uganda Land Bill 1998 for women,' Section 2 - Expected provisions in a modern agrarian land law, subsection on general requirements.
- ⁹⁷ *GC 4*, para.7.
- ⁹⁸ Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992.
- ⁹⁹ Lands Circular No.1 of 1985, para. 3 (or para. 4 in the amended Circular).
- ¹⁰⁰ 'Opinion,' *Times of Zambia*, 6 August 1997; see also 'Opinion,' *Times of Zambia*, 22 October 1997.
- ¹⁰¹ Memorandum from the Minister of Lands, circulated to the Cabinet in March 1992.
- ¹⁰² *Ibid.*, para. 12.
- ¹⁰³ Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. A subsequent Lands Circular of 12 April 1996 updates the procedure on the conversion of customary tenure. See fn. 78 above.
- ¹⁰⁴ Hansungule et al. (1998), *Report on Land Tenure Insecurity*. In particular, see 'Procedures for acquiring land: Circular No. 1 of 1985,' p.21.
- ¹⁰⁵ *Ibid.*, p.21.
- ¹⁰⁶ On issue of the final offer and certificate of title, the lessee then has to commence development of any land within six months and move to occupation within a specified period depending on the type of land in question. Failure to comply with these time limits means that the land reverts to the State. In the case of urban land, evidence of occupation is required within eighteen months; for land within 12 kilometres of urban areas or land beyond District Council boundaries, including land for commercial agriculture, the period for occupation/use is set at two years.
- ¹⁰⁷ 'Opinion,' *Times of Zambia*, 25 November 1997.
- ¹⁰⁸ In the memorandum, the onus is placed upon the District Councils to notify the Department of Lands through the provincial Lands Officers of undeveloped land so that it can be entered as such on the land register. There is a requirement that District Councils identify land for future developments and have such land serviced and numbered so that it can be easily identified for allocation to would be developers. This is unrealistic given the resource base of the councils. Furthermore, the memorandum acknowledges that a major logjam in issuing title deeds is caused by the inability of the Survey Department to complete the required cadastral surveys because of lack of adequate resources. Two offices of the Commissioner for Lands - one in Ndola, dealing with Copperbelt, Northern, North Western and Luapula provinces, the other in Lusaka catering for the other five provinces - will process all approvals and issue the title deeds. The Ndola office did not open until 1995 and only became operational in 1998.
- ¹⁰⁹ The offer of land makes it clear that, before title deeds are issued, the lessee must produce evidence, to be confirmed by the Agricultural Officer at the end of a two year period, that reasonable development of the land has been carried out. Article 16(2)(t)(ii) of the 1991 Constitution provides the basis for the forfeiture of land.
- ¹¹⁰ '200 illegal squatters face eviction,' *Times of Zambia*, 19 June 1997.
- ¹¹¹ 'Squatters stone officials,' *Times of Zambia*, 6 August 1997.
- ¹¹² 'Opinion,' *Times of Zambia*, 8 August 1997; see also 'I Ordered settlers to stay put - Official,' *Times of Zambia*, 8 August 1997.
- ¹¹³ 'Ndola bailiffs won't evict Chichele squatters,' *Times of Zambia*, 24 November 1997.
- ¹¹⁴ 'Council backs out...squatters to stay put,' *Times of Zambia*, 17 March 1998.
- ¹¹⁵ 'Meshi wrangle erupts again,' *Times of Zambia*, 20 March 1998.
- ¹¹⁶ For unalienated State land, the Minister of Agriculture issues a simple statutory declaration that the land has been designated for agricultural development. In the case of State land on which title has already been transferred, the consent of the owner is sought.
- ¹¹⁷ In addition, penalties are imposed under the Agricultural Lands Act upon leaseholders who fail to use the land for agricultural purposes.
- ¹¹⁸ Lands Act (1995), section 4(1).
- ¹¹⁹ Lands Act (1995), section 4(1) re waiver of payment for conversion; section 4 (2) re public purpose.
- ¹²⁰ The Lands Acquisition Act, 1970, which is not repealed by the Lands Act (1995), in section 15 allows for the compulsory acquisition of undeveloped land without compensation. However, this legislation was enacted when undeveloped land had no market value. If the right of title holders to compensation, under these changed circumstances, were to be established, this would prove so expensive as to render compulsory acquisition impractical. Cf. Hansungule et al. (1998), p.20.
- ¹²¹ *GC 4*, para. 8 (a).
- ¹²² *Ibid.*, para. 8(a).
- ¹²³ Lands Act (1995), section 9.
- ¹²⁴ This warning to squatters is not in doubt: any ambiguity over whether squatters retain rights under previous legislation is removed. Although the Act is at pains to point out that customary rights remain valid - and this despite the repeal of the underlying legislation - it is immediately stipulated that section 9 applies. There is no recourse, therefore, to the limited protection afforded to all occupants of reserves and trust lands under The Zambia (State Lands and Reserves) Orders, 1928 to 1964 and The Zambia (Trust Lands) Orders, 1947 to 1964.
- ¹²⁵ Housing (Statutory and Improvement Areas) Act, 1975, section 5 (1) (c).
- ¹²⁶ *Ibid.*, section 38 (c). There is no fixed criterion for designating an Improvement Area; for example, in Kitwe the council set a threshold of at least 2000 homes. A council may apply to upgrade an Improvement Areas to Statutory Housing Areas once a sufficient number of residents have upgraded their homes.
- ¹²⁷ Housing (Statutory and Improvement Areas) Act, section 39. Any houses erected must meet approved specification (section 40).
- ¹²⁸ *Ibid.*, section 39 (3).
- ¹²⁹ Hansungule et al. (1998), p.24.
- ¹³⁰ Housing (Statutory and Improvement Areas) Act. It is only a requirement that a house, building or plot is identified by reference to its number on the large-scale Statutory Housing Area Plan (section 13 (2)).
- ¹³¹ Forest Act, CAP 311, section 11(5).
- ¹³² See, for example, Environmental Council of Zambia (1994), *Zambia: State of the Environment Report, 1994*, p. 98.
- ¹³³ For a recent report on the issue of settlement in forest areas on the Copperbelt, see Hansungule et al. (1998), especially pp. 36 ff.
- ¹³⁴ 'MP to settle land row,' *Times of Zambia*, 14 March 1997.
- ¹³⁵ Hansungule et al. (1998), p.26.
- ¹³⁶ On the state of degradation of Zambia's Forest Reserves through encroachment and uncontrolled logging see 'Zambia's vast tourism wealth, but...,' *Times of Zambia*, 20 July 1998.
- ¹³⁷ Hansungule et al. (1998), p.26.

¹³⁸‘Ministry cites hurdles,’ *Times of Zambia*, 11 October 1997.

¹³⁹*Ibid.*

¹⁴⁰Continuation of article ‘Miners sound warning bells,’ *Times of Zambia*, 15 February 1997.

¹⁴¹The actual amount immediately required was K3.1 bn. See continuation of article ‘Lusaka medical workers threaten to strike,’ *Times of Zambia*, 24 March 1997.

¹⁴²Continuation of article ‘Lusaka issues ultimatum,’ *Times of Zambia*, 21 May 1997.

¹⁴³‘Ndola starts massive evictions,’ *Times of Zambia*, 15 May 1998.

¹⁴⁴*GC 4*, para. 8(b).

¹⁴⁵*Ibid.*, para. 18.

¹⁴⁶The Committee has determined that ‘legislation against forced evictions is an essential basis upon which to build a system of effective protection’ and ‘should include measures which...provide the greatest possible security of tenure to occupiers of houses and land...’ (see *GC 7*, para. 10). The measures must also ‘conform to the Covenant’ and ‘be designed to control strictly the circumstances under which evictions may be carried out.’

¹⁴⁷*GC 7*, para. 14.

¹⁴⁸*Ibid.*, para. 14.

¹⁴⁹‘Forced evictions’ are defined in *GC 7*, para. 4 as ‘the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.’

¹⁵⁰*GC 7*, para. 12.

¹⁵¹‘Lusaka issues ultimatum,’ *Times of Zambia*, 21 May 1997.

¹⁵²Continuation of article ‘Lusaka issues ultimatum,’ *Times of Zambia*, 21 May 1997.

¹⁵³‘Council issues houses ultimatum,’ *Times of Zambia*, 29 August 1997.

¹⁵⁴See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in ‘Presidential Petition,’ *The Post*, 30 April 1997.

¹⁵⁵See the testimony of Mr. Chibbota, Town Clerk of Livingstone, reproduced in ‘Presidential Petition,’ *op. cit.*

¹⁵⁶See the testimony of Mr Mumbi, Town Clerk of Solwezi. The figures, as cited in the transcript of the proceedings reproduced in *The Post* newspaper, are purportedly to February 1996. However, as neither the Presidential decree nor the circular directing the sale of all council houses were issued until March/May 1996 respectively, it must be assumed that the date of February 1996 is erroneous.

¹⁵⁷See, for example, ‘Hold your fire,’ *Times of Zambia*, 13 November 1997.

¹⁵⁸‘Council houses grace period!’ *Times of Zambia*, 2 December 1997.

¹⁵⁹‘Ndola starts massive evictions,’ *Times of Zambia*, 15 May 1998.

¹⁶⁰*GC 7*, para. 16(a); also *idem*, para. 14.

¹⁶¹*Ibid.*, para. 16(b).

¹⁶²*Ibid.*, para. 16(c).

¹⁶³*Ibid.*, para. 16(g).

¹⁶⁴*Ibid.*, para. 16(h). Other procedural safeguards are: ‘(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise...’

¹⁶⁵A submission to the Committee from a Zambian NGO (ZWOSAG), supported by the Centre on Housing Rights and Evictions, resulted in the Committee raising the matter of planned evictions with the Government. A number of evictions were averted. For an account of this exchange, see Kothari (1995), ‘The United Nations Speaks out on Forced Evictions’.

¹⁶⁶‘Opinion,’ *Times of Zambia*, 7 September 1996.

¹⁶⁷‘Mulenga condemns squatters,’ *Times of Zambia*, 4 December 1997.

¹⁶⁸‘City Council to demolish illegal structures,’ *Times of Zambia*, 17 April 1997.

¹⁶⁹‘Kick out squatters,’ *Times of Zambia*, 8 May 1997; also ‘Opinion,’ *Times of Zambia*, 8 May 1997.

¹⁷⁰Continuation of article ‘Now Lusaka cuts red tape,’ *Times of Zambia*, 12 May 1997.

¹⁷¹‘Are Lusaka shanties forever?’, *Times of Zambia*, 22 October 1996.

¹⁷²Finance and general purposes committee chairman, councillor Bwalya Chiti, cited in the *Daily Mail*, 24 March 1999.

¹⁷³‘Are Lusaka shanties forever?’, *Times of Zambia*, 22 October 1996.

¹⁷⁴Lands Act (1995), Part IV - The Lands Tribunal, sections 20 - 29. A chairman and deputy chairman, both qualified High Court judges, are supported by an advocate, a planner, two surveyors, and a maximum of three persons from the private and public sectors (section 20 (2)). All are appointed by the Minister of Lands. The members of the Tribunal are appointed on terms and conditions as specified in their letters of appointment (section 20 (4)). The Tribunal may appoint its own assessors to assist it in determining any matter under the Act (section 21).

¹⁷⁵Lands Act (1995), sections 22 (a) and 22 (b), respectively. The Tribunal reaches its decisions by majority determination (section 23 (3)). At least five members, including either the Chairman or the Deputy Chairman, must be present (section 23 (2)); furthermore, members or assessors with a personal interest in a matter under discussion are excluded (section 23 (4)).

¹⁷⁶Lands Act (1995), section 22 (c).

¹⁷⁷*Ibid.*, section 15 (1).

¹⁷⁸*Ibid.*, section 15 (2).

¹⁷⁹The Lands Act (The Lands Tribunal) Rules, Statutory Instrument 90, 1996, section 3.

¹⁸⁰SI 90, section 3(e). As referenced in the Act and related Statutory Instruments, the Lands Tribunal is most likely to deal with those situations in which the consent of the President to sell, transfer or assign land has been refused (section 5 (4)); where the Government has issued a certificate of re-entry to repossess land when it believes the terms of a lease have been broken (section 13 (3)); or when an applicant for the conversion of land from customary tenure to leasehold has been refused permission by the Commissioner of Lands to do so, perhaps because the chief or local authority has not given its consent (Statutory Instrument 89 of 1996, section 6).

¹⁸¹SI 90, section 15. Grounds not stated in the notice of appeal may only be introduced if the Tribunal thinks it is just.

¹⁸²SI 90, section 9 stipulates that the Tribunal shall meet in public unless, after an application from party to the proceedings, it directs that all or part of the proceedings shall be held in Camera.

¹⁸³Lands Act (1995), section 25.

¹⁸⁴SI 90, section 12.

¹⁸⁵Lands Act (1995), section 29.

¹⁸⁶Continuation of article ‘Ndola bailiffs won’t evict Chichele squatters,’ *Times of Zambia*, 24 November 1997; see also ‘Opinion,’ *Times of Zambia*, 25 November 1997.

¹⁸⁷SI 90, section 8 (1).

¹⁸⁸*Ibid.*, section 22.

¹⁸⁹Wiley (1998b), ‘Implications of the Uganda Land Bill 1998 for women,’ Section 2 - Expected provisions in a modern agrarian land law, subsection on general requirements.

¹⁹⁰The expenses and costs of the Tribunal are met out of funds earmarked by Parliament (Lands Act (1995), section 27); however, the costs of all

- parties, including the Government, may be awarded against an applicant if their submission is considered frivolous or vexatious (Lands Act (1995), section 26; see also SI 90, 26).
- ¹⁹¹'Kick out squatters,' *Times of Zambia*, 8 May 1997; also 'Opinion,' *Times of Zambia*, 8 May 1997.
- ¹⁹²*Vis-à-vis* customary rights, the Tribunal reached a compromise ruling in a case brought by a commercial farmer who sought to evict local people from his land in Ndola Rural. The farmer had been awarded the title deeds with the written consent of the late local chief. However, the present chief alleged that this consent had been fraudulently obtained and that his subjects had a right to settle on the land. The Tribunal ruled that villagers occupying the land before the sale in August 1997 could remain, as agreed with the landowner. However, new settlers could not be moved into the area nor should villagers interfere with the farming operations. See 'Squatters stay, rules Lands Tribunal,' *Times of Zambia*, 16 April 1998.
- ¹⁹³ICESCR, article 2
- ¹⁹⁴*GC 4*, para.11; see also *GC 2*, para.9.
- ¹⁹⁵*GC 4*, para. 11.
- ¹⁹⁶Hansungule et al. (1998), p.22.
- ¹⁹⁷The general requirement under the Lands Act (1995) is that all council owned land is to be surrendered to the President (section 6(1)); however, land held by a council under the Housing (Statutory Improvement Areas) Act is exempted (section 6(3)).
- ¹⁹⁸Housing (Statutory and Improvement Areas) Act, section 4 and section 37 respectively.
- ¹⁹⁹*Ibid.*, sections 5 (1) (a) and (b); section 38 (a) - (c).
- ²⁰⁰*Ibid.*, section 7 (1); section 39.
- ²⁰¹*GC 4*, para.12.
- ²⁰²*Idem.*
- ²⁰³Auditor General (1998), *Report of the Auditor-General on the accounts for the financial year ended 31 December 1996*, p.69.
- ²⁰⁴K35m was paid to Zambia Police on the basis of a handwritten note from the Inspector General of Police.
- ²⁰⁵*Report of the Auditor-General*, p.70.
- ²⁰⁶*Ibid.*, p.71.
- ²⁰⁷Lands Act (1995), section 4 (1).
- ²⁰⁸Lands Act (1995), section 6 (1) and (2), respectively.
- ²⁰⁹Lands Act (1995), section 6 (2). See also section 14(1) on the setting of ground rent. The failure to pay incurs a penalty of 25 per cent on outstanding rent (section 14 (2)).
- ²¹⁰Lands Act (1995), section 6 (3).
- ²¹¹Lands Act (1995), Part III - The Land Development Fund, sections 16 - 19. The Fund is established in section 16 (1). Its use is specified in section 18 (1).
- ²¹²Lands Act (1995), section 16 (2) (a) - (c).
- ²¹³Lands Act (1995), section 19. The Act stipulates that an Annual Statement of income and expenditure is to go before the National Assembly.
- ²¹⁴Lands Act (1995), section 18 (2) on council applications for money. The Fund is managed and administered by the Minister for Lands and vested in the Minister of Finance (section 17).
- ²¹⁵Figure based on *National Housing Policy* estimate of 6.0 per cent of Zambia's total housing stock of 1.3 million housing units belonging to district councils in 1996.
- ²¹⁶8,798 pool houses out of the Government's stock of 15,798 units were earmarked for sale. See 'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
- ²¹⁷*GC 4*, para. 15.
- ²¹⁸*Ibid.*, para. 17(d).
- ²¹⁹See 'Mushota advises State: Enact housing Act,' *Times of Zambia*, 30 March 1998.
- ²²⁰'FTJ criticised over the sale of houses,' *The Post*, 19 March 1996.
- ²²¹'The law report: Presidential house sales frightening,' *The Post*, 20 March 1996.
- ²²²Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraph B.
- ²²³In Livingstone, the Council met on 23 April in advance of the formal issue of the circular. The Council was aware of the content of the circular and sought to pre-empt it by adopting a procedure which, although aimed at disposing of the entire housing stock, set different prices and terms. Most significantly, the council resolved that tenants should pay rent until they had paid for their house in full. The council received special approval on 9 July 1996 from the Minister of Local Government allowing it to apply this procedure rather than that outlined in the circular. The council claimed that its procedure was advantageous to tenants who would be required to pay less for their homes. However, residents argued for the application of the rebates, as set out in the circular. When the council refused to compromise, a delegation of residents successfully sought and received the intervention of the central Government in Lusaka. The Ministry of Local Government instructed the council to apply the rebates.
- ²²⁴'Outsiders out - court,' *Times of Zambia*, 24 July 1998.
- ²²⁵'Non-civil servants fight for Government houses,' *Zamtoday*, 6 November 1998.
- ²²⁶*GC 4*, para. 6.
- ²²⁷*Ibid.*, para. 9.
- ²²⁸*Ibid.*, para. 8 (a).
- ²²⁹*Ibid.*, para. 8 (a).
- ²³⁰See the transcript of court proceedings, reproduced in 'Presidential Petition,' *The Post*, 30 April 1997.
- ²³¹The rationale was that the sale of houses to tenants would transfer maintenance costs to residents. The loss in rent would be offset by this transfer and by the collection of rates. The council had applied for, and had been granted, approval from the Minister of Local Government, in accordance with section 67 of the Local Government Act, early in 1994. By the time of the Presidential decree and subsequent circular of 2 May 1996, the council had sold 530 houses. See the testimony of Mr. Simwinga, Town Clerk of Kitwe, transcript of court proceedings, reproduced in 'Presidential Petition,' op. cit.
- ²³²Prior to the Presidential directive and circular of 2 May 1996, it has been confirmed in court that the council had no intention to sell houses. See the testimony of Mr. Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
- ²³³See, for example, the testimony, reproduced in 'Presidential Petition,' op. cit., of Mr. Chibbota, Town Clerk of Livingstone; Mr. Mumbi, Town Clerk of Solwezi; and Mr. Simwinga, Town Clerk of Kitwe.
- ²³⁴Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraph F.
- ²³⁵The discounts for low cost houses were 100 per cent for houses built before 1959; 40 per cent for houses built between 1960 and 1970; 30 per cent for houses built between 1971 and 1981; and 20 per cent for houses built between 1981 and 1990. Different discounts applied to medium and high cost houses.
- ²³⁶See the testimony of Mr. Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
- ²³⁷For example, the Mongu Town Council had plans to build more houses, but, after the sale, had no money to do so. Solwezi had hoped to pay off debts with proceeds from its original sale of selected houses; however, even after all its housing stock was sold as a result of the directive, the Town Clerk confirmed that the debts remained outstanding. In part this was because the council had intended to realise money from certain older houses

- which were subsequently transferred to tenants at a 100 per cent rebate. Please refer, *intra*, to the main text. See also the testimony of Mr. Mumbi, Town Clerk of Solwezi, reproduced in 'Presidential Petition,' op. cit.
- ²³⁸See 'K2 billion realised from the sale of council houses,' *The Post*, 21 February 1997. The circular requires the council to maintain a register for audit and public inspection and to open a revolving fund for continued housing development. See the Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraphs L and M.
- ²³⁹See, for example, the testimony of the Town Clerks of Mongu, Livingstone and Solwezi, reproduced in 'Presidential Petition,' op. cit. The Town Clerks of Mufulira and Chililabombwe confirmed the same in interviews with RAID conducted in January 1998.
- ²⁴⁰See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
- ²⁴¹See 'The law report: Presidential house sales frightening,' *The Post*, 20 March 1996.
- ²⁴²Continuation of article 'Squatters ring-leaders caught, charged,' *Times of Zambia*, 11 September 1996.
- ²⁴³*Ibid.*
- ²⁴⁴The Government handbook on the Civil Service Home Ownership Scheme stipulates that land will be allocated to those civil servants who do not benefit from the sale of pool or council houses. A fund was to be used to enable the Commissioner of Lands to identify and service suitable sites.
- ²⁴⁵'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.
- ²⁴⁶'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
- ²⁴⁷'Mushota advises State: Enact housing Act,' *Times of Zambia*, 30 March 1998.
- ²⁴⁸'Name ministers grabbing houses,' *Times of Zambia*, 30 June 1997.
- ²⁴⁹'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.
- ²⁵⁰'Wives protest against evictions,' *Times of Zambia*, 23 May 1998.
- ²⁵¹ZCCM (1996a), *Employee Privatisation Update*, Number 1, p.4 and p.10.
- ²⁵²ZCCM (1997a), *Employee Privatisation Update*, Number 2, p.4. The MUZ's response is outlined in their (1997) briefing *ZCCM Privatisation: Areas of Concern to Miners*, pp.10 ff.
- ²⁵³A. Sakala, 'Miners sound warning bells,' *Times of Zambia*, 15 February 1997.
- ²⁵⁴See 'Sale of ZCCM houses to start next week,' *The Post*, 4 July 1997.
- ²⁵⁵Announced by the Manager of Corporate Affairs, Sam Equamo. See 'Miners first, says ZCCM,' *Times of Zambia*, 1 January 1998.
- ²⁵⁶'Teachers being used,' *Times of Zambia*, 11 August 1997.
- ²⁵⁷Letter from Ndola Lime employee, 'Mr President, please sort out ZCCM houses mess,' *Times of Zambia*, 9 April 1998.
- ²⁵⁸The contract of sale and conditions was written on March 3, 1998 and signed by ZCCM lawyers and the new tenants.
- ²⁵⁹The mine tailings are being reworked in the Bwana Mkubwa Project, the new owners of which are First Quantum of Canada. The assets were sold in June 1996 outside of the main ZCCM sale packages. The company has taken on 100 staff and has built a new extraction plant which began production in March 1998. It was the first company to be granted a license - covering 5800 Ha near Ndola - under the new Mines and Minerals Act. See First Quantum media releases, *Canada News Wire*, 22 April 1996, 21 June 1996, 4 September 1996, 4 December 1996, 14 April 1997, 20 June 1997, 2 July 1997, and 26 August 1997. See also 'Investors pump in \$30m,' *Times of Zambia*, 24 March 1998.
- ²⁶⁰'200 Bwana Mkubwa tenants face eviction,' *Times of Zambia*, 4 April 1998.
- ²⁶¹Miriam Zimba, 'ZCCM charts house sale modality,' *Times of Zambia*, 16 April 1998.
- ²⁶²'Pruned Kansashi miners cry for houses,' *Times of Zambia*, 13 April 1998.
- ²⁶³Reported in a feature 'Ndola starts massive evictions,' *Times of Zambia*, 15 May 1998.
- ²⁶⁴*GC 4*, para. 8 (c).
- ²⁶⁵See 'Ndola starts massive evictions,' *Times of Zambia*, 15 May 1998.
- ²⁶⁶'Three tenants take ZCCM to Lands Tribunal over house sales,' *Times of Zambia*, 15 April 1998.
- ²⁶⁷'Mine houses sale halted,' *Times of Zambia*, 30 April 1998.
- ²⁶⁸Speech by the President to the 17th bi-annual conference of the Mineworkers Union of Zambia, held 22nd - 25th January, 1998.
- ²⁶⁹'Houses 'freeze' hailed,' *Times of Zambia*, 1 May 1998.
- ²⁷⁰ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.1.
- ²⁷¹There are a few instances, on large farms growing cash crops, where estate houses have been simply sold with the business. This happened, for example, in the sale of the Zambia Coffee Company, Zambia Sugar and Kawambwa Tea. See ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 2, para. (e).
- ²⁷²*Ibid.*, p.1, (b).
- ²⁷³ZPA (1997f), 'Sale of Parastatal Housing Stock,' Attachment 2.
- ²⁷⁴*Ibid.*, p.3.
- ²⁷⁵*Idem.*
- ²⁷⁶A case in point concerns 120 ex-Zambia Airways employees who were granted an injunction to prevent their eviction from former company houses. The situation had arisen because of a dispute between the liquidators and the estate agents appointed to sell the houses over the payments realised and conditions in the contracts of sale. The Judge ruled the tenants had purchase rights and that a decision taken jointly by the liquidators and agents to rescind contracts of sale so that the houses could be sold to other parties was unjust. However, at the time of reporting, the issue was yet to be resolved. (See 'Ex-Zambia Airways workers win injunction,' *Times of Zambia*, 12 February 1998).
- ²⁷⁷ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.2. ZPA has found itself in the position of having to swap properties for money owed to creditors in order to keep a company solvent prior to its sale. Where parastatals are jointly owned, the other shareholders will have a claim on the proceeds of the sale of the company. In such cases, to realise their interest, shareholders often sell their proportion of the housing stock with the core business.
- ²⁷⁸Government workers are offered a discount of 2 per cent on the price of their house for each year of service. ZCCM's pricing policy is also based on years of employment and high discounts are on offer to certain employees.
- ²⁷⁹'Wherever possible, the sitting tenants are offered the houses. In accordance with sections 22 and 23 of the Privatisation Act, the houses are to be sold at the fair market value.' (ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.2).
- ²⁸⁰In the absence of public sale, this value ought to be determined by independent private sector valuers. In actual fact, as the ZPA itself is precluded from carrying out valuations, it has made use of the Government's own valuers.
- ²⁸¹'Retenchees apprehensive,' *Times of Zambia*, 11 November 1997.
- ²⁸²ZPA (1997f), 'Sale of Parastatal Housing Stock,' p. 5.
- ²⁸³ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.
- ²⁸⁴*GC 4*, para. 8 (c).
- ²⁸⁵Lungu & Silengo (1997), 'The socio-economic assessment impact of privatization on the Zambian Copperbelt: the case of Mufulira and Konkola,' Issue 4: Housing.
- ²⁸⁶*GC 4*, para. 8(c).
- ²⁸⁷Abstracted from the *NHP*, Current Housing Issues and Constraints, section 3.8.
- ²⁸⁸ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 5 para. (d).
- ²⁸⁹'Govt halts evictions,' *The Post*, 27 October 1998.

²⁹⁰ZPA (1997d), 'Summary of ZPA's Parastatal Housing Activities,' para. 6.

²⁹¹NHP, section 5.1 ff.

²⁹²ER 1997, p.75.

²⁹³Theole (1999), 'House Keeping'.

²⁹⁴PABS managing director, Goodwin Kapema, at the launch of a teachers' Self-Help House Loan Scheme, as reported in 'Home ownership scheme respite to teachers' woes,' *Times of Zambia*, 1 July 1998.

²⁹⁵'Teachers being used,' *Times of Zambia*, 11 August 1997.

²⁹⁶The Self-Help House Loan Scheme for teachers was launched in June 1998 by the ZNUT in conjunction with the Pan African Building Society. A monthly contribution from teachers is paid into a pooled fund from which money will be lent in rotation to those participating in the scheme. The Union will act as loan guarantor to enable members to borrow at a minimum rate of interest. Its viability will depend upon whether teachers can make regular contributions to the fund from out of their already over-stretched salaries and whether sufficient funds can be mobilised in time to buy houses which are up for immediate sale. ('Home ownership scheme respite to teachers' woes,' *Times of Zambia*, 1 July 1998).

²⁹⁷'Hold your fire,' *Times of Zambia*, 13 November 1997.

²⁹⁸Ibid.

²⁹⁹'Council houses grace period!' *Times of Zambia*, 2 December 1997.

³⁰⁰ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.

³⁰¹Ibid., p. 4.

³⁰²ZPA (1997f), 'Sale of Parastatal Housing Stock,' pp. 4 - 5.

³⁰³ZPA (1997d), 'Summary of ZPA's Parastatal Housing Activities,' paras. 7 - 8. ZPA's intention is to package mortgages in groups once 'a positive payment history has been established' which are then and sold to commercial investors.

³⁰⁴ZPA (1997f), 'Sale of Parastatal Housing Stock,' p.3.

³⁰⁵ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' pp. 2-3.

³⁰⁶'Govt sells 5,045 houses,' *The Post*, 14 October 1996.

³⁰⁷'K2 billion realised from the sale of council houses,' *The Post*, 21 February 1997.

³⁰⁸'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.

³⁰⁹Ibid.

³¹⁰ZPA concedes that the only houses it had sold were in relation to liquidations, to pay off creditors, to realise proceeds for minority shareholders or to include houses with the core business in sales to investors in order to maintain a positive value for companies during negotiations. See ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.

³¹¹ZPA (1997f), 'Sale of Parastatal Housing Stock,' Attachments 1 - 3.

³¹²ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.

³¹³PIRC & ESAC PAR, para. 1.12.

³¹⁴Ibid., para. 2.12.

³¹⁵Ibid., para. 2.23. To pursue the objective of land reform, the Government agreed to establish a Land Identification Committee and a central administration responsible for developing a comprehensive land policy.

³¹⁶PIRC & ESAC PAR, para. 3.2.

³¹⁷Ibid., para. 3.2. Overall, under ESAC the Government did successfully reduce property transfer tax from 7.5 to 2.5 per cent and passed legislation in 1995 allowing the subdivision of leaseholds into subunits with separate titles and the simplification of land registration. See PIRC & ESAC PAR, para. 3.20.

³¹⁸PIRC & ESAC PAR, para.3.1; also para. 5.6.

³¹⁹ESAC II R&R, para. 44.

³²⁰Ibid., para. 45; also para. 57(e).

³²¹Ibid., para. 44; also para. 57(d).

³²²Ibid., para. 47.

³²³Ibid., para. 48; also para. 57(f).

³²⁴ESAC II R&R, Letter of Development Policy, Annex J, para. 64. The envisaged action plan appears, even at the outset, to have a limited scope focused upon Lusaka.

³²⁵ESAC II R&R, para. 53.

³²⁶Ibid., para. 46; also *idem*, Letter of Development Policy, Annex J, para. 65.

³²⁷ESAC II R&R, para. 49; also PSREPC R&R, Evolution of Policy Reform Agreements, Annex E, table C.

³²⁸PIRC & ESAC PAR, para. 3.19.

Supplement - The process of gaining title to land

The Land Act (1975) gave ultimate ownership of land and authority over land transactions to the President. It was not, of course, the President who implemented the legislation or administered land transactions. Instead, a department under the Commissioner of Lands was empowered to make grants and dispositions of land on the President's behalf.¹

The day to day allocation of State land in Zambia is carried out by the District Councils on behalf of the Commissioner of Lands or by the chiefs in customary areas. Land is allocated by the chiefs according to the type of customary tenure operating in the area. Whether such distributions are equitable when compared against international standards depends upon the type of customary tenure practiced. In contrast, the main tenets of the mechanism by which District Councils process applications for leaseholds for title to State land are codified under the *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. The procedure is essentially similar whether the land to be allocated is for various uses (residential, industrial *et cetera*) or for agriculture.

Despite the subsequent introduction of the Lands Act, (1995), it would seem that this the *Procedure on Land Alienation* (as amended) is still in effect.² A recent 1998 review of land law, contained within a study of land tenure insecurity by Oxfam GB in Zambia, confirms the continued application of this amended *Procedure on Land Alienation*.³ Indeed, it is stressed that the overall alienation procedure, dating back ten years, 'is not known by either the general public or even by many officials involved in land administration.'⁴

1. *The allocation of State land*

Before the allocation of land to be used for various purposes can take place, the planning authority must approve layout plans and forward these to the Commissioner of Lands who determines whether the land is available for development. The procedure by which State land is allocated for agricultural use is very similar. Once more, the Commissioner of Lands checks the availability and status of the land in question. It is then the responsibility of the Department of Agriculture to plan the area in consultation with the District Council. Provided the land in question is available - for example, that it is indeed State land and is not either land already leased (for example, to ZCCM for mining) or set aside as a Forest Reserve or other protected natural resource - then the Surveyor-General will be requested to number and survey the stands or plots.

In the case of land earmarked for non-agricultural purposes, it is assumed that the land to be allocated is fully serviced by the District Council. Otherwise the District Council must explain why this is not the case before the allocation process can proceed. The District Council may then advertise the plots or stands in the national press, inviting prospective developers (including individuals) to make applications for title to the District Council.

It is then up to the District Council to select applicants for title to the land and make its recommendations to the Commissioner of Lands. Its reasoning for each allocation is especially important when there is more than one applicant for the title to a plot of land or where an applicant is recommended for more than one stand. The recommendations of the District Council are crucial and are to be 'invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.'⁵

Formal consideration is given to the District Councils recommendations by the Commissioner of Lands and offers of land are issued direct to the successful applicants. A District Council has a 30 day right of appeal to the Minister of Lands if it is aggrieved by the final decision reached by the Commissioner of Lands and its recommendations are not followed. Prior to 1995, the Minister's decision on the appeal is final; however, under the Lands Act (1995), it is possible that appeals may be made to the Lands Tribunal.

Successful applicants will still need to pay lease and development charges. Furthermore, in the case of non-agricultural land, planning permission will be required when the planning authority is not the District Council itself. If buildings are to be erected on a plot, minimum clauses and regulations must be written into the direct lease. Once these conditions have been met, a certificate of title is issued by the Commissioner of Lands via the District Council.

2. Grants or dispositions of statutory leasehold in customary areas

The Lands Act (1995), through repeal of existing legislation, abolishes the two categories of reserves and trust lands which are now both classified as 'customary areas'.

While the allocation of land in customary areas is handled by the chiefs under customary law, it is possible for tenants in these areas to apply to convert their customary tenure to statutory tenure. It is only when this happens that a District Council will become involved in the allocation of land in customary areas. The procedure to convert tenure under the *Procedure on Land Alienation* is as follows:

A new Statutory Instrument 89 [hereafter 'SI 89'] has been introduced together with a new Lands Circular of 16 April 1996 to inform councils and civil servants of the simplified conversion procedure.⁶ There are two mechanisms.

The first relates to an application to the chief from those with a right of customary tenure, or those using land in a customary area and who intend to settle for at least five years, to have his or her tenureship converted to a statutory leasehold title.⁷ The chief may give or withhold consent.⁸ Reasons for refusing consent must be communicated to the Commissioner of Lands.⁹ When the chief gives consent, he sends a form to the local Council confirming both the applicant's status and that the rights of others are not infringed.¹⁰ The Council reviews the application to convert *vis-à-vis* customary law in the area and the Lands Act and makes a recommendation for acceptance or rejection to the Commissioner of Lands.¹¹ However, the Commissioner has the power to decide whether or not to accept the Council's recommendation and, ultimately therefore, whether or not to grant or refuse the application for conversion.¹²

The second mechanism allows a local council to apply to the Commissioner of Lands to convert customary land into leasehold tenure if it considers this to be 'in the interests of the community.'¹³ While there is a requirement to consult the local chief and ascertain family or communal interests or rights, no reference is made to prior consent. Furthermore, a person aggrieved by a decision to refuse an application for title may appeal to the Lands Tribunal.¹⁴ This has powers of decision over specific disputes and a power of adjudication on any matter affecting land rights or obligations under the Act, subject only to appeal to the Supreme Court.¹⁵

Notes

¹ Under Statutory Instrument No.7 of 1964 and Gazette Notice No. 1345 of 1975.

² *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. A subsequent Lands Circular of 12 April 1996 updates the procedure on the conversion of customary tenure.

³ Hansungule et al. (1998), *Report on Land Tenure Insecurity*. In particular, see 'Procedures for acquiring land: Circular No. 1 of 1985,' p.21.

⁴ *Idem*

⁵ *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992, para. 4.

⁶ The Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument 89 of 1996. The new Lands Circular, dated 12 April 1996, updated that part of the original *Procedure on Land Alienation*, Lands Circular No.1 of 1985, (as amended) dealing with the conversion of customary title.

⁷ SI 89, section 2(1).

⁸ *Ibid.*, section 2(2).

⁹ *Ibid.*, section 2(3).

¹⁰ *Ibid.*, section 2(4).

¹¹ *Ibid.*, section 3(1) - (2).

¹² *Ibid.*, section 3(3).

¹³ *Ibid.*, section 4.

¹⁴ *Ibid.*, section 6.

¹⁵ Lands Act (1995), section 22, on the powers of the Lands Tribunal; see section 29 on appeal to the Supreme Court.

IV. The conduct of parastatal and private companies

Introduction

In a consideration of the realisation or denial of economic and social rights in Zambia, it would be negligent to ignore the actions, and unrealistic to ignore the influence, of companies. In the specific context of privatisation, the actions of both parastatals and private sector companies are duly examined in this section.

As a State party to the Covenant, the Zambian Government has an obligation to respect, fulfil and protect economic social rights. The obligation to respect requires it to abstain from action which impinges upon the enjoyment of such rights. The obligation to fulfil requires active, concrete steps by the Government to ensure the progressive realisation of the rights in the Covenant. It is the Zambian Government's obligation to protect against the denial of economic and social rights by third parties which is often the most pertinent when considering its response to the conduct of companies. In the context of privatisation, the Government must ensure that private sector companies and parastatals do not violate human rights. Yet when determining the obligations of various actors *vis-à-vis* the realisation or denial of economic and social rights, three further arguments are advanced.

First, it is maintained that private sector companies have direct responsibilities in respect of the International Bill of Human Rights and other human rights instruments and have already been brought within the purview of corresponding supervision both within and outside of the UN forum.

Second, when parastatals such as ZCCM perform governmental functions they cease to become third parties and their actions are directly attributable to the State in terms of the binding effect of international human rights law. Third, it is necessary to reiterate that the World Bank has certain obligations under article 22 to ensure that the assistance measures it adopts are advisable in contributing towards the effective, progressive implementation of the Covenant. This is particularly important when a nexus forms between the public and private sector arms of the Bank and both private and parastatal companies, as it has done in respect of privatisation in Zambia.

The argument as to why international human rights law is considered to apply directly to private companies and parastatals is presented in a preliminary subsection (A). Appeal is made to the Committee to lead the way by extending its consideration of economic and social rights to the actions of companies. In this regard, the long-standing invitation to NGOs to submit written information to the Committee provides a basis upon which companies as non-governmental entities could themselves be encouraged to participate in the work of the Committee.¹ In respect of the matters raised in this submission, the companies concerned could be invited to supply written information to shed light on events.

Many aspects of deregulation are given expression in statutory law in Zambia. The Government is clearly culpable when economic and social rights are eroded or denied as a result, although the influence of the World Bank in fostering legal reform in Zambia has been documented. The focus in a second subsection (B) is upon other aspects of social deregulation which arise out of the plan to privatise ZCCM. A number of private companies, in different ways, have formed a nexus with the Bank and Government/ZCCM to set the parameters of privatisation. The end result is a privatisation plan which not only purposefully neglects to deal with complex questions of social provision and informal settlements on mine land in the Copperbelt mining towns; but it is a plan which furnishes model sales and development agreements for the unbundling of ZCCM which deliberately dismantles or suspends Government environmental and social protection in those few areas where it has been successfully advanced.

A third and final subsection (C) examines whether the potential for the denial of a subset of economic and social rights inherent within the ZCCM privatisation plan has resulted in actual violations in practice. By way of substantiation, an account is given of two situations which are the cause for serious concern. The first relates to the Luanshya Mine which was at the centre of unprecedented civil unrest and industrial action on the Copperbelt in November 1998. Behind these disturbances lies a development agreement which is detrimental to the interests of employees and the wider mining community. The second pertains to the forced eviction and involuntary displacement from mine land of ex-miners, villagers, and the residents of squatter townships. Both ZCCM and the private company which purchased the Kansanshi Mine are implicated in these actions.

A. The direct application of international human rights law to private companies and parastatals

1. *The direct responsibilities of private companies to protect, promote and respect human rights*

Governments and intergovernmental agencies with their clear duties in respect of economic, social and cultural rights have retrenched substantially in recent years, handing over many activities which had previously been considered solely their responsibility to the private sector. Consequently, the capacity of corporate entities to impact both positively and negatively on the realisation of economic, social and cultural rights has increased.

An emerging issue is the extent to which companies are subject to international human rights instruments.² International law does not govern state behaviour alone and any assertion that corporates as private entities are outside its realm is misleading. Private individuals and groups have been held responsible for acts prohibited under international law such as piracy, slavery, crimes against humanity and genocide.³ In its *Statement on Globalisation and Economic, Social and Cultural Rights* issued pursuant to the Day of General Discussion, the Committee recognised that globalisation involves:

‘...the privatisation of various functions previously considered to be the exclusive domain of the State ... and a corresponding increase in the role *and even responsibilities* attributed to private actors.’⁴

It is recognised within the International Bill of Human Rights *per se* that private actors have responsibilities. The Universal Declaration of Human Rights asserts that ‘Every individual and organ of society ...shall strive by teaching and education to promote respect for [the rights and freedoms contained therein] and by progressive measures, national and international, to secure their universal and effective recognition and observance...’⁵ Two obligations, applicable to *all* actors, and this must include private companies, are apparent: first to promote human rights and second to work to secure their achievement. Both Covenants frame similar provisions.⁶ Article 30 of the Universal Declaration adds an obligation to respect: ‘Nothing in this Declaration may be interpreted for any state, *group or person* any rights to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein’ [emphasis added].⁷ Once more, there is a corresponding article in each Covenant.⁸ Whether injunctions to promote, protect, respect and secure human rights carry the same meaning as they do for states has yet to be clarified. The expert opinion of the Committee is sought in this regard.

Although traditionally regarded as outside the scope of human rights mechanisms, the private sector has featured in recent pronouncements by human rights bodies which are pertinent to the Committee’s own supervision of the Covenant.⁹ A threefold distinction can be drawn between a general recognition of the role played by private actors in the denial of human rights and the need to apply human rights standards to their conduct; the expression of concern over the actions of private companies, often in the context of the State’s obligation to protect human rights; and the active steps taken to examine specific private sector issues or violations within the remit of the human rights body in question. This simultaneously defines the direct responsibilities and obligations of private actors. This progression from (a) recognition of the issue, through (b) the expression of concern, to (c) an active consideration of concrete situations and even the assignment of responsibilities, means that private actors, including companies, are gradually being brought within the purview of human rights bodies.

a. Recognition

Under the rubric of recognition, the Subcommittee on the Prevention of Discrimination and Protection of Minorities has, through its appointment of key Special Rapporteurs, made clear its concern regarding the role of the private actors in denying human rights. The Special Rapporteur on the Realisation of Economic, Social and Cultural Rights has recognised that the ‘rush to denationalise and leave economics, politics and social matters to the whims of the private sector...will inevitably have an impact on the full realisation of economic, social and cultural rights.’¹⁰ The Special Rapporteur on the question of the impunity of perpetrators of human rights violations has stated that ‘violations of economic, social and cultural rights can also be perpetrated by private individuals.’¹¹ Successive reports by the Secretary General on the enjoyment of human rights and the working methods and activities of transnational corporations have underlined that ‘shared responsibility for the realization of the right to development must be extended to actors in the private sector which are creators of wealth and hence agents of growth. To this effect, "ground rules" are necessary at the national and international levels to combat the abuses of economic concentration and restrictive trade practices. States should establish a regulatory framework and economic instruments which would ensure the transparent operation

of the market and correct its deficiencies, to implement policies for the development of human resources, and to achieve equity in the allocation of resources and incomes.¹²

The Intergovernmental Group of Experts on the Right to Development, in its first progress report to the Commission on Human Rights in 1997, calls for measures to be taken 'to address the growing influence and impact of transnational corporations, especially in terms of ethical behaviour; effects on the environment, health and safety; culture; technology transfer; development and social objectives and priorities; effects on local firms and sectors, the domestic economy and the resources of the local population; and the right to development.'¹³ The practical steps envisaged include the regulation of transnational corporations through an international code of conduct.¹⁴

One of the most unequivocal determinations by the Committee on the responsibilities of corporate bodies is in respect of the right to food. Under the obligation to protect, the Committee recognises that '[v]iolations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States.'¹⁵ Furthermore, '[a]s part of their obligations to protect people's resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.'¹⁶ However, the Committee imparts direct responsibilities on such entities: 'The private business sector - national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.'¹⁷ If this direct responsibility exists in respect of the right to food, then it must apply to other rights under the Covenant. No authoritative interpretation of the Covenant suggests that the right to food is a 'special case' in this regard.

b. Expressions of concern

It is increasingly common for human rights bodies, in the consideration of periodic State reports, to express concern over the actions of companies. The Committee itself, in its recent concluding observations on the situation in the Russian Federation, noted that 'the economic rights of indigenous peoples are exploited with impunity by oil and gas companies which sign agreements under circumstances which are clearly illegal.'¹⁸ Similarly, attention has been drawn by the Committee to the negative impact of oil companies working in the Ogoniland of Nigeria.¹⁹ The Human Rights Committee has expressed the concern that the practice of contracting out or transferring security functions from the State to the private sector weakens the protection of human rights.²⁰ It has recommended that measures be taken to ensure that law and order remain State responsibilities.²¹ Implicit in the Human Rights Committee's observations is the notion that there are some state responsibilities the privatisation of which is incompatible with the fulfilment of civil and political rights. The same must apply in the realm of economic and social rights. The Committee on Economic, Social and Cultural Rights should perhaps be prepared to consider recommending possible limitations on the privatisation of certain state functions.

c. Active consideration

Certain bodies have moved to active examination of the conduct of private actors, either thematically or in the context of situations arising in specific states. Most notably, in respect of the former, the UN Special Rapporteur on Toxic Waste was explicitly enjoined to scrutinise the activities of TNCs involved in the transit and disposal of toxic waste. The Special Rapporteur was mandated to include 'information on countries *and enterprises*, including TNCs, engaged in the illicit movement and dumping of toxic and dangerous products and wastes' in her reports to the Commission on Human Rights.²² The Commission has itself issued a resolution noting the impact that corporate entities can have on the right to life and to health through the illicit movement and dumping of toxic and dangerous products.²³

In relation to situations within specific states, the Inter-American Commission on Human Rights was petitioned by a group of indigenous people from Ecuador to consider the negative impact of two oil companies, Texaco and the national oil company Petroecuador. The Commission sent a fact-finding mission to Ecuador in 1994 which reported that '[b]oth the state and the companies conducting oil exploitation activities are responsible for such anomalies [the spillages leading to denial of various rights], and both should be responsible for correcting them.'²⁴

These citations add weight to the argument that it is not beyond the bounds of precedent for the Committee to consider the responsibilities of corporate actors. The denial of human rights by companies ought to be dealt with at a national level within the regulatory and legal framework²⁵. However, as in the case of Zambia, national law and regulation is frequently inadequate.²⁶ In the context of globalisation, as states retrench and companies become increasingly influential, arbitrary distinctions are created whereby those whose rights are violated by the State have recourse to human rights mechanisms, whereas those who suffer damage through corporate activity are left with no avenue of complaint. The Committee must continue to engage with this reality if a whole range of abuses of economic, social and

cultural rights are not to fall outside its remit, creating distinctions that are arbitrary and at odds with the universality of human rights. The pressing need is for further clarification of the obligations of private actors.

2. Direct obligations under the Covenant arising from the attribution of ZCCM actions to the State

To the extent human rights standards apply to private companies, they automatically apply to ZCCM as a parastatal company. An additional argument is advanced in this subsection. ZCCM is described as a parallel administration in the Copperbelt; in other words, ZCCM carries out governmental functions and, in doing so, it becomes an extension of Government in that its actions are attributable to the State. Hence not only must the Zambian Government protect those within its jurisdiction from the actions of parastatals which are detrimental to the realisation of human rights, but these entities themselves are directly subject to duties under the Covenant.

The question of attribution of the acts of third parties to a state has great significance for the application of human rights law in the context of privatisation and deregulation when functions previously regarded as the preserve of the state are hived off to parastatal and private sector actors.

The International Law Commission's Draft Articles of State Responsibility, although they are presently being finalised and therefore remain unadopted, do provide a well-founded interpretation of attribution and effectively express principles of customary international law.²⁷ A state cannot be held responsible for the actions of those within its jurisdiction unless (i) the action is attributable to it, and (ii) the action involves a breach of an international obligation owed by the state to the person or entities affected therein.

a. Attribution

There is a narrow range of bodies in society which are subject to the same duties as a state under international law by virtue of the principle of attribution. Of the entities identified in the ILC Draft Articles whose behaviour may be attributable to the state, it is the category of parastatals defined in article 7(2) as outside the formal structure of the state but who are empowered to exercise elements of governmental authority which is relevant to the operation of ZCCM.²⁸ In respect of such entities, the ILC regards the key criteria for attribution to be whether the body takes on a function which is 'normally exercised by organs of State'.²⁹ Overall, the ILC does intend its categorisation to be 'wide enough in meaning to cover bodies as different as ...public corporations, semi-public entities, public agencies of varying kinds and even, in special cases, private companies'.³⁰

ZCCM was established by the Kaunda Government in 1981 by the merger and full nationalisation of Nchanga Consolidated Copper Mines Ltd and Roan Consolidated Mines Ltd.³¹ The Government of Zambia has a controlling interest in ZCCM by virtue of its majority 60.3 per cent holding. A majority of eight out of fifteen directors are appointed by Government. However, international law acknowledges the separateness of corporate entities from state bodies. Thus the fact that a state establishes, owns or controls a company does not mean that the company's acts are necessarily attributable to it.³² However, when it can be ascertained that ZCCM performs governmental functions, then it falls within the scope of article 7(2) and thus its behaviour becomes attributable to the state. Furthermore, if the state uses the company deliberately to achieve a specific result that is at odds with its international obligations, then the company's actions are once again attributable.

b. The breach of international obligations

It is maintained that a number of key economic and social rights in the Covenant have been violated as a consequence of the way in which the privatisation of ZCCM has been handled. Ostensibly, ZCCM has a long history of performing governmental functions. It provides all manner of municipal services - water supply, sewage systems, roads and other infrastructure, lighting, waste disposal, township security - not only to miners and their families, but to the wider community. It also runs schools, hospitals, clinics and other social amenities in mining communities. The extent of this provision is mapped further in subsection B.1. In the run-up to privatisation, the Government has abrogated its duty to ensure that the governmental functions of ZCCM are transferred to either central or local Government. Realisation of the right to an adequate standard of living, the right to adequate housing, and the right to health has been diminished as a result.³³

Furthermore, action by a public company can be attributable if ‘the State directed or controlled the *specific* operation and the conduct complained of was a necessary, integral or intended part of *that* operation.’³⁴ Article 10 of the Draft Articles considers the question of entities acting outside their competence or contrary to instructions regarding their activities.³⁵ There is general agreement that actions of both organs of state and those entities exercising governmental functions are attributable to the state so long as they were acting in their public capacity. Case law implies that where such bodies were ‘purporting to act in official capacity’ or ‘cloaked with governmental authority’ their *ultra vires* acts are attributable no matter how manifestly incompetent.³⁶

Evidence is presented in subsection C.2 which suggests Government complicity in action by ZCCM to begin a programme of forced displacement. In contrast, full realisation of the right to housing requires a State party to take measures to provide security of tenure and refrain from action leading to forced eviction. Ultimately, even if the Government/ZCCM were to successfully defend itself against the charge of complicity and deny attribution, the Government *per se* cannot evade the charge that it has failed to protect the right to housing of squatters and others on mine land from the detrimental actions of a third party.

3. *Corporate codes of conduct*

Codes of conduct at the firm, industry, and corporate levels are also relevant in extending the concept of company responsibility. First, their existence amounts to a recognition of the importance of ethical standards and corporate governance issues by both organisations concerned with trade, investment and economic relations, and also by companies themselves. Second, such instruments carry considerable normative legitimacy. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977) (hereafter ‘the ILO Tripartite Declaration’), the OECD Guidelines for Multinational Enterprises (hereafter ‘the OECD Guidelines’) and the OECD Principles of Corporate Governance (hereafter ‘the OECD Corporate Principles’) are of particular importance in this regard.³⁷ Finally, the overlap in terms of content between human rights instruments and internationally recognised principles governing corporate behaviour is by no means inconsiderable: in other terms, a recognition of corporate codes is simultaneously a recognition of the legitimacy of human rights standards and *vice versa*.

a. ILO and OECD corporate standards

It is recognised within the ILO Tripartite Declaration that multinational enterprises, within the framework of development policies established by governments, can fulfil an important role in the promotion of economic and social welfare, the improvement of living standards, the creation of employment opportunities and the enjoyment of human rights. On the other hand, the supranational organisation of such enterprises ‘may lead to abuse of concentrations of economic power and to conflicts with national policy objectives’.³⁸ The OECD Guidelines offer an essentially similar formulation.³⁹

The common aim pursued through the OECD Guidelines and the ILO Tripartite Declaration is ‘to encourage the positive contributions which multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise’.⁴⁰ Both the OECD Guidelines and the ILO Tripartite Declaration lay down recommendations governing the activities of multinational enterprises.⁴¹ The instruments are addressed to both parent companies and local entities within the multinational enterprise according to the actual distribution of responsibilities among them.⁴² Domestic enterprises too are subject to the same expectations in respect of their conduct wherever the Guidelines or the principles within the Declaration are relevant.⁴³

Whereas the OECD Guidelines cover a broader range of issues pertaining to the conduct of multinational enterprises, the ILO Tripartite Declaration limits the extent of its consideration to the fields of employment, training, working conditions, and industrial relations.⁴⁴ However, in these specific areas the ILO Declaration provides more detailed standards. The OECD Guidelines relate to all key aspects of multinational enterprises’ operations: general policies, information disclosure, competition, financing, taxation, employment and industrial relations, environment, and science and technology. Both the OECD and ILO instruments are referred to in the analysis, drawing on the scope of the former and the detail of the latter.

Finally, reference must be made to the recently adopted OECD Principles on Corporate Governance which address issues of corporate conduct relating to accountability to shareholders, relations with other stakeholders, disclosure and transparency, and board responsibility. As such, the Principles compliment the OECD Guidelines for Multinational Enterprises.⁴⁵ The OECD Corporate Principles are intended ‘to assist Member and non-Member governments...to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and

to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance.⁴⁶ They focus upon publicly traded companies, but are applicable, at least in part, to state-owned enterprises. Particular recognition is given to the global nature of investment and the need for strong corporate governance arrangements in order to attract ‘patient’ capital.⁴⁷

b. Normative legitimacy arising from the endorsement of ILO and OECD corporate standards

Use will be made of all three instruments in the analysis of the conduct of certain companies in the context of privatisation in Zambia. It is therefore necessary to establish that the standards in question carry the necessary normative legitimacy. This makes it more difficult for a company, should it be so minded, to argue that the instruments do not apply.

The OECD Guidelines for Multinational Enterprises were adopted in their original form in 1976 as one part of the OECD Declaration on International Investment and Multinational Enterprises.⁴⁸ The OECD Guidelines complement both the UN Principles and Rules on Restrictive Business Practices and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.⁴⁹ The latter, approved by the ILO Governing Body in 1977, is addressed to governments, business and labour in the ILO’s 174 member countries, thereby lending considerable normative legitimacy to the Declaration.⁵⁰ Zambia is an ILO member State. The multinational companies involved in the privatisation of ZCCM - for example, Anglo American, Avmin (Anglovaal), Genbel and Metorex, all of South Africa, Cyprus Amax of the USA, Midlands Power International and the National Grid Company of the UK, the Crew Development Corporation and First Quantum of Canada, Binani Industries of India, and China Non Ferrous Metals Industries Corporation - all operate out of countries which are members of the ILO.

The OECD Guidelines have their own inherent normative value. They are supported not only by all 29 Member countries of the OECD, but also by a corpus of multinational companies, represented through the OECD’s Business and Industry Advisory Committee (BIAC), and by employees, represented through the corresponding Trade Union Advisory Committee (TUAC).⁵¹ Certain non-Member countries fully support the Guidelines through their adherence to the underlying Declaration and Decisions on International Investment and Multinational Enterprises.⁵² Moreover, and because multinational enterprises are organised on a global basis, support for the extension of the Guidelines to cover their operation in all countries is recognised.⁵³ Indeed, and with particular reference to developing countries, efforts are to be undertaken to improve the welfare and living standards of all people ‘by encouraging the positive contributions which multinational enterprises can make and by minimising and resolving the problems which may arise in connection with their activities.’⁵⁴

The OECD Corporate Principles are also widely endorsed. Their development is the result of a decision taken at the Ministerial level among the Member countries of the OECD.⁵⁵ Not only do they embody the views of Member countries on the issue of corporate governance, but non-OECD countries, the World Bank, the International Monetary Fund, the business sector, investors, trade unions, and other interested parties were all consulted in their formulation.⁵⁶

While their observance is voluntary and not legally enforceable,⁵⁷ the OECD Guidelines represent ‘Member countries’ firm expectations for multinational enterprise behaviour.’⁵⁸ The recommendations within the Guidelines are therefore viewed as a supplement to, rather than a substitute for, national law and practice.⁵⁹ Likewise, multinational enterprises, as well as employers’ and workers’ organisations, are recommended to observe the principles set out in the ILO Tripartite Declaration, again on a voluntary basis.⁶⁰ However, although all concerned parties should respect the sovereign rights of States and obey national laws and regulations, the ILO Tripartite Declaration is more forthright than the OECD Guidelines in drawing attention to the applicability of international instruments.⁶¹

It should also be noted that both the OECD and ILO instruments are not disembodied texts, but are underpinned by mechanisms for their supervision. The ILO Tripartite Declaration is supervised through the examination of periodic reports invited from governments on the effect given to the Declaration after consultation with workers’ and employers’ organisations. There is also a procedure for the examination of disputes concerning the application of the Declaration. There is a procedure for the implementation of the OECD Guidelines which includes, in theory, consideration of individual cases involving specific enterprises, albeit with full anonymity.⁶² From this it can be concluded that the instruments are meant to be applied; furthermore, and as explored in the next section, there is scope for the Committee, as a UN human rights body, to make use of ILO and OECD corporate standards in its own supervision of the Covenant.

c. The relevancy of corporate governance issues to the Committee's supervision of the Covenant

The Committee has adopted a statement on globalisation.⁶³ This identifies a number of strands to the phenomenon: *inter alia*, the rise of information technology, reliance on the free market, the private or institutional control of international capital flows, a diminished role for the State, privatisation, and deregulation.⁶⁴ The Committee recognises a corresponding increase in the role and responsibilities attributed to private actors, in particular transnational corporations, not only in the business sphere, but also in civil society. While the Committee recognises that none of these associated developments are necessarily incompatible with the Covenant, 'if not complemented by appropriate additional policies, globalization risks downgrading the central place accorded to human rights by the United Nations Charter in general and the International Bill of Human Rights in particular. This is especially the case in relation to economic, social and cultural rights.'⁶⁵

At the time of its statement on globalisation, the draft Multilateral Agreement on Investment was singled out by the Committee as one instrument with the potential to impact upon the realisation of economic, social and cultural rights.⁶⁶ The OECD's Guidelines for Multilateral Enterprises were appended to this Agreement. Notwithstanding the fact that the MAI has subsequently been abandoned, the Committee has signalled that issues relating to global investment and the OECD Guidelines *per se* are within the purview of its work in monitoring compliance with the Covenant.⁶⁷

Article 18 of the Covenant itself establishes a mechanism by which relevant work of the UN specialised agencies, including the ILO, is to be given consideration by the Committee.⁶⁸ Repeated resolutions have called upon the UN specialised agencies to submit reports detailing such work.⁶⁹ It is maintained here that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, together with information relating to its monitoring, are relevant to supervision of the Covenant and warrant consideration by the Committee. The basis for the Committee's consideration in its own work of the Declaration is strengthened by the Limburg Principles: 'The experience of the relevant specialised agencies...including the United Nations working groups and special rapporteurs in the field of human rights should be taken into account in the implementation of the Covenant and in monitoring State Parties' achievements.'⁷⁰

B. Social deregulation, private influence and the privatisation of ZCCM

Introduction

Large parastatals in Zambia have traditionally provided a web of social support to workers, their families and the wider community. The obligations of private sector employers are being renegotiated under privatisation and the extent to which measures are in place to safeguard the interests of those affected during and after the transfer of ownership is a test of the commitment of the actors concerned to realise economic and social rights.

The focus here must be limited to a consideration of ZCCM. Not only is it the largest service provider - often described in terms of a parallel administration or a state within a state - but it exemplifies the full range of issues to be resolved in the transfer of responsibility for social provision in all its dimensions after privatisation.

Private companies associated with the privatisation of ZCCM have acted in different capacities. At the most obvious level, a number of the World's leading mining companies have sought to buy the various sale packages on offer. The Anglo American Corporation of South Africa is in a different position to other potential bidders in that it already has a significant holding in ZCCM. Less obvious is the role played by merchant banks, private consultancies and international legal firms in planning for the privatisation of the conglomerate. Such actors have been highly influential in setting the parameters for the sale, including the vexed question of separating ZCCM's commercial and social functions.

ZCCM has become part of the country's urban social fabric. Under Kaunda's Zambian humanism, all parastatals served a social as well as a purely commercial purpose. It is important to distinguish between two facets of this support. The first concerns social provision for employees and their families, many aspects of which were guaranteed at the time in law and which, to a lesser degree, are presently the subject of collective agreements and contracts of employment. The second relates to the role of ZCCM as a parallel administration. Entire towns in the Copperbelt - Kitwe, Ndola, Mufulira, Chingola, Chililabombwe, Kalalushi, Luanshya - have developed on the back of mining. There are visible

reminders everywhere of the importance of ZCCM: the mines themselves on the edge of town; the mining compounds; corporate offices; cinemas; hospitals; sports grounds; social clubs; ZCCM diggers working on public roads. There are elements of support which are less obvious: ZCCM water pipes and sewers which articulate with the municipal system; ex-miners and others farming land rented to them by ZCCM; former mine houses now occupied by non-miners; even extensive squatter settlements on mine land tolerated by the company. Overall, the level of integration is such that it is not always possible to maintain the distinction between the social amenities available only to miners and those used by the community as a whole.

Social regulation/deregulation has occurred at three levels. First, as has been noted, deregulation at the level of legislation has dismantled worker-related social provision. Employers, and this includes ZCCM and private mine owners, are no longer required by law to provide employee housing and social amenities. Yet, as a balance to this, an adequate system of precise State regulation and social protection has not been established.

It is unnecessary to argue that employers must be compelled by law to make blanket social provision for their workers in order to advocate that certain matters require Government regulation and that preparations must be in place for the take-over of those social responsibilities which are to be transferred. This applies doubly so to services provided by ZCCM to the wider community and councils as such relationships are seldom formalised. Local councils are certainly not in any position to shoulder the financial cost of any increase in their burden of responsibility.

The principal obligation of result reflected in article 2(1) of the Covenant is to take steps to achieve the progressive realisation of the rights recognised.⁷¹ ZCCM has carried out governmental functions and, in doing so, it has become an extension of Government in that its actions are attributable to the State. In other words, ZCCM has been the vehicle through which the Zambian Government has sought to fulfil certain social rights. This pertains to both miners and their families and to many residents in the wider community. In respect of both groups, social services traditionally associated with ZCCM on the Copperbelt underpin aspects of the right to an adequate standard of living, the right to housing, the right to health, and even the right to education.⁷² It is pertinent to recall that the right to adequate housing, as recognised under the Covenant, encompasses the availability of services and infrastructure. The right is not realised if sustainable access to, *inter alia*, safe drinking water, sanitation, heating and lighting, refuse disposal and emergency services is denied.⁷³ Furthermore, adequate housing must be in a location where there is provision for health-care services, schools and other social facilities.⁷⁴

Specifically in relation to workers, both the Covenant and the ILO Social Policy (Basic Aims and Standards) Convention (No. 117) require a State party, respectively, to take steps to ensure a decent or minimum standard of living.⁷⁵ Within the ILO Social Policy Convention, 'essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education' are recognised elements of a minimum standard of living.⁷⁶ If the Zambian Government, in conjunction with other agents, is shown to have omitted to make the necessary preparations to ensure adequate social provision is maintained, then the undertaking to take steps is jeopardised; furthermore, the principle of progressive realisation is violated when deliberate measures are adopted which result in the increased denial of social rights. The onus is upon the State party to justify such regression.⁷⁷

It is at this juncture that a comprehensive privatisation plan - a second level of regulation - is crucial in order to plan for this transition. Instead, the ZCCM privatisation plan has purposefully sidelined the question of the continued provision of municipal services while the obligations on the new owners to provide social amenities for employees, to honour existing working conditions and to deliver environmental protection have been carefully and systematically reduced.

At a third level - that of individual development agreements pertaining to each sale as the result of negotiations - social and environmental protection has been further undermined. It is incumbent upon both parastatals and private companies to abide by the limited body of laws and regulations governing their conduct which do exist. Instead, there is evidence to suggest that where legislation has been enacted in Zambia, for example to protect social goods such as the environment, private investors have immediately used their financial power to negotiate exemptions in the development agreements.

In examining the debacle surrounding the transfer of social responsibility, it is necessary in a first subsection (1) to map the extent of ZCCM's social support. In a second subsection (2), an account is given of how the decision to privatise ZCCM was taken. A first consultancy study, in recommending that the conglomerate be unbundled and sold, did at least address the implications of disentangling ZCCM's social and commercial functions and suggested the use of tax credits to prevent the rapid withdrawal of private companies from social provision. This measured approach fell by the wayside as a casualty of the decision to commission a second consultancy report into the sale of ZCCM. Once more, the recommendation of the consultants, a merchant bank and an international legal firm, was to unbundle ZCCM; yet the time lost in carrying out this second study, combined with the pressure to privatise ZCCM rapidly and stem huge losses to the Zambian economy, has resulted in a deliberate decision to put aside the whole complex issue of municipal social provision and concentrate on the sale of the business. (3) Regrettably, as evidenced in a third subsection, the actual

privatisation of ZCCM has resulted in the worst of both worlds: after three long years, the sale has only recently been successfully concluded in 2000, while the decision to neglect the question of long term social provision on the grounds of expediency has proved detrimental to the realisation of economic and social rights on the Copperbelt. The Zambian Government, the World Bank and various private sector companies are responsible for bringing about this situation. In a final subsection (4), the conduct of each actor is variously related to the benchmark of the Covenant, other human rights instruments and, in the case of private companies, to OECD and ILO corporate principles and guidelines.

1. The extent of ZCCM social provision

The importance of ZCCM's social functions is readily apparent. Three citations affirm the web of support for employees, local authorities, and people in the wider community in each town on the Copperbelt:

'ZCCM has created a corporate culture which extends past a workplace involvement. ZCCM as an employer provides for all of an employees [sic] needs: Shelter, medical assistance, hospitals, education for his children, free electricity, water and transport, a number of subsidised items including burial arrangement. Once severed from this support an ex-employee has little to fall back on except final redundancy payment...'⁷⁸

'Historically, the local authority townships have received basic services such as water, electricity and hospital services from the mines. The mine authorities have over the years been keen to shed all town responsibilities, but incorporation under local authorities has been delayed by remarkable administrative complexities and the reluctance of the Mine workers Union of Zambia (MUZ) to accept this proposition....As a result, the amenities in the mine townships have remained privately administered.'⁷⁹

'The Zambia Consolidated Copper Mines, has operated a 'cradle to grave' welfare policy. It has had a paternalistic approach to communities providing medical care services, schools and other social amenities, much wider in scope than those offered by the mines during the colonial period.'⁸⁰

In March 1995, prior to privatisation, 58,953 employees worked for ZCCM and its subsidiary companies, accounting for twelve per cent of Zambia's formal sector workforce.⁸¹ Each ZCCM employee often supports a family. The average household size in towns on the Copperbelt in 1996 was 5.4.⁸² Hence somewhere in the region of 320,000 people are directly dependent, to a high degree, on ZCCM. Furthermore, hundreds of thousands of others - from market traders to employees in ZCCM's suppliers - rely on the multiplier effects generated by the company. It is difficult to overstate the importance of the social support provided by ZCCM, yet it is hard to quantify its actual level or cost to the company.

The cost of social support is subsumed under the category of 'divisional overheads' and covers a plethora of expenses ranging from support for social clubs and the sponsorship of sports teams to the provision of ongoing and emergency assistance to local councils in the running of services and the maintenance of infrastructure.⁸³ A 'community contribution' is often listed in the divisional records, but this is ill-defined and it cannot be determined whether it represents support for local councils: to establish the true figure would require detailed review of the accounts at each division. However, the expenditure on divisional overheads does, by and large, indicate the 'consistent contribution which ZCCM makes towards the support of services either directly or indirectly'.⁸⁴ In 1992/3, this amounted to \$109 million. In the case of the largest working mines - Nchanga, Nkana, Mufulira, and Luanshya - these divisional overheads in the early 1990s were in the region of \$20 million per year for each operation.

Information obtained from ZCCM lists company-wide capital expenditure on social assets and infrastructure as peaking at \$36 million in 1993.⁸⁵ No figure was provided for recurrent costs. Between 1990 and 1997, such capital expenditure averaged \$9 million each year. The array of capital purchases or facilities rehabilitated is astonishing: the relaying of sewers, the replacement of municipal pumping stations, water reticulation, the sinking of boreholes, the provision of a new chlorination plant and a one million gallon reservoir; the installation of an electricity substation to power a local cinema, floodlights at a local sports ground, the upgrading of electrical supply systems; home ownership schemes, the demolition of defunct housing, the building of new houses, road rehabilitation, the repair of streetlights, expenditure on the local market, money to revamp a telephone exchange; the provision of libraries, training and youth schemes, the rehabilitation of women's centres, the building of shelters for mourners at local cemeteries; hospital refurbishments, the purchase of X-ray equipment, ventilators, blood banks, mortuary chambers, pathology labs, the construction of entire health centres; the purchase of laundry equipment, furniture, typewriters, fridges and cookers, kennels for the dogs of the mine police, a lawn mower, a fish pond, and three Tata buses.⁸⁶

It is difficult to present a full picture of the level of ZCCM social support to employees, their dependants and the non-mining communities in the Copperbelt precisely because of the lack of systematic research on this issue. Without this baseline data, monitoring the likely and actual impacts of privatisation will be problematic. Nevertheless, by way of example, it has been possible to map the extent of social services provided by the former ZCCM operating division at Luanshya. There are two qualifiers. First, it must be emphasised that the inventory of facilities and projected costs refers to the situation bequeathed by ZCCM. Further research would be necessary to clarify the current state of social services and the level of expenditure during the last two and a half years of private ownership. Second, the operating division is relatively small in comparison to others, in particular Nkana and Nchanga, where the net of social provision is even more extensive.

Social services provided by Luanshya Mine

The medical department at Luanshya employed 582 staff in 1997.⁸⁷ Of these, 24 were doctors, including 6 consultants. There were 310 nurses. The two hospitals at Luanshya - one high cost and one low cost - have units for general surgery, orthopaedics/traumatology, paediatrics and neonatology, and obstetrics and gynaecology. The hospitals run outpatient and emergency clinics. Seven clinics are run in residential areas, concerned mainly with maternal and child screening, antenatal and immunisation services, family planning, nutritional surveillance and home-based care services for HIV/AIDS patients. In 1995/96, a total of 66,000 people attended the hospital outpatient clinics, half of them on a non-contributory basis. Hospital admissions totalled over 15,000, 80 per cent on a non-contributory basis. The dependants of mine employees make up the bulk of patients; however, a significant number of people in the wider community attended the hospitals as in- and out-patients on a non-contributory basis. Almost 12,000 did so in 1995/96, dispelling the myth that mine medical facilities serve only those among the general public with an ability to pay. Attendance at the residential clinics averaged 235,000 each year over the period 1993 - 1996. Once more, a quarter of patients were from the wider non-mining community.

There is one mine primary school at Luanshya with a teaching staff of 27 and an enrolment of 440 pupils, of which 50 are the children of non-mine employees.⁸⁸ Whereas the children of company employees paid K25,000 per term in 1996/97, the parents of other children were charged a commercial rate of K400,000. This gives some indication of the degree to which costs to all parents will escalate if the company subsidiary to schools is removed. It seems doubtful that miners will be paid a market wage commensurate with such increases.

The Division contracts refuse services to collect rubbish and clear drains in all mine townships and markets. It also pays for tending to grass verges, the digging of graves and the making of coffins. The cost to the Division was estimated to be K154.6 million for 1997/98. Added to this is the cost of township maintenance - houses, roads, sewers - calculated at K2.36 billion in the same year. Water treatment and supply to all townships was budgeted at K411.4 million. Electricity was provided to all mine houses at low/no cost to employees. The cost to the Division was estimated at K2.4 billion.

Other facilities provided by the Division included three markets, twenty-one social clubs, a cinema, four welfare halls, eight football fields and sports stadia, six centres for women, and seven nurseries for pre-school children.

One socio-economic study of mine areas which has been undertaken suggests that particularly severe community-wide impacts might be expected in the health sphere.⁸⁹ Overall, there are two ZCCM hospitals at Nkana (Kitwe), two at Nchanga, two at Mufulira, two at Roan (Luanshya), one at Konkola (Chililabombwe) and one at Chibuluma.⁹⁰ Some of the mining towns, for example Nchanga and Konkola, have no Government hospital. Hence the general public are reliant on the mine hospitals for treatment. All the hospitals have satellite clinics; a total of no less than thirty-seven across the six mining towns in question. Each clinic is staffed by nurses with a daily visit by a doctor each day. Nearly all clinics have maternity units.

The responsibilities of the ZCCM medical and educational institutions include, *inter alia*, the provision of health care and education to ZCCM employees, their dependants, employees in subsidiary companies and the paying public and 'to contribute to the national effort in providing medical and educational services aimed at promoting health and education in Zambia...'⁹¹ However, social services, especially medical care, are provided to the wider community on a non-contributory basis. This is evident in the breakdown of attendance figures for ZCCM health facilities at Luanshya.

The same study gives brief consideration to the issue of the dependency of local councils on ZCCM for water supply. Mine operators, including ZCCM since the sector was nationalised, have held water rights. These were last renewed in 1986 and will run until the holder lease expires. Privatisation, in the absence of prior agreements, is seen to jeopardise existing *ad hoc* arrangements: 'The water situation will be of concern to people when these rights go into private companies. The new proprietors may apply economic criteria, and sell water to the council whenever water shortages are experienced in council areas. It is recommended that ZCCM's social concern in this regard be respected [,] [the] more so that the Copperbelt has experienced outbreaks of cholera from time to time.'⁹²

The study notes that the council treatment plants at Chililabombwe receive water pumped from underground to prevent Konkola mine from flooding. Both Chililabombwe and Mufulira are supplied with water from the mine treatment plant

during the frequent shortages in council areas.⁹³ This pattern of dependency is repeated across most of the other present and former ZCCM operating divisions. Using information from the Environmental Impact Statement (EIS) for Nkana Division, an attempt has been made to illustrate the extent to which both the mining townships and council areas rely upon the company for water provision and sewerage disposal and treatment. The recommendation in the EIS, made repeatedly, is to investigate opportunities to transfer responsibilities for water supply and sewage treatment services in both council and ZCCM communities to the local authorities.⁹⁴ It is no coincidence that this recommendation to shift the burden from mine proprietors to impoverished local councils is made against the backdrop of the privatisation of ZCCM.

The dependency of local councils on ZCCM water and sewage services: the example of Nchanga

In a 1997 survey of the ZCCM water supply and the sewage systems managed by Nchanga Division, it was calculated that the water requirement of the 90,000 strong ZCCM community in the area was 30 million litres per day.⁹⁵ The actual supply was 50 million litres per day because of the supply of treated water to non-ZCCM communities: 'It is apparently informally recognised that the ZCCM treatment and reticulation facilities are supplying non ZCCM consumers.'⁹⁶ This relationship is reported to have arisen because of the inability of the municipal authorities to meet local demand due to lack of finance for maintenance, servicing, and treatment chemicals. The report records that greater than two hundred people were observed collecting water manually from 'illegal' connections at one of the ZCCM reservoirs at Nchanga because there was no supply in the areas in which they lived.⁹⁷ To cite another example, the ZCCM Lulamba works was attempting to treat sewage from a population four times greater than that living in the ZCCM township it was designed to serve.⁹⁸ This indicates the level to which the local council is reliant on ZCCM services.

The dilapidated system of water pipes resulted in frequent interruptions of supply and bursts, exposing consumers to 'a significant health risk.'⁹⁹ A similar danger to health was presented by the rupturing of sewage pipes.¹⁰⁰ Even worse, each of the ZCCM sewage works at Nchanga and Lulamba was regarded as 'incapable of performing as a treatment plant'. Their failure to comply with domestic standards was deemed to expose staff and downstream water users to health hazards, endanger the aquatic environment and expose the mine to risks of prosecution.¹⁰¹

The cost of rehabilitating the water treatment plant to a capacity of 70 million litres per day is estimated to be \$7.9 million.¹⁰² However, this would still not achieve the preferred level of supply in mine and non-mine communities around Nchanga.¹⁰³ It is calculated that a further \$2.75 million is needed to provide new reservoir capacity.¹⁰⁴ The cost of rehabilitating the Nchanga sewage works to the capacity needed to serve existing mine and non-mine communities is estimated at \$11.2 million; at Lulamba the cost was \$2 million.¹⁰⁵ The total cost of these minimal measures alone is in the region of \$24 million. In comparison, it is estimated that just \$3.5 million is to be provided towards the rehabilitation of the ZCCM reticulation system as part of the World Bank/African Development Bank project to rehabilitate Kitwe's municipal water and sewage systems in an area overlapping with the Nchanga mine.¹⁰⁶

Since August 1992, the Water and Sewerage Services Department of Kitwe Town Council has been required to fund its operations from charges on services. Yet the council admits that the collection of rates from low-cost housing areas, let alone squatter settlements, has proved impossible.¹⁰⁷ In an act which is indicative of its increasing desperation, it has, on occasion, cut-off water supply to residents among whose number rank the poorest of the poor.¹⁰⁸

2. The decision to privatise ZCCM: commercial and social considerations

a. Initial consideration of the future of ZCCM

An initial consultancy report, paid for out of donor funds, was commissioned by the Government of Zambia in 1993 to determine strategic options for the future of ZCCM. Some attention was given to the social implications of the sale. In assessing ZCCM's costs against a comparable operation in Chile, the consultants - Kienbaum Development Services GmbH of Germany - determined that, although overall operating costs were not much higher at ZCCM, indirect costs were almost twice as high. They concluded that a potential buyer would wish to reduce indirect expenses, to include financing costs and corporate overheads.¹⁰⁹ Excluding subsidiaries, Kienbaum calculated a ratio of production to administrative staff of 77:33. The fact that human resources and medical functions employed over two thirds of the administrative staff was seen as an indicator of how seriously ZCCM viewed its social responsibilities. The consultants stated that '[a] significant question for privatisation is therefore how a new owner may address those social responsibilities.'¹¹⁰

Kienbaum cautioned that privatisation must entail a solution to the problem of maintaining this level of services for employees, their dependants and the local community. To do otherwise would engender suspicion and apprehension and threaten public opposition to privatisation.¹¹¹ It was noted that support for selected social services - sports facilities,

cultural activities, education and housing - far from being incompatible with commercial aims, correlated with increased productivity.¹¹² The consultants recognised the necessity to ensure the approach adopted was suited to an environment in which 'the central Government may not have the capacity to support major redevelopment on its own' and was designed to 'allow government to avoid the immediate responsibility of providing services from a revenue base which is already overburdened.'¹¹³

Kienbaum proposed, in the short-term, to negotiate with potential buyers to rehabilitate infrastructure and take over the running of social services for an agreed period and to compensate them for doing so through a system of tax credits or offsets against local council rates. From a commercial perspective, improved infrastructure was necessary in any case to rehabilitate the mines: tax credits made this expense less onerous. From the Government's perspective, the loss in receipts from the mines would be more than offset by forestalling the need to increase local authority funding.¹¹⁴ In the longer-term, the recommendation was for effective application of the new rates system of 1993 to existing and former ZCCM properties so that company payments 'in-kind' could be gradually wound-down and replaced by quantifiable cash payments. Over time, the level of offsets would discourage company involvement in municipal service provision and disentangle private sector and local government obligations.¹¹⁵

Kienbaum envisaged that schools and hospitals would ultimately be hived-off from the mines and run on a commercial basis.¹¹⁶ In the interim, it proposed that the new mining companies cater for the educational and medical needs of their workforce by providing tax efficient 'non-cash' benefits as part of an employee's salary. The public would be expected to pay a realistic charge.¹¹⁷ However, while the consultants suggested that companies should be free to offer services on a fee paying basis, they conceded that 'given the social problems which already exist in the Copperbelt in terms of unemployment, the generally low living standards and the existing interdependence between the public and private sector it might also be necessary for the "new" ZCCM to offer services at a subsidised rate to low income or unemployed members of the public.'¹¹⁸ The level of tax credit received would be proportional to the level of subsidy.

Above all else, Kienbaum emphasised the importance of clarifying the complex nature of service provision in mining areas. The consultant underscored the need to plan for any transfer of responsibilities in advance. Recommendations were put forward to review all local council budgets in towns/cities where ZCCM has a presence to determine the source of local government income, whether through rates, personal levies, fees, and other charges or from central government funding.¹¹⁹ Only on such a basis could it be established whether the finance available was commensurate with the level of services planned or provided. Kienbaum noted not only changes to the system of local authority finance which resulted in councils receiving less money, but also the withholding of mandatory provision. By late 1993, for example, the Government had not disbursed sales tax receipts, a major source of council revenue. The overall aim was to calculate the shortfall in resources, so often met in kind by ZCCM. Establishing the magnitude of this shortfall prior to negotiations was seen as essential for clarifying the potential liability for the new owners. An accurate determination of these costs was to be reflected in the price paid, but at least social assets and liabilities were placed openly upon the agenda so their take-over could be planned and a system of credits or alternative funding agreed.

b. The decision to privatise ZCCM

The privatisation of ZCCM had not originally been part of the MMD's policy agenda in 1991. It had hoped to run the mining parastatal by attracting new investments through joint ventures. According to the Bank, the recognition that there was no alternative to privatise became apparent due to falling production levels in 1993-94.¹²⁰ This was the immediate context for the completion of Kienbaum's final report in September 1994. In accordance with prior speculation, the recommendation was that ZCCM should be unbundled into five operating divisions run as partnerships between the Government and private sector companies as majority shareholders.¹²¹ The study was championed by few inside the Government, the notable exception being the deputy Minister of Mines who attributed the lack of support to vested political and personal self-interest.¹²² He was duly sacked the following month. The entrenched ZCCM management were against the report's findings and were fighting a rearguard action to resist privatisation *per se*.¹²³ A bitter domestic exchange was waged in the media between the proponents and opponents of unbundling and, indeed, those resisting any move to privatisation of the mines.¹²⁴ Anglo American opposed the splitting-up of ZCCM on the grounds of inefficiency and the difficulty of organising investment: the obvious reason was, of course, that it would stand to become the controlling shareholder if the company was to be privatised as a single unit.¹²⁵

From the outset, any attempt to privatise ZCCM was always going to be complicated by the fact that the company is not wholly owned by the Government. As has been noted, Anglo American has a significant holding in the company. The ZCCM Board is split into two groups of A and B Directors. The A Directors consist of those appointed by Government through the state-owned ZIMCO holding company to look after the Government of Zambia's 60.3 per cent interest in ZCCM. The B Directors are all appointed by Anglo American via its holding company Zambia Copper Investments which has a 27 per cent holding in ZCCM. Given Anglo/ZCI's position as principal minority shareholder, privatisation

could not proceed without its agreement. Furthermore, Anglo has pre-emptive rights under an act of parliament over any shares offered for sale by the Government once the latter's holding drops below 50 per cent.

The fact of ZCCM's continued decline and its cost to the economy was a powerful argument for privatisation. An announcement was finally made in the budget speech in January 1995 that ZCCM would be privatised within two years. The Government Mining Privatisation Team was duly established and tasked with identifying suitable privatisation advisers. The World Bank had been frustrated by the position of both certain politicians and Anglo American which it viewed as the driving force behind the rejection of the Kienbaum report.¹²⁶ Nevertheless, it paid for the hiring in October 1995 of consultants - the investment Bank N. M. Rothschild and Sons and the international legal firm Clifford Chance - to produce a second report and plan on the best way to privatise ZCCM.

c. The Rothschild's report and ZCCM privatisation plan: relegation of the social dimension

i. The pressure to privatise ZCCM and adoption of the Rothschild's report

The Rothschild's report was commissioned and produced in the context of an ever more urgent push by the World Bank, other donors, and ZCCM's creditors to see the conglomerate sold. Over the period March 1993 to March 1996, broadly corresponding to the dates when the Kienbaum study was first commissioned and when Rothschild's subsequent report was completed, the copper output of ZCCM had declined by thirty per cent.¹²⁷ The adoption of a ZCCM privatisation plan was made a specific Bank condition for the release second tranche of the ERIP Credit.¹²⁸ This pressurised climate was not conducive to allowing meaningful consideration of the future of social provision.

Rothschild's recommendations in the form of a privatisation report and plan were presented to the Government in April 1996. The mode of privatisation recommended was to unbundle ZCCM and sell its assets in business packages. This was to happen in two stages. First, the majority shareholdings in the new successor companies (packages A - L) were to be sold to trade buyers. ZCCM, in the capacity of an investment holding company, was to retain a minority interest in each company. Second, pending the successful conclusion of the first stage, the Government would have the option to sell its shares in the ZCCM holding company to Zambians and other investors.¹²⁹ This privatisation plan was approved by both the Government and the ZPA in May 1996 and unanimously by the ZCCM Board in June 1996. However, the Board made it clear at the outset that the privatisation mode would take into account consents from the company's shareholders.¹³⁰ Anglo American's own opposition to the unbundling of ZCCM was dropped after the company negotiated the option of purchasing the Konkola mine with its associated massive deposits of copper outside of the main sale.¹³¹

In order for privatisation to proceed in accordance with the Rothschild report, a memorandum of understanding was drawn-up between Anglo/ZCI and the Government of Zambia.¹³² This confirmed, *inter alia*, that ZCI appointed directors would give proper consideration to bids and vote in favour of proposals from bidders where, in their opinion, acceptance would be in the best interests of ZCCM and its shareholders.¹³³ As the proposed sale process was to unbundle ZCCM and to sell a majority holding in the relevant package to the selected buyer at the first stage, followed by the disposal of the Government's remaining holding at the second stage, Anglo/ZCI also agreed to waive its pre-emptive rights to purchase shares. Overall, however, and notwithstanding the memorandum of understanding between the Government and Anglo/ZCI, it is essential to recognise that the ZCCM Board, including the Anglo/ZCI B directors, must approve each sale before it can proceed and that a key criterion in reaching a decision in each case is the extent to which the deal is deemed to be in the best of interest of the company and its shareholders.

ii. The ZCCM privatisation report and its implications for social provision

The Rothschild's ZCCM privatisation report is regarded as commercially sensitive and strictly confidential while negotiations continue over the purchase of ZCCM assets. Its conclusion that ZCCM should be unbundled and sold was rapidly disseminated after the adoption of the plan by the Government and the ZCCM board. Indeed, this publicity was part and parcel of the sale process. The authorities and other concerned parties, such as the Bank, have been far less candid in revealing the analysis and recommendations in respect of the social impact of the privatisation, yet a number of facts have emerged through a mixture of official and unofficial leaks.

First, it is apparent that privatisation of ZCCM is predicated on rationalisation and mass redundancy. The report purportedly analyses ZCCM's performance in respect of El Teniente Mine in Chile, identified by the World Bank as a good comparator. For ZCCM to achieve the productivity of El Teniente, it is concluded that labour reductions of between 20 - 70 per cent would be required depending upon the mine/operation in question. The report projected an overall reduction in ZCCM's employment by a third compared to the size of the workforce at the end of 1995/96. It is

understood that the report viewed an initial wave of 9000 planned redundancies as sending out a good signal to investors that the Government had the political will to push ahead with a difficult privatisation. Across the major operating divisions, retrenchment costs were estimated to total in the region of \$65 million over the period 1996 - 1999 or approximately \$85 million including the shedding of staff at the corporate head office, the operations centre and Kabwe/Nampundwe mines. To part fund redundancies of this magnitude, it is believed that Rothschilds recommended that the Government seek concessional funding. The main source of such funding is, of course, the World Bank.

Second, the report is understood to acknowledge the complexity of any sale of social assets and therefore to recommend that the whole issue of determining the future of social provision should not be pursued because this would delay privatisation. The immediate solution was to adopt temporary measures by which the new buyers would continue to run social services, but strictly in the short-term. It is believed that Rothschilds concluded that investors would need to control operational costs and that expenditure on social service provision at mines such as Luanshya and Mufulira could make the difference between economic and uneconomic operation. However, despite the implication that the new proprietors would therefore be expected to withdraw from social provision, the question of planning for the longer term is left unresolved.

Finally, an annex to the report contains model development and sales agreements drawn up by Clifford Chance as a basis upon which to expedite the actual sale. It has been reported that, for a period specified in the development agreement, the government will not introduce any legislative changes which increase taxes, royalties or duties paid by the mining company or adversely change the basis upon which these are levied; nor will the government prejudice the foreign exchange rights conferred on the mining company by restricting its right to exploit its product and to retain foreign exchange proceeds of sales offshore. Finally, there is an undertaking on the part of Government not to tighten the environmental standards to which the mining company is required to operate.¹³⁴ It is also apparent that the development agreements commonly require the new owners of former ZCCM operations to run hospitals and schools and other social assets for an initial two year period. This creates great uncertainty over the future of these facilities.

From what has been reported, it would therefore appear that the development agreements are silent on a number of key social issues: the way in which *ad hoc* arrangements between ZCCM and the local councils over municipal service provision is to be managed in the longer term; the degree to which employees and wider public, especially the poor, will continue to have access to the web of hospitals and health clinics on affordable terms after the two year management period has ended; whether the new owners will continue to rent former ZCCM land to local farmers on favourable terms; and the attitude of private sector companies to squatter settlements on mine land, especially in the context of increased exploration activity to map the extent of untapped reserves.

It can safely be assumed that both the concessions and the areas of omission, as outlined, are common to each sale: they are certainly confirmed in the Development Agreement for the Luanshya mine. However, the model development agreement as sketched represents the minimum advantages which a new proprietor is likely to enjoy. The latest negotiations between the Government and Anglo American over the sale of the core assets of ZCCM have seen the South African company use its influence to win additional concessions while at the same time retreating from any responsibility whatsoever for social provision.

3. *The ZCCM sales debacle*

The first step of plan preparation and approval was described by the Bank as having proceeded smoothly.¹³⁵ In the initial stages of the second phase - the actual sale - a number of bidders pre-qualified and bids for all the packages were received by the target date of 28 February 1997. The aim was to complete the privatisation by June 1997.

Unfortunately, the sale of ZCCM has not proceeded according to plan. On the contrary, it has been characterised by delay, indecision on the part of the MMD administration, overt pressure from multilateral donors, and corporate exploitation of the Government/ZCCM's weak bargaining position in a falling copper market. By September 1998, over two years after the privatisation was announced, less than 20 per cent of the conglomerate's operating capacity had passed into private ownership.¹³⁶ As of January 2000, the sale of the key mine packages at the core of ZCCM - Konkola, Nkana, Nchanga and Mufulira divisions - has still not been finalised, although completion appears imminent. The conclusion reached by *The Economist* magazine in November 1999 is damning: 'As an object lesson in how not to privatise, the sale of Zambia Consolidated Copper Mines (ZCCM) is exemplary.'¹³⁷ *Mining Magazine*, in a review of the ZCCM sale, is of the view that '[s]adly, it has been one of the most protracted and problematic mining industry privatisations of all time.'¹³⁸

Despite initial progress in selling non-operational and smaller ZCCM mines, as well as the Power Division, the failure to conclude the sale of the Nkana/Nchanga mines to the Kafue Consortium is recognised as marking the point at which the

privatisation stalled. The Consortium comprised three major international mining companies - Phelps Dodge of the USA, Noranda of Canada, and Avmin of South Africa - and the UK Commonwealth Development Corporation to provide development finance. A year of protracted negotiations saw the replacement of ZPA/Rothschilds by a Government/ZCCM negotiating team in apparent contravention of the Privatisation Act; the refusal of the Government team to accept a deal in June 1997 worth over \$1 billion in cash, debt assumption, and investment; the excise of the Chibuluma Mine from the overall Nkana/Nchanga package to be sold to a rival bidder; a collapse in the price of copper reflecting overproduction and continued repercussions from the Sumitomo trading scandal;¹³⁹ the failure of the Government to conclude a deal worth a total of \$700 million it had accepted in October 1997; the onset of recession in Asia and Japan and further falls in the copper price; and progressively lower bids by the Consortium, culminating in an unacceptably reduced final offer in May 1998 which were flatly rejected. The Consortium dissolved and all its former members finally pulled out of negotiations in June 1998.

The Government has subsequently accused the major mining companies involved as banding together in the Kafue Consortium to form a buyer's monopoly in order to force the sale of Nkana/Nchanga for a knockdown price. This allegation, at the very least, raises questions about fair competition, for example, *vis-à-vis* the OECD Guidelines for Multinational Enterprises.¹⁴⁰ The eventual tax exemptions demanded by the Consortium in respect of mineral royalty, excise duty on electricity and import duties on fuel, all in addition to the existing package of concessions common to all development agreements, were deemed unacceptable. The Government, in turn, has been criticised for passing up the 'dream ticket' comprising four major players with the expertise to turn prospects for the bulk of ZCCM's operations around. Within the mining industry, the view is that to develop reserves of base metals such as copper increasingly requires the cooperation of more than one company.¹⁴¹ The accusation against the Government has been one of a failure to act decisively to clinch the best deal in June 1997 because of its preoccupation with the cash component of the overall package when its priority should have been to stem the haemorrhage of losses incurred by ZCCM and secure its future.

Throughout, Anglo American has fully exploited its privileged position as the principal minority shareholder in ZCCM. By virtue of the initial agreement it signed with the Government in February 1997, it was assured the right to purchase the highly lucrative Konkola Deep concession and given first refusal over a modern smelter excised out of the Mufulira sale package, despite the fact that this threatened the viability of the associated mine. Furthermore, the purchase of Konkola by Anglo was always conditional on the prior sale of the Nkana and Nchanga mines. When the sale of the latter collapsed in June 1998, the pressure on Anglo to finalise its purchase of Konkola was removed while its rights to the Mufulira smelter, to all intents and purposes, precluded the privatisation of the remainder of the package. The privatisation of ZCCM was effectively halted while the conglomerate continued to lose between an estimated \$1 million to \$2 million each day.

From this position of strength, Anglo American has been able to negotiate the purchase not only of Konkola, but also the mines at Nchanga and Nampundwe. Furthermore, the company has gained access to the Nkana smelter and secured a right of veto over who buys the Nkana mine itself if the development and investment plans are not in its own interests. It has signed agreements with the Government/ZCCM in January, October and December 1999 to this effect, although the sale still has not been concluded. There will be mass redundancies, the cost of which will be borne by the Government using finance provided by the World Bank.

The price paid for the productive core of ZCCM amounts to just \$90 million in cash, the bulk of which is on deferred payment terms, and investment commitments of \$208 million at Nchanga and the existing Konkola mine. The company will also begin implementation of the Konkola Deep Mining Project, although the cost of this has been scaled down somewhat.¹⁴² In stark contrast, the offer of the Kafue Consortium for broadly comparable assets, accepted in October 1997 but never successfully concluded by the Government/ZCCM, was worth \$150 million in cash, with debt take-over of \$75 million, and investment commitments of \$400 million. ZCCM was to retain a 12 per cent holding and benefit from profit sharing worth up to \$75 million. Even the Consortium's reduced offer at the end of March 1998 had been worth \$105 million in cash with the assumption of \$35 million debt and retention of the profit sharing component: 'How badly the country has been served since then, by those who have allowed the value to fall so far to what it is today. Quite apart from the loss in value of the operations, what has been the toll caused by disrupting management and destabilising the workforce in general?'¹⁴³

On 27 January 2000, Anglo American confirmed a setback in finalisation of the sale. The company blamed complex legal and administrative problems for the delay. The Government downplayed speculation about the failure to complete by the January 31st deadline, referring to this as an arbitrary target date.¹⁴⁴ In an address to Parliament on 27 January, the Minister of Mines cited low copper prices as a factor which made the conclusion of the sale difficult. Others pointed to delays in securing finance for the sale and in agreeing arrangements for retrenchments. On the same day, extensive concessions to the buyers of the remaining ZCCM were framed in the budget. The Government also announced that it would make provision to pay miners their redundancy packages and would meet ZCCM's obligations to creditors. K423 billion, the equivalent of 4 per cent of GDP, has been set aside to settle part of ZCCM's colossal debt to local suppliers.

The sale of the core of ZCCM to Anglo American, as well as that of Mufulira and Nkana mines to First Quantum/Glencore, were finally completed on 31 March 2000.

Overall, the initial strategy was to unbundle ZCCM and sell it in packages to different buyers in order to avoid its wholesale transfer to Anglo American. The final outcome is that Anglo American is now in a position where it has either bought or controls the core assets of ZCCM at a price substantially below that achieved in the previous year. Under the rubric of competition within the OECD Guidelines for Multilateral Enterprises, companies should '[r]efrain from actions which would adversely affect competition in the relevant market by abusing a dominant position of market power, by means of, for example: a) Anti-competitive acquisitions;...c) Unreasonable refusal to deal...'¹⁴⁵ It is beyond the scope of this submission to fully explore the actions of Anglo American in respect of these requirements; however, further examination appears to be warranted.¹⁴⁶ A more detailed account of the ZCCM sale to the end of March 2000 is summarised in the supplement accompanying this Section.

4. Obligations and responsibilities arising out of economic and social rights standards and company codes of conduct

In the context of this submission, the manipulation of the ZCCM privatisation process and the soundness or otherwise of the Government/ZCCM's commercial judgement are of concern only to the extent to which they impinge upon the realisation of economic and social rights.

The compatibility or otherwise of the conduct of the different entities involved in the privatisation of ZCCM is reviewed in relation to the obligations and responsibilities arising out of the Covenant, related human rights instruments, pertinent ILO labour standards and OECD codes of conduct. There are six aspects to the sale which cause considerable disquiet: first, the deliberate neglect by the Government, the Bank and the private sector of measures to ensure essential social provision after privatisation; second, exploitation by certain companies of their strong negotiating position to demand and win an excessive level of tax concessions; thereby reducing the level of resources available to the Government; third, a lack of transparency in the sales process to the extent that affected communities are deprived of essential information; fourth, a failure of accountability to the point where the Bank appears to be acting in the interests of Anglo American; fifth, discrimination in the provision of finance to fund redundancy payments; and finally, the negative repercussions for domestic social spending and policy arising out of Bank conditionality on the privatisation of ZCCM.

The analysis is organised around three main subsections: (a) State obligations and the actions of the Zambian Government; (b) the fulfilment or rejection of corporate responsibilities; and (c) the advisability of measures adopted by the World Bank.

a. State obligations and the actions of the Zambian Government

i. The failure of the Government to take steps to ensure continued social provision

The Zambian Government is obliged to take steps for the progressive achievement of the rights under the Covenant.¹⁴⁷ In contrast, it has omitted to prepare for the take-over of social provision on the Copperbelt; moreover, the unjustified adoption of deliberately regressive measures is incompatible with the undertaking of progressive realisation.¹⁴⁸ Zambia has also ratified the aforementioned ILO Social Policy (Basic Aims and Standards) Convention (No. 117). This requires that '[a]ll policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress' and that '[a]ll policies of more general application shall be formulated with due regard to their effect upon the well-being of the population.'¹⁴⁹ The improvement of standards of living is regarded as the principal objective in planning economic development.¹⁵⁰ More specifically, the Zambian Government, as a State party to the Convention, is required to take all practicable measures 'in the planning of economic development to harmonise such development with the healthy evolution of the communities concerned.'¹⁵¹ In particular, 'efforts shall be made to avoid the disruption of family life and of traditional social units, especially by...the promotion of town and village planning in areas where economic needs result in the concentration of population...'¹⁵²

In accepting the advice of the Rothschild's report on the privatisation of ZCCM in 1996, the Government has done little or nothing to prepare for the take-over of social assets, postponing the adoption and implementation of concrete measures over the initial two year period during which time the buyers of the mines have been running services. However, these commitments are now coming to an end. Moreover, and in respect of the core ZCCM divisions which

have recently been sold, Anglo American and other buyers are refusing to take on any responsibility for social provision.

Belatedly recognising that the local councils are utterly lacking in the resources and capacity to take over provision, the Government's last minute response, at the end of March 1999, has been to establish an Asset Holding Company (AHC).¹⁵³ ZCCM social assets owned by the parastatal in Nchanga, Nkana, Konkola, Mufulira and Luanshya have been transferred to the AHC which is to take-over responsibility for municipal services in the five mine townships.¹⁵⁴ A private operator is to be engaged by the AHC to deliver services on the basis of a four year management contract and will be responsible for operating and maintaining the associated facilities, for billing customers and for collecting revenue on behalf of the AHC. In return, the operator is to be paid a management fee together with incentives for reaching specified performance targets. Essential operation and maintenance costs are to be met out of two funds.¹⁵⁵

The criticisms of the Government's plans are manifold. First, the programme represents a belated, reactive response to a problem that was apparent as soon as the decision was taken to privatise ZCCM. This runs contrary to the determination made by the Committee that '...steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies...with the obligations under article 11 of the Covenant.'¹⁵⁶ The decision to act has been forced upon the Government by the uncompromising stance of Anglo American. It has not been initiated or informed by the need to ensure the realisation of social rights. There has been a lack of consultation with local councils.¹⁵⁷ At this late stage, the AHC is not operational. A World Bank project, key to the programme, is at the appraisal stage and there is little prospect of approval by the Bank's Board before the end of May 2000 at the earliest.¹⁵⁸

Second, the programme is limited in scope and duration. It relates only to water services, waste water services and solid waste management systems. It is unclear who is to be responsible in the longer-term for other municipal services such as lighting, refuse disposal, and road maintenance, let alone the management of extensive health facilities and the running of former mine schools. The AHC is itself an interim arrangement: the expectation is that local councils will take-over the management of water supply and sewerage disposal in the mining townships on a commercial basis as part of major reforms underway in the water sector as a whole. The ultimate aim is to share-out the cost of provision in rural areas, but recover costs from consumers in urban centres.¹⁵⁹ While the first phase of a pilot project on the Copperbelt has seen eight town councils form three joint companies to run water and sewerage services, the latter are not yet operational.¹⁶⁰ The same applies to the National Water Supply and Sanitation Council (NWASCO), the body which will regulate the AHC in its setting of water tariffs, despite have been established under the Water Supply and Sanitation Act of 1997.¹⁶¹

Finally, the commercialisation of water supply and sewerage services on a cost recovery basis, and in the absence of effective regulation and safeguards, is liable to lead to the exclusion of poor residents from provision and must threaten the realisation of the basic right to adequate, serviced housing and jeopardise the right to health. For those unable to pay a market tariff for their water, the prospect of disconnection must increase.

The current proposals to transfer the cost of social provision from the proprietors of the mines to employees and the public amounts to regression in respect of the Covenant. There will be an inevitable deterioration in an already low standard of living. This argument is made in specific terms and is not founded on an unreasoned *a priori* rejection of the market in supplying social goods. It is recognised that services which contribute to the realisation of social and economic rights may be provided by either the public or the private sector either separately or in combination.¹⁶² However, this in no way diminishes the obligation upon a State to ensure the satisfaction of minimum essential levels of each right.¹⁶³ As is evidenced within this submission, it is apparent that significant numbers of individuals in Zambia are already denied their rights to an adequate standard of living, food, housing, health, and education. In the circumstances which exist in Zambia, where seventy per cent of the population are poor and fifty-three per cent live in extreme poverty in the virtual absence of social welfare, the decision to provide services on a commercial basis will inevitably result in yet more people being denied the most basic of rights.

ii. The use of maximum available resources

The onus is upon the Government to overturn a conclusion of *prima facie* violation. To do so, it may cite resource constraints; yet still it must demonstrate that 'every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.'¹⁶⁴ On the one hand, it is the MMD Government which has taken measures to guarantee unprecedented tax and other concessions to companies in the mining sector. In this respect, it is pertinent to note that the Declaration on Social Development commits the Zambian Government to 'increasing significantly and/or utilizing more efficiently the resources allocated to social development' by, *inter alia*, ensuring that 'in accordance with national priorities and policies, taxation systems are fair, progressive and economically efficient, cognizant of sustainable development concerns, and ensure effective collection of tax liabilities.'¹⁶⁵ Yet the tax regime applicable to the mining sector in Zambia will have negative repercussions on revenue, and ultimately on public spending and the level of resources available for social provision, for decades to come.

Moreover, there is no indication that proceeds from the sale of ZCCM are being set aside or earmarked for social provision. Cash from the sale of ZCCM assets to date has not been deposited in the Privatisation Revenue Account administered under the Privatisation Act, but has instead been returned to the company. There are mitigating circumstances. As a consequence of chronic indebtedness in the face of declining production in the absence of investment, ZCCM is recording losses in excess of \$30 million per month.¹⁶⁶ The Zambian Government has therefore been providing finance - estimated at \$6 million each month, and therefore at a level significantly above any privatisation receipts - to keep ZCCM afloat in order to stave off moves by creditors to seek the liquidation of ZCCM which could trigger the collapse of the conglomerate and threaten the very basis of the Zambian economy. Despite this situation, it still might be assumed that any ostensible savings which the Government realises each time a loss-making ZCCM division is sold would free up domestic resources which could be allocated to the social sectors.

On the other hand, it is at this juncture that the culpability of both the international community and influential private sector players must be scrutinised. The neglect of preparation for the take-over of social provision and restraints on the ability of the Government to switch adequate funds towards the social sectors is a reflection of the agenda of the World Bank and IMF. Once more, the measures they have taken in respect of the privatisation of ZCCM have proved ill-advised when viewed in relation to the progressive implementation of the Covenant. This circumstance, in which the Government fails to invest in essential social services for the poor while simultaneously according massive tax breaks to rich foreign mining houses, also reflects the powerful vested influence of those very companies.

b. The advisability of measures adopted by the World Bank

To recap the argument made earlier in this submission, article 22 enables the Committee to bring to the attention of other organs of the United Nations and specialised agencies matters which may assist them in deciding on the advisability of international measures likely to contribute to the effective implementation of the Covenant. In accordance with article 22, recommendations of either a general policy nature or which relate to a specific situation may be made to the World Bank and IMF.¹⁶⁷ Recommendations of the second type open the way for the Committee to address concerns arising from individual projects or programmes. Use is made by the Committee of the principle that development assistance may be ill-conceived and even counterproductive in human rights terms. Hence '[i]n order to reduce the incidence of such problems, the whole range of issues dealt within the Covenant should, wherever possible and appropriate, be given specific and careful consideration.'¹⁶⁸ The Committee recommends that 'every effort should be made, at each phase of a development project to ensure that the rights contained in the Covenants are duly taken into account.'¹⁶⁹

Once more, it is strongly contended that the Bank has neglected to give consideration to the effective progressive implementation of the Covenant in the design and implementation of the measures it has taken to foster the privatisation of ZCCM. There are at least four areas of concern. First, the Bank's neglect of the social dimension to the privatisation of ZCCM; rather, technical assistance to support the sale is conceived of, supported, and supervised solely in relation to economic criteria centred on performance and productivity. Second, although there is no conditionality requiring the Government to plan for the social consequences of the ZCCM privatisation, it is apparent that continued Bank/IMF lending has increasingly been predicated on the rapid conclusion of the sale. The withholding of balance of payment support has reduced the resources available to the Government for social spending while, at the same time, the negotiating position of companies bidding for mine assets has been considerably strengthened by the knowledge that the Government is under immense pressure from the donor community to jettison ZCCM. Third, the Bank is itself seen to be reacting to events, taking action through both its private and public arms in the interests of Anglo American. This raises issues of accountability and discrimination. Furthermore, and finally, the refusal of the private sector to take on responsibility for social provision has forced the Bank to consider the use of project assistance to support municipal services in the Copperbelt towns. Putting aside the fact that social measures should have been an integral part of the ZCCM privatisation when it was initiated three years ago, there are other grounds for criticising the assistance on offer. The objective of the project is not to transfer responsibility for social provision, formerly attributable to the State through ZCCM, to central or local government; rather, the aim is to encourage a commercial system in which private companies provide services at market prices to consumers. Yet it appears that the Bank has so far failed to consider the implications of these plans for the realisation or denial of the social rights of poor residents.

i. *The culpability of the World Bank in failing to consider the social dimension in the privatisation of ZCCM*

The Bank's neglect of the social dimension in the measures it has promoted to privatise ZCCM is apparent at both the level of the mining sector as a whole and at the level of the privatisation plan *per se*.

A number of Bank lending instruments have been explicitly concerned with shaping the mining sector in Zambia and advancing the privatisation of ZCCM. A Mining Technical Assistance (Mining TAS) project was first supported by the Bank in 1991. One key objective was to develop institutional capacity within the Ministry of Mines and Minerals Development and to assist in the creation of a pro-private sector environment to encourage mining companies to invest in Zambia.¹⁷⁰ The Economic Recovery and Investment Promotion Credit was designed for the purpose, *inter alia*, of 'improving the legal, fiscal, environmental framework for the mining sector, strengthening the Ministry of Mines and Minerals Development (MMMD), and adopting a plan for the privatization of ZCCM.'¹⁷¹ While the Government of Zambia agreed to carry out this reform agenda, funds from the ERIP credit were provided as general balance of payments support. The specific requirements for the release of funds under the credit included, *inter alia*, the adoption of a new Mines and Minerals Act together with a legally secure pro-investment fiscal regime and environmental framework.¹⁷² The Bank also provided \$23 million to be spent directly on support for the ERIP programme through a technical assistance facility, building on the previous Mining TAS, to implement policy, institutional and regulatory reforms in four areas:¹⁷³ the privatization of ZCCM; the financing of ZPA activities; improving the operational capability of the Ministry for Mines and Mineral Development; and the drafting of new business related laws.¹⁷⁴ The latter required the use of funds to restaff the Department of Legal Drafting at the Ministry of Legal Affairs (MOLA).¹⁷⁵

Despite the far-reaching implications of legislative reform on people's rights in matters from housing to employment, from the environment to taxation, the Bank's monitoring of technical assistance to the Ministry of Legal Affairs was geared to 'the number of pieces of legislation (together with the number of pages) drafted by the department every year, with 1995 as a baseline' and 'the number of draft bills contracted out to private lawyers.'¹⁷⁶ The Mining and Minerals Act itself was designed to guarantee security of title to mine owners, unrestricted access to foreign exchange, the right of companies to market products, and freedom of commercial operation.¹⁷⁷ Agreement under the ERIP credit ensured a new pro-mining fiscal regime which 'concentrates taxation on profits, rather than output and is non discretionary, and internationally competitive.'¹⁷⁸ When crystallised in the development agreements accompanying the Rothschild privatisation plan, it is apparent that the Zambian Government has been forced to offer blanket tax and other concessions to mining companies on the premise that this will attract investment. Even so, international mining houses have attempted to exploit their position and gain further advantage. The allegation has been made in the Zambian press that the negotiating position of certain companies has been facilitated by subtle donor pressure.¹⁷⁹

Turning to the question of Bank support for ZCCM itself, privatisation of the conglomerate was not considered an option when the first technical assistance package was designed. The primary component of the Mining TAS aimed to assist ZCCM to improve its operational performance by lowering its costs, to initiate joint ventures to enable the company to mine hitherto underdeveloped copper reserves, and to divest itself of non-mining assets. The corporate plan prepared by ZCCM failed to reduce costs.¹⁸⁰ On the contrary, efficiency and production declined to a point where ZCCM was in danger of insolvency. As a result of this deterioration, the Bank intervened directly at the request of Government: 'Bank staff worked rapidly and intensively to identify the underlying problems and to support ZCCM in preparing an Emergency Action Program to enable ZCCM to survive...'¹⁸¹ In its later stages, finance under the Mining TAS was used, in conjunction with subsequent technical assistance, to prepare the mining parastatal for privatisation.

The Bank, in explaining the delay in the ZCCM privatisation, suggests that, among other reasons, '...complex issues relating to the retrenchment of labor, handling of ZCCM's accumulated arrears, liability for past environmental damage, ownership of staff housing, and provision of social infrastructure and municipal services had to be resolved.'¹⁸² Yet many of these matters have either not been resolved at all or else have been resolved to the detriment of mining communities.

First and foremost, the ZCCM privatization report advises that, beyond interim measures of limited import, the issue of social provision should be set aside so as not to delay the sale. The Bank's enthusiastic endorsement of this plan - and, in other terms, the Bank's culpability for its social failings - is unequivocal. It was the Bank which provided the necessary finance and which congratulates itself on playing a 'vital role' in the privatization of ZCCM. Under the ERIPTA credit, a \$2 million project preparation facility advance was made available to fund the hiring of legal/financial advisors.¹⁸³ The part subsequently played by Rothschilds and Clifford Chance in the drawing up of the ZCCM privatization plan and related sale documentation is described as 'indispensable'.¹⁸⁴ The Bank may consider the hire of this high quality international investment and legal advice as necessary to lend 'political and business credibility' to the sale of ZCCM, but no consideration is given to the plan's social credibility.¹⁸⁵ The Bank concedes that the rights of other ZCCM shareholders, namely Anglo American, had to be considered and protected in drawing up the privatization plan,

while no account is taken of the economic and social rights of those living in mine-dominated townships in the Copperbelt.¹⁸⁶ Legal covenants and conditionality associated with the ERIP are solely concerned with the adoption and implementation of the ZCCM privatisation plan. They do not envisage preparations for the take-over of ZCCM social responsibilities; nor the establishment of social safety nets to cover direct and indirect retrenchments. The performance indicators used by the Bank relate to the company's fiscal position, production targets, operating costs and employment levels.¹⁸⁷ No use is made of social indicators, despite the pivotal position of ZCCM in providing social services. In relation to the ZPA, the preoccupation is solely with quantifying privatisation progress.¹⁸⁸

ii. Conditionality on the privatisation of ZCCM and the withholding of balance of payments support

The underlying imperative from the Bank and IMF has been to privatise ZCCM. Over time, there has been a gradual hardening of the tactics employed to bring this about, culminating in uncompromising conditionality requiring the conclusion of the sale. The consequences, with negative repercussions for the realisation of economic and social rights, have been twofold: firstly, and at a general level, the withholding of balance of payments support which has reduced the resources available to the Government for social expenditure; and secondly, the reinforcement of a situation in which incoming buyers have been able to demand unprecedented tax concessions and to reject responsibility for existing employees and social service provision.

The Bank's preference was for the early privatisation of ZCCM. However, when PIRC I and PIRC II were developed, the sale of ZCCM was considered too politically sensitive and practically difficult for the Government to achieve early in its tenure, although it is clear that Bank staff in Washington favoured the inclusion of the mining conglomerate in the original privatisation program.¹⁸⁹ Instead, the Bank confined its role to the initiation in 1992 of preparatory studies on State divestiture from ZCCM.¹⁹⁰ Under PIRC II (FY93), the Government agreed to examine strategic options on how to privatise ZCCM. This culminated in the Kienbaum report. However, at this juncture, the acceptance of its findings was not a covenanted requirement of Bank lending. The omission of ZCCM from the original privatisation program was subsequently described by the Bank's Operations Evaluation Department as 'a missed opportunity,' 'misguided' and 'the major shortcoming of the privatisation program.'¹⁹¹ Although the imperative was clearly to push for the privatisation of ZCCM, regional Bank staff were 'trying to find the right balance between insisting on tight timetables and dictating methods on the one hand and allowing the Government to choose methods that fit their political goals on the other.'¹⁹²

Once the decision had been taken to commission the Rothschild's report, the Bank made the adoption of this privatisation plan for ZCCM a specific Bank condition for the second tranche release of funds under the ERIP Credit (FY95).¹⁹³ At this point in time, the Bank, although candid in its aim to achieve the disposal of ZCCM, showed restraint: 'Although the ultimate objective of the ERIP program was the actual privatization of ZCCM, this was not made a condition of the ERIP Credit in order to keep the playing field level for ZCCM and the Government vis-à-vis potential buyers.'¹⁹⁴ Second tranche release of the Bank's follow-on ESAC II (FY 96) was similarly made conditional on satisfactory progress in implementing the ZCCM privatisation action plan.¹⁹⁵

The Bank appears to have been satisfied with initial progress in the first stage of privatisation under which the sale packages were put out to competitive tender and bids were received by the end of February 1997.¹⁹⁶ However, the replacement of the ZPA/Rothschilds' negotiating team and subsequent delays in the sale of key ZCCM assets prompted some disquiet. Although the Consultative Group meeting scheduled for December 1997 was undoubtedly postponed because of concerns over governance and human rights, representatives of both the World Bank and IMF were cited in the Zambian press referring to the failure to sell ZCCM. However, it was the effective collapse of negotiations to sell the core Nkana/Nchanga mines to the Kafue Consortium in the second quarter of 1998 which caused the multilaterals to withhold balance of payments support. External program support of \$235 million was pledged at the consultative group meeting on May 1998, but its release was conditional on the swift privatisation of ZCCM.¹⁹⁷ Any vestige of the policy which resisted tying balance of payments support to the final sale of ZCCM, on the grounds that potential buyers could exploit such conditionality for their own ends in negotiations, was therefore abandoned.

It is in this context, when the Government's access to much needed foreign exchange and the funding of aspects of its domestic program for 1998 was dependant upon the restoration of balance of payments support, that Anglo American entered into talks over the prospect of restructuring the core ZCCM sale packages to its advantage. Indeed, it was not until the company, from this position of strength, had negotiated and signed a memorandum of understanding with the Government over the purchase of Nkana, Nchanga and Konkola on 24 November 1998, that the donor community indicated that it would consider the approval and release of funds. In December 1998, the IMF agreed in principle to a second Enhanced Structural Adjustment Facility for Zambia, the negotiation of which had been delayed since May 1998. However, confirmation was dependant upon a number of prior actions, one of which was substantial progress on the privatisation of ZCCM.¹⁹⁸

The Bank's long-awaited \$170 million Public Sector Reform and Export Promotion Credit was approved by the Bank's Board of Executive Directors on 26 January 1999, but only after the memorandum of understanding between the Government/Anglo American over the sale of remaining ZCCM assets had been affirmed in a 'final' agreement signed on 19 January 1999. The PSREPC is specifically designed to facilitate completion of the privatisation of ZCCM by bankrolling the labour reduction program.¹⁹⁹ The first tranche release is for \$65 million; however, the payment of an interim \$40 million 'floating tranche' is dependant on the fulfilment of conditions relating to public sector reform while the second tranche release of the balance of \$65 million is the subject of a number of covenanted agreements. In this respect, conditionality on the completion of privatisation is explicit: 'The transfer to the new owners of ownership and control of the remaining core ZCCM assets for which MOUs and/or ales agreements have been reached and decisions concerning the future status of any major ZCCM assets that are unsold will also be conditions for the release of the Second Tranche.'²⁰⁰ It is understood that similar conditionality applies to the release of bilateral funds from certain donors.²⁰¹

At the end of March 1999, the IMF Board finally approved its follow-on ESAF worth a total of \$349 million and designed to support the 1999/2001 economic and financial program as outlined in the Policy Framework Paper agreed between the Fund, Bank and the Government.²⁰² IMF lending in the first year, worth \$55 million, is conditional not only on a number of fiscal and monetary benchmarks, but also on structural performance criteria to include continued 'substantial progress' being made in the privatisation of ZCCM which is understood by the Zambian Government to mean 'the transfer of the major asset packages of the ZCCM.'²⁰³ Given that the final sale of the remaining core ZCCM assets had still not been finalised at the end of October 1999, it is apparent that the further release of both IMF and Bank funds is once again in abeyance.²⁰⁴

The recent withholding of balance of payments support triggered by the failure to privatise ZCCM has required the Government to plunder its foreign currency reserves and even transfer resources out of the domestic budget. This sequence of events is described in more detail in Section 1; the consequences for social spending are explored in Section 3. At this juncture it is sufficient to note that the equivalent of \$183 million was transferred from the domestic budget in 1998 to meet servicing on foreign debt.²⁰⁵

Moreover, because the Zambian Government's support for ZCCM has its origin in donor finance, any savings that are made as loss-making divisions are sold will undoubtedly be mirrored by a corresponding fall in balance of payments support. As a result, there is unlikely to be a freeing-up of domestic resources in the near future. Meanwhile, ZCCM's debts have mounted: net short-term debt and arrears to suppliers were estimated to total \$124 million to the end of March 1999 while the parastatal's debt service obligations to the World Bank alone amounted to \$23 million at the same date.²⁰⁶ The total has undoubtedly risen in the interim and will continue to do so until all ZCCM divisions are sold. It is the intention of the Government to assume these obligations when the conglomerate is finally privatised. Furthermore, the first tranche of \$65 million under the PSREPC which the Government is borrowing from the World Bank is to be on lent to ZCCM to cover a redundancy program required by Anglo American as a condition of its purchase of the core mines. This transaction is discussed in more detail in the next subsection.

iii. Bank action in the interests of Anglo American

As has been noted, the Bank initially avoided tying its adjustment lending to the privatisation of ZCCM in order to create a level playing field for the sale. However, the question must be asked as to whether its support for the privatisation of ZCCM was always going to be in the best interests of Anglo American given the company's position on the ZCCM board? The Bank has readily conceded that the Rothschild report paid for through ERIPTA was commissioned precisely because of Anglo's opposition to the earlier Kienbaum study. Furthermore, from the outset, this second study had to deliver recommendations at least acceptable to Anglo American if it was to be approved by the ZCCM board. The Bank has subsequently become locked into supporting a privatisation process over which Anglo American has exercised considerably influence: its negotiation of the exclusive right to develop Konkola Deep; the excise of the Mufulira smelter from its recommended sale package; the retention of the right of Anglo appointed directors on the ZCCM board to vote on the final acceptance or rejection of each winning bid. The latter is confirmed in a document produced in court in the case bought by First Quantum against Binani, ZCCM, ZPA and the Government as fourth defendant over the award of the sale of the Luanshya package confirm the key position of Anglo American:

'The Board of Directors of ZCCM comprises GRZ and ZCI [an Anglo subsidiary] directors. Despite GRZ directors been [sic] in the majority[,] the Articles of Association provide that any decision to dispose of major assets or shares of ZCCM requires approval by a quorate of directors. A decision can therefore not be made by simple majority and requires the consent of both sets of directors....The Agency [ZPA] Members should note that while the objectives of GRZ in the privatisation of ZCCM are broad and encompassing, those of the minority shareholders may be narrower and focusing [sic] more on maximising value for their shareholding in ZCCM in the short and long term. For instance,

the objective of diversifying ownership of Copperbelt assets may not necessarily be consistent with that of maximising value...Therefore, any decision reached in the sale of ZCCM's assets will require a delicate balance between these possibly varying objectives of GRZ and the minority shareholders.'²⁰⁷

The fact that the Bank has supported a privatisation process which has implicitly favoured Anglo American is undeniably a reflection of the company's real and pre-existing influence; however, other aspects of the Bank's support have been explicit and direct. This applies to both the Bank's public and private sector arms, respectively the International Development Association and the International Finance Corporation. First, concessional IDA funds of almost \$10 million have been spent not only on the services of Rothschilds and Clifford Chance in the ZCCM privatisation, but also on assisting ZCCM in the joint-venturing with Anglo American of Konkola Deep.²⁰⁸ Second, the International Finance Corporation has long been engaged in talks with Anglo American over finance for its plans to develop not only Konkola Deep, but also the existing Konkola Mine and Nchanga. Indeed, one of the preconditions set by Anglo in January 1999 in respect of its purchase of the remaining core ZCCM assets was the securing of third party 'non-recourse' financing.

The IFC board has recently approved an investment of \$30 million, in equity and shareholder loans, to part finance the purchase and initial two year mining rehabilitation programme at Konkola, Nchanga, and Nampundwe.²⁰⁹ The total cost is estimated at \$260 million. The Corporation, in the context of revitalising the mining sector as 'a key component of World Bank Group strategy,' describes the Konkola Copper Mine plc assets as 'the essential part of this privatization' and its own involvement as providing 'the final impetus to allow their successful privatization'.²¹⁰

The IFC recognises that there are concerns over the project in respect of the environment, health and safety of personnel, and adverse social consequences.²¹¹ The project is designated Category A which means that an Environmental Assessment is required. It is acknowledged that arrangements relating to the transfer of responsibility for the provision of services such as health, education, housing, water, sanitation and power require careful monitoring given the fact that negotiations between the World Bank, the Government and Anglo have not been concluded. Moreover, given that the IFC has already drawn attention to the importance of involuntary resettlement as a social issue, it is of the utmost importance that the project is implemented in full compliance with international human rights standards and the Bank's own policy on resettlement. Please see subsection C.2 for further discussion of the latter.

Finally, a related element of the sale requires that funds are raised through multilateral donors to pay for redundancies. A substantial part of the Bank's latest IDA credit is to be used for this purpose: 'In the transactions concluded so far, the new owners have undertaken to take over the existing labour force and to honor all existing conditions and terms of service. Any labor reduction programs will thereafter be implemented at their discretion and cost. The investors negotiating for the remaining assets are reluctant to take over all the workers.'²¹² Instead, such workers will remain with the residual ZCCM holding company which will implement a mass redundancy programme.²¹³ IDA funds of \$65 million under the PSREPC are to be lent to the Government and then on-lent to ZCCM on commercial terms so that it can meet the cost of redundancies.²¹⁴ 7,400 employees, representing about a quarter of ZCCM's workforce at the end of 1998, are to be made redundant under the ZCCM rationalisation programme.²¹⁵ The residual ZCCM holding company is to have a staff of just 30.

The programme was originally to have been implemented over the period January 1999 to March 2000, but has been postponed while the finalisation of the sale of ZCCM's core assets was itself delayed. On 21 January 2000, Reuters reported the findings of a study by the Anglo/ZCI subsidiary Konkola Copper Mining plc which quantified mass redundancies. The workforce at Nchanga was to be cut by 3000 prior to completion of the sale. A further 450 posts will be lost at the mine by the end of 2000. At the existing Konkola mine, there are to be 1,640 redundancies while 91 workers are to lose their jobs at Nampundwe. Articles in the press suggest that morale among miners is extremely low: reportedly, many have already received notices of termination of employment.²¹⁶

The Bank agreed to provide public support at the insistence of a private company on the basis of what was, at the time, a non-binding agreement. Indeed, the original deal of January 1999 to buy the mines was renegotiated by Anglo and has only just been concluded.²¹⁷ Given that the Bank is using public funds to meet ZCCM redundancies, it is incumbent upon it to account for why these job losses are necessary. The payment of terminal benefits is, of course, no substitute for secure employment. The Bank has conceded that, even taking into consideration severance payments, the short term impact of thousands of redundancies in both the public service and ZCCM is a matter of concern.²¹⁸

If retrenchment is inevitable, it is of course of paramount importance that ZCCM employees are paid their terminal benefits promptly and in full. The use of Bank funds for this purpose when there is no alternative source of finance is vital to the interests of affected employees. However, and in comparison, the discrimination suffered by those workers in Zambia who have lost their jobs before and after privatisation, but who have not received their terminal benefits is heightened. The Committee calls upon all relevant bodies, including the World Bank, to make every effort in the

measures it employs to ensure that the rights contained within the Covenant are given 'specific and careful consideration' and are 'duly taken into account'.²¹⁹ The Covenant encompasses the right to fair and equal remuneration.²²⁰ In this respect, it is also pertinent to consider the ILO Equal Remuneration Convention, 1951 (No. 100), to which Zambia is a State party.²²¹ Moreover, the overarching principle of non-discrimination applies to the exercise of all rights in the Covenant.²²² The Bank may be justified in its decision to fund ZCCM redundancies, although it must account for other aspects of its backing of the Anglo sale; however, what it must do, in respect of obligations arising out of the Covenant, is explain why it has omitted to act when other equally deserving employees who have lost their jobs as a result of privatisation have been deprived of their entitlements and denied access to assistance.

iv. The advisability of belated project assistance: the Zambia Mine Township Services Project

The Bank has responded to the refusal of the purchasers of the remaining ZCCM core assets to take on the responsibility, even in the short-term, for service provision by preparing a last minute package of assistance. The principal objective of the Mine Township Services Project is to support the Government's own belated plans for an Asset Holding Company to manage water supply and sewerage services in the five mine townships of Nchanga, Nkana, Konkola, Mufulira and Luanshya during the transition period following the privatisation of ZCCM. The project has four specific aims: firstly, to introduce a management structure to promote private sector participation and commercialisation; secondly, to implement cost recovery and 'demand management mechanisms'; thirdly, to develop and make operational a longer term strategy to integrate the running of water and sewerage services in the mine townships with those provided by the local councils - again on a commercial basis - in non-mine areas; and, finally, to undertake selected rehabilitation and maintenance of the existing infrastructure.²²³

The Bank's Public Information Document for the project betrays a number of ostensible misconceptions. It is stated that the ZCCM water and sewerage systems are 'self-contained' when, in fact, certain councils are reliant on ZCCM plant and infrastructure.²²⁴ The systems are characterised as having been 'fully supported by ZCCM' and 'sheltered from the maintenance decline of the majority of the country's infrastructure'.²²⁵ While this assessment has some validity in relative terms, the Environmental Impact Statements commissioned by ZCCM and completed in March 1997 prior to privatisation record a system which is overwhelmed by demand and dilapidated to the point where there is a threat to public health.

Whereas the measures adopted by the Bank in respect of the ZCCM privatisation should be informed by the whole range of issues dealt with in the Covenant,²²⁶ once again, the organisation is rather seen to be reacting, in the main, to the dictates of a private company: 'The need to put in place a transitional arrangement to oversee the urban/municipal services and reassure the new mine owners of the continuation of these services, cannot be overemphasized'.²²⁷ Clearly the timing of each stage of the project cycle is being managed to coincide with the unravelling of the latest twists in the final purchase negotiations. Following the signing of the conditional agreement between the Government/ZCCM and Anglo American on 27 October 1999, the project was due to be appraised by Bank staff in November 1999 for projected board approval in March 2000. The delay in finally concluding the sale resulted in the appraisal date being put back to February 2000. The projected date for approval by the Bank's Board is not until the end of May 2000. Too little is being done too late.

Project planning which is not informed by a close reading of the Covenant has resulted in an exclusive and inappropriate reliance on the market to deliver essential services which underpin social rights to housing and health. It must be reiterated that the Committee, in its interpretation of the Covenant, is neutral in respect of the vehicle used to realise economic and social rights.²²⁸ Moreover, an increased reliance on the free market and the growing role of private providers are recognised as features of globalisation which are not, in themselves, necessarily incompatible with the principles in the Covenant.²²⁹ At the same time, the principal obligation of result is to take steps to achieve the progressive realisation of the rights recognised in the Covenant.²³⁰ The adequacy or otherwise of the totality of public and private measures in this regard is assessed against this datum.

In comparison, the commercial arrangements envisaged for social service provision on the Copperbelt, in the absence of measures designed to protect the rights of the poor, will result in inevitable regression and an increased denial of article 11. A requirement under the Covenant is for the targeting of vulnerable groups. Juxtaposed to this, the Bank is supporting commercially-based reform measures in the full knowledge that '[m]arket forces will...dictate the level of services that will prevail for the various income groups'.²³¹ The Bank regards the involvement of the private sector as the key to sustainable service provision in urban areas. To achieve this goal, the Bank endorses the principle of cost recovery;²³² moreover, private operators must generate a profit either through contract fees or direct charges. Either way, the expectation must be that charges to residents will increase to reflect the total cost of provision which was formerly subsidised by ZCCM. In its statement on globalisation, the Committee is of the view that the introduction of user fees, or cost recovery policies, if not supplemented by necessary safeguards, can easily result in significantly reduced access by the poor to services which are essential for the enjoyment of the rights recognised in the Covenant.²³³

The Bank fails to address the inevitable, adverse consequences for the poor of the proposals within the Mine Township Services Project. The Public Information Document neither articulates a concern with poverty alleviation nor does it give any consideration to the use of safeguards to ensure that those without the means to pay market prices will continue to receive essential services. Article 22 provides a basis for the Committee to examine whether the Mine Township Services Project, as planned by the World Bank, is itself advisable in this respect. In the context of globalisation, with its attendant recourse to the free market and private provision, the Committee calls for ‘a renewed commitment to respect economic, social and cultural rights’ and emphasises that ‘international organizations, as well as the governments that have created and manage them, have a strong and continuous responsibility to take whatever measures they can to assist governments to act in ways which are compatible with their human rights obligations and to seek to devise policies and programmes which promote respect for those rights.’²³⁴

c. The fulfilment or rejection of corporate responsibilities

A company, in conjunction with the Government, has agency through negotiation in shaping the development agreements to which it is subject. Given this agency, a company must be answerable to the extent in which it succeeds in negotiating a development agreement which is manifestly not in conformity with international labour and human rights instruments or corporate codes of conduct. However, this assessment is made problematic by the fact that such agreements are, for the most part, executed in accordance with national law. A company may argue that it need only comply with national law and with the terms of the agreements governing its operation; yet, the root basis for nonconformity with international standards may exist at the underlying level of national legislation. In the context of deregulation in Zambia, aspects of national laws relating to employment and industrial relations, or wider Government social policy, are themselves incompatible with international instruments such as the Covenant and relevant ILO standards.

A critique on three levels is therefore required. First, the compatibility of national legislation and practice must be assessed in relation to international human rights and labour law. Second, corporate codes are useful in highlighting instances when companies seek to avoid, suspend or reduce national curbs on their operations. This initial differentiation is a necessary, but is not a sufficient basis, for a full critique. Any acceptance of the argument that companies are automatically absolved of responsibility for upholding economic and social rights as long as they are in compliance with *Zambian law* and the terms of development agreements is profoundly misplaced. This is because national laws are subject to the prior influence of the private sector, together with the World Bank, IMF, and other advocates of deregulation; and because firm or industry-level agreements reflect the strong negotiating position of companies in their individual or collective capacity. In Zambia, there are instances when the terms *first* agreed in negotiations are *subsequently* reflected in law. Hence a third level critique is required in which the conduct of companies is subject to direct scrutiny in relation to international standards.

The OECD Guidelines for Multinational Enterprises, and the ILO Declaration of Principles concerning Multinational Enterprises are relevant at the second level of critique: they apply directly to companies and are suited to reviewing their conduct in respect of domestic parameters agreed with a Government. At the third level of critique, the usage of the OECD Guidelines is limited, although by no means annulled, by a degree of ambiguity. For example, it is recognised in the Guidelines that ‘[e]very State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction’ yet this right is qualified as ‘subject to international law and to the international agreements to which it has subscribed.’²³⁵ Hence explicit recognition is given to the application of overarching obligations. At the same time, ‘[t]he entities of a multinational enterprise located in various countries are subject to the laws of these countries.’²³⁶ The perception that companies need only comply with national laws is reinforced, but this remains a partial interpretation of the Guidelines. While they are not viewed as a substitute for national law and practice, the recommendations within the Guidelines are perceived in supplementary terms and the firm expectation is that companies will adhere to them.²³⁷ After all, their *raison d’être* is the need for standards applicable across national boundaries to mirror the organisation and operation of multinationals. It is pertinent to note, based on the example available in the public domain, that the development agreements governing the operation of the new proprietors of the mines in Zambia formulate respect for domestic and international law in strikingly similar terms: ‘This Agreement shall be governed by and construed in accordance with the laws of Zambia which the Parties acknowledge and agree includes, so far as they are relevant, the rules of international law.’²³⁸

The ILO Tripartite Declaration is less circumscribed in its consideration of the applicability of international human rights and labour law. While all parties concerned should respect the sovereign rights of States and obey national laws and regulations, the Declaration places particular and specific emphasis on respect for international standards.²³⁹ Concerned parties, including multinational enterprises, ‘should respect the Universal Declaration of Human Rights and the corresponding International Covenants...as well as the Constitution of the International Labour Organisation and its principles according to which freedom of expression and association are essential to sustained progress.’²⁴⁰ The ILO

Tripartite Declaration constitutes guidance for all concerned parties, including multinational enterprises, when taking measures or adopting social policies.²⁴¹ In this regard, the relevancy of ILO Conventions and Recommendations for social policy formulation is underlined.²⁴² Governments who have not ratified ILO Conventions Nos. 87, 98, 111 and 122 are urged to do so.²⁴³ All Governments, whether or not they are State parties to these Conventions, should apply the principles they embody through national policies. Governments are reminded of their obligation to ensure compliance with the Conventions they have ratified. Where there is non-compliance, all parties, including multinational enterprises, should refer to them for guidance in their social policy.²⁴⁴

Two provisos arise from this consideration. First, the use which is made of existing normative standards governing the operation of multinational enterprises is pragmatic: it should not be inferred that they are considered a sufficient check on corporate conduct. The ambiguity of the OECD Guidelines in respect of the applicability of international standards is a particular shortcoming. The ILO Tripartite Declaration is more robust in asserting respect for such standards. Second, while international human rights and labour instruments are drawn upon extensively within this submission to assess the adequacy or otherwise of State legislation and practice, it is maintained that such instruments are increasingly interpreted to apply direct responsibilities for companies. Hence, and where appropriate, reference will also be made to articles within the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the ILO Social Policy Convention (No. 117), and the Declaration on the Right to Development. In this way, international human rights and labour law and normative corporate codes are viewed as complimentary.

The UN Special Rapporteur on the Realisation of Economic, Social and Cultural Rights recognises that '[w]here measures designed to stimulate the private sector are put into place, what often occurs is the de facto relinquishment of what were previously State responsibilities.... Even in cases where the State remains committed to at least aiming to guarantee the range of economic, social and cultural rights, it is unable to do so.'²⁴⁵ The parallel with the evolving situation in Zambia is unequivocal. Privatisation of ZCCM has seen the relinquishment of parastatal social responsibilities attributable to the State. This, in itself, constitutes regression on the part of the Zambian Government in fulfilling economic and social rights under the Covenant. At the same time, the ability of the Zambian State to take up direct responsibility for social provision through central or local government is precisely undermined by the tactics adopted by powerful corporate players: first, by use of their negotiating power to demand and win financial concessions which deprive the Government of revenue and its capacity, if so minded, to increase social spending; and second, by their insistence to withdraw from social provision without acknowledging longer term responsibilities to local communities and the necessity for a carefully planned transition period. There is normative support for this interpretation.

i. Excessive tax concessions and the misuse of corporate power

Companies as private collective bodies have a significant role to play in achieving the right to development, and as such are enjoined in article 2(2) of the Declaration on the Right to Development to respect human rights and to 'promote and protect an appropriate political, social and economic order for development.'²⁴⁶ In contrast, the exploitation of a strong negotiating position to increase tax and other concessions to the point where the resources available to the Zambian Government to realise economic and social rights are significantly diminished must amount to a contravention of this article. In the sphere of normative codes governing company conduct, it is recognised in both the ILO Tripartite Declaration and the OECD Guidelines that enterprises should 'take fully into account established general policy objectives of the Member countries in which they operate'.²⁴⁷ In particular, it is specified within the ILO Declaration that '[t]heir activities should be in harmony with the development priorities and social aims...of the country in which they operate' while under the OECD Guidelines, multinational enterprises should give due consideration 'to those countries' aims and priorities with regard to economic and social progress...'²⁴⁸ Tax concessions for investors in the mining sector in Zambia have been written into the Mines and Minerals Act, made more favourable still in successive budgets, and protected in the long term through model development agreements; yet still private mining companies, either individually or through consortiums, have pressed to secure ever greater advantage.

Tax concessions pursued by the Kafue Consortium

At various points in its fruitless negotiations for Nkana and Nchanga, the Kafue Consortium sought additional allowances. The Consortium's first offer was reportedly subject to tax concessions for up to 20 years.²⁴⁹ Its improved bid of June 1997 was also tied to tax concession over and above those already granted across the board to mining companies: a further reduction in mineral royalty tax from two to one per cent;²⁵⁰ and exemptions from the payment of Import Declaration Fees and withholding tax on loan interest.²⁵¹ If these concessions were refused, the cash consideration was to be reduced by \$75 million. By November 1997, as the result of further negotiations, the requirement of extra tax concessions had been dropped and the conclusion of the sale seemed likely. However, and against a background of falling copper prices and increasing ZCCM liabilities, the Consortium, in its unsuccessful final bid of March 1998, was demanding 100 per cent exemptions from mineral royalty tax for seven years, from Import Declaration Fees, from excise duty on electricity for five years, and, if necessary, from import duties on fuel products.²⁵²

Tax concessions achieved by Anglo American

Anglo American has secured a lower level of company income tax in order to improve the internal rate of return from the Konkola Deep Mining Project as it progresses.²⁵³ The tax rate to be applied is 25 per cent in comparison to the normal rate of 35 per cent for companies listed outside of Zambia. Based on existing concessions at the time relating to the offset of losses for ten years, it was calculated that any profits from KDMP would not be taxed until its eleventh year of operation. The period for the carry over of losses has since been doubled. In addition, Anglo American has been guaranteed a reduction in the power tariff by almost 20 per cent.²⁵⁴ This will significantly reduce the company's costs and increase profitability.²⁵⁵ Finally, mineral royalty was to have been reduced from an already low 2 per cent to 1 per cent. In the event, the reduction has been even greater. These concessions and others are confirmed in the 2000 budget, as analysed further in the main text.

Overall, the pursuit of ever greater tax concessions constitutes regression when considered in relation to the privatisation of ZCCM on equitable terms. The recommendation made by Kienbaum in its original consultancy report on strategic options for ZCCM was for the use of a system of tax credits to be used to reward companies for their continued support of social services. Instead, not only have private buyers rejected responsibility for social provision, but they have also demanded extraordinary tax concessions.

Investors in mining have benefited from tax concessions in successive budgets. The 1998 budget allowed for the offset of 100 per cent of losses against profits and to carry forward losses for ten years. Mineral royalty tax was reduced from 3 to 2 per cent. Withholding tax on interest and dividends was reduced from 15 per cent to 10 per cent. Designated mines were already allowed to write-off 100% of capital expenditure against tax.

Prompted by IMF concern over the effect of preferential tax treatment on revenue, the Government committed itself to refrain from introducing any further tax concessions in 1999. However, tax incentives relating to the sale of ZCCM were explicitly exempted.²⁵⁶ Certain members of the IMF voiced significant reservations about this arrangement: '...some Directors expressed concern about the generosity of the tax concessions granted in the context of the privatization of ZCCM, which would entail significant fiscal costs in the long term, while other Directors agreed that these concessions were important for the recovery of the copper sector in Zambia.'²⁵⁷

Since the time when the concerns of IMF directors were made public, the Zambian Government has proceeded to announce a raft of additional and extraordinary concessions in its 2000 budget to benefit the new buyers of the remaining ZCCM operations.²⁵⁸ The measures will largely benefit Anglo American and are not applicable to the mining sector as a whole. The concessions were granted in order to facilitate recapitalisation and encourage investment in the mining industry. As justification for their exclusivity, it was stated that the remaining assets suffered operational problems which translated into lower output and export earnings.²⁵⁹

The concessions are unprecedented. The expected reduction in corporate tax from 35 per cent to 25 per cent is confirmed; however, the period for carry over of losses is extended to 20 years. The mineral royalty rate is lowered from 2 to just 0.6 per cent of the gross value. Furthermore, a ceiling of \$16 million in the first year and \$15 million in subsequent years has been set, above which the mine operator will cease to pay royalties.

The new buyers are also exempted from paying customs duty on consumables. Moreover, they will not be charged any excise duty on electricity consumed. Neither will they be required to pay withholding tax on interest, dividends, royalties and management fees paid to shareholders and affiliates. Fees relating to copper and cobalt price participation will be tax deductible. Finally, for the purposes of the Income Tax Act, the mines will be deemed 'a 1975 new mine', allowing them to qualify for the deduction of 100 per cent of capital expenditure.

The budget announcements are already being incorporated into legislation. The Income Tax (Amendment) Bill which, *inter alia*, 'seeks to give Anglo-American Corporation (AAC) exclusive long-term and wide-ranging tax incentives,' passed its second reading in Parliament on 16 February 2000.²⁶⁰ Opposition to the Bill centred on its partisan nature. There were calls for the concessions to be extended equitably to all operators in the mining sector.²⁶¹

The Zambia Institute of Chartered Accountants, while welcoming the incentives, observed that the concessions should have been spread across the industry. The accountants Price Waterhouse Coopers, in their budget analysis, recognised the need to boost mining operations, but noted that a second tier of tax rates would be created within the sector.²⁶² Moreover, the Government will almost certainly be under pressure to extend similar concessions to other companies. For example, a clause in the Development Agreement for the Luanshya Mine stipulates that the tax regime will not be altered in a way which discriminates against the purchaser 'when compared to other mining companies or joint ventures conducting similar operations...'.²⁶³ Please refer to subsection C.1 below for further analysis of the incentives secured under the rubric of 'taxation stability' in this Agreement.

ii. *The rejection of social responsibilities*

In the sphere of normative standards applicable to company conduct, Principle III of the OECD Principles of Corporate Governance states that:

'The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.'

Principle III refers to the assurance for the respect of the rights of stakeholders protected by law.²⁶⁴ There is complementarity with the Covenant, a key purpose of which is to ensure that national laws themselves are in conformity and constitute appropriate steps for the realisation of economic, social and cultural rights.²⁶⁵ In other words, the adequacy or otherwise of State legislation and practice is examined in respect of the Covenant while, at the same time, the OECD's Principles of Corporate Governance seek to ensure that powerful companies do not use their influence to diminish the *de facto* protection of the law.

Stakeholders referred to by the OECD include investors, employees, creditors, and suppliers.²⁶⁶ In addition, recognition is given to stakeholders with broader interests whose relationship to a company is not necessarily formulated in legal terms: 'Even in areas where stakeholder interests are not legislated, many firms make additional commitments to stakeholders, and concern over corporate reputation and corporate performance often require the recognition of broader interests.'²⁶⁷ Companies are not only responsible for ensuring that the legally recognised interests of employees are respected, but also that due recognition is given to wider community interests. In the Zambian context, this must encompass, at the very minimum, ensuring that long-standing social provision is not neglected, curtailed or ended unless and until adequate measures are in place to ensure its take-over by other parties so as not to diminish enjoyment of the right to an adequate standard of living. It should be recalled that the ILO Social Policy (Basic Aims and Standards) Convention recognises that 'improvement of standards of living shall be regarded as the principal objective in the planning of economic development' and that 'all practicable measures shall be taken in the planning of economic development to harmonise such development with the healthy evolution of the communities concerned.'²⁶⁸ The ILO Tripartite Declaration requires that where enterprises provide workers with basic amenities such as housing, medical care, these amenities should be of a good standard.²⁶⁹

The framework development agreement appended to the Rothschild's report sets the parameters for company take-over of social responsibilities. As a result, none of the new proprietors of the mines which have been sold are committed to providing social services beyond the short term. Of the ZCCM packages privatised prior to 2000, three are associated with significant social assets. Two of these are operational mines, while the third is former ZCCM power Division. In respect of the latter, the Copperbelt Energy Consortium as purchaser has made a public commitment to provide social services at a standard not worse than that at the time of take-over.²⁷⁰ However, details of the exact nature or extent of CEC's continued social responsibilities have not been made available. The two main consortium members - Midlands Power International and the National Grid Company, both incorporated in the UK - failed to respond to a request to release further information.

Social services connected to the relatively small Chibuluma Mine, sold to the Metorex Consortium of South Africa in July 1997, include the Kalulushi Hospital and a primary school, as well as the usual infrastructure - roads, sewers, water systems.²⁷¹ According to information released in the public domain, the company agreed to run these assets until they were privatised. Luanshya and Baluba mine was sold to Binani of India in October 1997. The new owners made commitments to maintain municipal services and infrastructure, but only for a maximum period of two years. In respect of the running of schools and hospitals, no time-frame was stipulated. The company may continue to run schools,

hospitals and clinics, but it is not bound to do so and is permitted to contract out or privatise such provision. Overall, caveats allow the company to withdraw from provision at any time for any reason provided certain conditions are met: please see subsection C.1 below for further details. It is assumed that similar terms relating to social provision are common to those other development agreements which remain confidential, thereby qualifying public statements about the secure future of service provision.

The core of ZCCM has finally been disposed off in March 2000. Extensive social services are associated with the mines at Nkana, Nchanga, Konkola and Mufulira, yet the future of such services is under immediate threat. The uncompromising refusal of Anglo American and First Quantum to take on social provision is confirmed in public documents of the World Bank:²⁷²

‘Within the context of the current negotiations for the sale of the remaining ZCCM assets, private investors have been unwilling to take responsibility for assets that are not directly linked with copper mining. Investors are looking to the GRZ to provide mechanisms that will assure the continuation of an adequate and reliable range of vital urban services for their employees. Without a reasonable level of confidence that these services can be fully provided, the sale of the mines could be jeopardized.’

Not only is it a requirement of each sale that the proprietor’s social responsibilities to the wider community are ended, but the expectation is that the Government, the World Bank and, ultimately, employees themselves will henceforth meet the costs associated with aspects of their social welfare. In order to be able to do so, employees must be paid a wage which allows them to afford market prices for these services. Article 7 of the Covenant requires the payment of fair wages which, as a minimum, provide workers with a decent living for themselves and their families.²⁷³ If wages do not rise to compensate miners for the loss of in-kind social benefits, then employees will suffer a significant deterioration in their standard of living thereby infringing article 7 and article 11 of the Covenant. In this regard, it is pertinent to recall article 11 of the ILO Social Policy Convention which requires that where, *inter alia*, housing, essential supplies and services form part of remuneration ‘all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.’²⁷⁴ There is no evidence to suggest that such an assessment is being made in respect of the remuneration paid to miners who will be affected by the withdrawal of service provision under the terms of the sale.

Overall, it is only when the ending of company responsibility for social service provision is considered in combination with the extraordinary level of tax concessions afforded to the mining sector that the implications for the realisation of economic and social rights on the Copperbelt begin to crystallise. Firstly, and most obviously, the withdrawal of company responsibility and support for social services in towns across the Copperbelt will precipitate a crisis in provision. Notwithstanding the fact that no adequate preparations have been made for the take-over of such services, the Government at central and local level is the obvious candidate to take over this burden. Secondly, however, it is at precisely this juncture when greater financial resources are required that the Government’s revenue base is further undermined by the very tax concessions demanded by private mining houses. The wider context is one of austerity insisted upon by the World Bank and IMF with the consequent decimation of public expenditure. Thirdly, the Government, incapacitated in the face of this situation, has sought to shift the cost of social provision to employees and an already impoverished wider public on the Copperbelt by adopting a strategy under which services will be operated by private providers on the basis of cost recovery. The negative repercussions on the social rights of the poor of moving to a commercial system have not been given due consideration.

iii. Accountability, transparency and the corporate veil

Serious questions of public access to information and accountability are raised by the ‘corporate veil’ of confidentiality. The public in general, and affected parties in particular, have been denied access to information over the privatisation of ZCCM stemming, in the first instance, from the Rothschild report and plan. This has curtailed not only meaningful debate about the process as envisaged, but has also prevented local councils and workers’ representatives from making their own preparations in advance of the sale.

Subsequently, binding development and sales agreements have been negotiated between the Government/ZCCM and the buyer. While under negotiation, such agreements are regarded as commercially sensitive. The result is that no information, even in relatively broad terms, is available in the public domain at that time. The result is that other affected parties are presented with a *fait accompli* and can do little or nothing to alter the terms of such agreements. Yet, even when terms have been agreed, these documents are still withheld from public scrutiny.

In contrast, a requirement for transparency stems from the right to free expression and opinion based upon freedom to seek, receive and impart information under the Covenant on Civil and Political Rights;²⁷⁵ and from securing the right to development of the entire population and all individuals on the basis of their active, free and meaningful participation in

development and in the fair distribution of the benefits resulting therefrom.²⁷⁶ Furthermore, the principles of transparency and accountability are fully endorsed in normative codes relating to business conduct.

The importance of information disclosure to the general public is recognised within the OECD Guidelines for Multinational Enterprises. The purpose is to encourage greater transparency.²⁷⁷ Enterprises should ‘publish in a form suited to improve public understanding a sufficient body of factual information on the structure, activities and policies of the enterprise as a whole...’²⁷⁸ Where national law requiring disclosure is minimal, supplementary information in accordance with the Guidelines should be published.²⁷⁹ In respect of employee representatives, companies should provide information which is needed for ‘meaningful negotiations on conditions of employment’.²⁸⁰ Further information - if necessary, over and above that provided in the public domain - should also be made available to enable employee representatives ‘to obtain a true and fair view of the performance’ of the subsidiary company or, where appropriate, the enterprise as a whole.²⁸¹ Parallel requirements are recognised in the ILO Declaration of Principles.²⁸²

While the recommendations concerning disclosure of information are addressed primarily to the parent company, they are applicable, where relevant, to subsidiary entities, and indeed, to the conduct of all domestic companies.²⁸³ Information is required on, *inter alia*, structure and ownership, areas of operation and principal activities, and sources and uses of funds.²⁸⁴ Information on operating results and sales, new capital investment, and the average number of employees should be broken down by geographic area before disclosure.²⁸⁵

Likewise, Principle IV of the OECD Principles of Corporate Governance states that ‘[t]he corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.’²⁸⁶ Accordingly, disclosure should include, but not be limited to, material information on, *inter alia*, company objectives, material issues regarding employees and other stakeholders, governance structures and policies.²⁸⁷ Under the rubric of company objectives, ‘companies are encouraged to disclose policies relating to business ethics, the environment and other public policy commitments.’²⁸⁸ Only on the basis of disclosure can concerned parties ‘...better evaluate the relationship between companies and the communities in which they operate and the steps that companies have taken to implement their objectives.’²⁸⁹ Moreover, under the rubric of material issues regarding employees and other stakeholders, ‘[c]ompanies are encouraged to provide information on key issues relevant to employees and other stakeholders that may materially affect the performance of the company. Disclosure may include management/employee relations, and relations with other stakeholders such as creditors, suppliers, and local communities.’²⁹⁰

In the case of the ZCCM sale, aspects of all these matters are covered by development agreements. The information they contain has profound importance beyond the purely commercial sphere. Clauses relating to employment and redundancy, information on post-privatisation working conditions, clarification of the arrangements to be put in place to manage social assets, and details of the measures required to protect the local environment, all represent a vital knowledge base for workers and local communities. The development agreements contain further information on training requirements and local business plans. People are entitled to know the extent to which clauses on employment levels and social provision are binding or whether companies have negotiated exemptions from the tightening of environmental regulation. It is therefore imperative that, minimally, pertinent parts of such agreements are made available in the public domain. It is recognised in the OECD’s Corporate Principles that channels for disseminating information should provide for fair, timely and cost-efficient access to relevant information by users.²⁹¹

C. The reality of privatisation: the denial of economic and social rights

Introduction

A substantial part of this submission examines Government legislation and practice in respect of obligations arising from the application of human rights instruments. The focus here is upon demonstrating the economic and social costs when corporate responsibilities are rejected. An account is given of disturbances at the Luanshya Mine, events presaged by a development agreement which, from the outset, was always going to be detrimental to the interests of employees and the wider mining community. A second case study relates to forced evictions and involuntary displacement of people from mine land. Both ZCCM and Cyprus Amax, the purchaser of the Kansanshi Mine, are implicated in these actions.

At a primary level, deregulation in Zambia has been integral to many major policy documents issued by the MMD Government and has been consolidated through fundamental changes to legislation. By and large, deregulation has been implemented in the absence of due safeguards or balances to counteract, where appropriate, the growing reliance on

market forces. At a secondary level, as exemplified in the privatisation of ZCCM, development agreements have not only consolidated, but have actively extended, the scope of deregulation. As a result of the weak bargaining position of the Zambian Government, certain companies have sought to further reduce their level of responsibility for social provision and environmental protection by negotiating development agreements with such a degree of latitude that they are able to deny certain rights with apparent impunity. Whether they do so or not in practice depends upon the value placed on good industrial and community relations. However, given the economic imperative of maximising profits, it must be a matter of serious concern that issues of central importance to the realisation of economic and social rights are dependant upon self-regulation.

Regrettably, there is increasing evidence of how the concessions, caveats and loopholes which have been negotiated from a position of power are indeed being fully exploited by certain companies. This cuts against both the welcome concept of corporate responsibility and is antithetical to the notion of universal human rights which, through instruments such as the Covenant, codify benchmarks which can be used as an overlay to determine compliance. The use of the Covenant is, of course, especially suited to those situations in which domestic legislation, either in its concept or practice, cannot guarantee fundamental rights in the face of the interests of powerful third parties. The crux of the matter is this: the Government and the multilateral agencies may be culpable by action for excessive deregulation and by omission for the disintegration of social services; safeguards to protect employee and community interests may have been negotiated away; yet it is maintained that companies have a direct responsibility to uphold basic human rights.

1. Luanshya Mine: an example of a development agreement

As has been noted, it has been impossible, both for local people and for other interested parties, to ascertain the full social implications of the development agreements associated with the sale of the mines. Despite, or rather because of, their vital significance in determining the limits to the responsibilities of the private sector owners in safeguarding employment, maintaining conditions of service, providing social services, and protecting the environment, the development agreements are regarded as confidential and are not available in the public domain. However, disclosure of documents in respect of the court case instigated by the Canadian company First Quantum over the sale of the Luanshya/Baluba mine has brought the development and sales agreements between the Government of Zambia and Binani Industries, the successful buyer, to light.

During October and November 1998, one of the most serious disturbances of recent times took place at the newly privatised Luanshya Mine. During a strike over conditions of service, there were numerous violent clashes between miners and the police which spilled over into the wider community. The deaths of up to three citizens as a result of police action were reported. In the twelve months since RAMCZ had been operating the mine, its ambitious development plans, which had not secured full finance, contrasted with a paring back of long-standing support to miners and their families. This was in part due to the apparent financial difficulties facing RAMCZ, but was also predicated on the nature of the agreements negotiated as part of the sale.

The accompanying box provides immediate background to the dispute. When the account of this unrest is read in conjunction with the analysis of the development agreement concluded between Binani and the Government on the sale of the mine, it is apparent that the seeds of the industrial action and associated disturbances lay in the lack of due safeguards. The development agreement was always detrimental to the interests of the workforce and the wider community.

The analysis which follows is structured across six subsections. The intention is to draw out the implications of the Luanshya/Baluba Development Agreement in relation to (a) employment levels, conditions of employment, and trade union rights; (b) procurement and local business development; (c) social provision; (d) the resolution of disputes; (e) environmental protection; and (f) the collection of Government revenue through taxes and duties.

Industrial action and social unrest at the Luanshya mine during October and November 1998

Police killings in Luanshya

On Monday 2 November 1998, at least one and possibly two people were killed by police during riots in Luanshya sparked by a long-running dispute between mineworkers and the mine owners over allowances and proposed service charges. A third person, a child of about one year, is also believed to have choked to death after inhaling tear-gas from a canister which went off in the house of its parents. One of those killed was a street vendor, identified only as Nkole of Roan township. It is unclear from press reports whether a second person was shot and killed at the same time, as reported by *The Post* newspaper, or whether the second death was that of the child, as reported in *The Times of Zambia*. The shooting happened in the aftermath of a march by miners through Luanshya during which incidents of looting were alleged to have taken place. The killing, which is seen as part of a growing pattern of police brutality when dealing with striking miners, has been condemned by opposition parties and the Zambia Independent Monitoring Team (ZIMT).

Events leading up to the strike

A number of events led up to the unrest and deaths. Mineworkers Union of Zambia (MUZ) Roan branch chairman, Cameron Pwele, had publicly criticised the management in a petition to the chairman of the Binani Group of Companies, dated 23 October 1998, calling for the removal of the mine's general manager, Mr Sam Phiri. Pwele cited mismanagement, the failure to honour the 1998 collective agreement between the union and the company, and Phiri's dismissal of certain workers who had staged a protest on 2 October 1998 over housing allowance arrears. On the day Pwele issued the petition, mine managers had reneged on the earlier agreement and had announced significant reductions in the housing allowance. In the petition, Pwele warned of the staging of a second protest on 2 November 1998 if outstanding issues were not resolved. Mr Pwele stated that the mine should not have been sold to the Binani Group who did not have the financial resources to fund the operation.

On Saturday 24 October, the Copperbelt Energy Consortium carried out their threat to cut power supplies to the mine because of the failure of RAMCZ to pay long-standing arrears. This precipitated a shutdown of operations and many miners believed the future of the mine was in jeopardy.

The beginning of the strike and protests

The dispute over the supply of power to the mine was resolved the next day, but Mr Pwele was suspended by RAMCZ on Monday 26 October while investigations were carried out into his denunciation of the company in the press and for provoking industrial unrest. His suspension immediately sparked a strike by the workforce, already harbouring grievances over the non-payment of housing allowance arrears, proposed deductions from these allowances and revised charges for water, electricity and land rates. A demonstration by strikers and their families followed on Tuesday 28 October during which property was damaged, a few vehicles were set on fire, and a mine welfare shop and recreation club were looted. Police used tear gas to disperse crowds in Roan and Mpatamatu townships and detained six suspects. The next day, miners and their families gathered at Mpatamatu police station. Running battles were fought with police who responded with the use of truncheons and tear-gas. Meanwhile, warning letters were delivered by armed police to the houses of striking miners ordering them to return to work.

On Friday 30 October, talks between the company and the union resulted in the reinstatement of Mr Pwele. However, he was excluded from further negotiations over the issue of the unpaid housing allowance. On return to Luanshya, MUZ Roan branch executive members used a public address system to announce the outcome of the talks in the townships and appealed to miners to return to work. Miners reacted angrily to news of Mr Pwele's exclusion from the talks. On the Saturday morning, miners beat up eleven MUZ Roan officials because of their failure to produce written details of the settlement which had been reached. Police intervened to prevent the beatings. Tear gas was used and the miners themselves retaliated by breaking the windscreens of police vehicles and later by smashing windows in the Mpatamatu Mine police station.

On Sunday 1 November, negotiations between the company and MUZ Mpatamatu and Roan branch officials stalled. An order was issued for Mr Pwele's arrest for addressing an illegal meeting. At that time, Mr Pwele was believed to have gone into hiding. Miners were ordered by police to disperse. At the same time, residents in Mpatamatu Township had their water supplies cut-off in an apparent deliberate act by the company. On Monday 2 November, amid rising tension, miners marched to the house of a RAMCZ spokesman. Looting was reported along the route of the march in Luanshya town centre. The crowd then advanced in two groups towards the RAMCZ general office and the house of the general manager, Mr Samuel Phiri. Police halted the march on the general office, but Mr Phiri's house was allegedly ransacked. Furthermore, miners set fire to the house of Roan MUZ vice-chairman John Musenge.

Running battles were fought with police and thirty suspects were arrested as thousands of miners and their families took to the streets until they were dispersed. In Luanshya itself, police guarding the headquarters of Mpelembe Drilling shot and killed a street vendor. A child of about one year died after inhaling tear-gas from a canister thrown into the house of her parents in Roan township.

Urgent talks between RAMCZ management, MUZ Roan branch officials and the Government on 3 November resulted in the miners being paid their October wages and in an amnesty being announced for all striking miners who returned to work by 06:00 on Wednesday 4 November. The vast majority did so and calm was restored while talks continued, despite an unsuccessful attempt by police to force Mr Pwele into a car so that he could be driven away for interview. Discussions were held between MUZ, the company, and Government representatives in effort to finally resolve the dispute.

[Sources: contemporary reports in the *Times of Zambia* and *The Post* newspapers].

a. Implications of the sale for levels of employment, conditions of employment, and trade union rights

i. Employment levels

A clause in the development agreement states that the company shall not be ‘restricted in its employment, selection, assignment or discharge of personnel’ provided that terms and conditions relating to employment, discharge or disciplinary matters comply with Zambian law, the Collective Agreement in force, and the terms in individual contracts.²⁹² This notwithstanding, RAMCZ’s has made a commitment not to make any compulsory redundancies. This pledge appears to accord with the provision within the ILO Tripartite Declaration stating that multinational enterprises ‘should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability’ and ‘assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.’²⁹³ However, the RAMCZ ‘employment protection’ clause is limited to a period of two years.²⁹⁴ Moreover, the company’s commitment to desist from compulsory redundancies is itself subject to alteration as the terms of the development agreement, the Approved Programme of Mining Operations and any related programme can be added to substituted, cancelled or varied.²⁹⁵ To do so, Roan Antelope need only notify the Government of the proposed modification which is automatically approved within 30 days.²⁹⁶ While the Government has powers to object to most major modifications to the agreement and approved programmes, reducing the number of employees is explicitly discounted as a ‘Major Change’.²⁹⁷ In other words, there is little to prevent the company from making redundancies whenever it wishes.²⁹⁸

Under the OECD Guidelines for Multinational Enterprises, the main situation envisaged in which enterprises are required to consider Government policy objectives and priorities with regard to economic and social progress is the cutting back or closure of operations.²⁹⁹ The right of the enterprise to reach decisions on this matter is upheld, although ‘a prudent company should seek clarification of government policies through advance consultations with the government concerned.’³⁰⁰ To comply with the ILO Declaration of Principles, companies considering changes in operations involving ‘major employment effects’ should provide reasonable notice to workers’ representatives and the appropriate government authorities ‘so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent.’³⁰¹ There is an essentially similar provision in the OECD Guidelines,³⁰² under which it is intended that notice should be given prior to any final decision being taken on redundancies to allow for meaningful consultation.³⁰³ On the issue of redundancies, no such provision is stipulated in the terms of the Luanshya development agreement.

The repercussions of the original and controversial decision to award the sale, amid allegations of self-dealing, to a company without an industry track record are becoming increasingly apparent: ‘The Indian-owned Binani and its local company Ramcoz...are dangerously exposed. They are new to copper mining, apparently under-capitalised, and have used some of their limited resources unwisely. Apart from bungling their union negotiations[,] the copper price has fallen dramatically. Thus it is not impossible that Ramcoz may be forced to close temporarily at least and the consequences could be worrying - for the public’s perception of the outcome of privatisation[,] for the shaky economy and for the prospects for peace and democratic governance.’³⁰⁴ Other commentators have criticised the Government for ‘ignoring the long-term viability of the buyer’ in the privatisation process, citing the sale of Luanshya to Binani as an example of this short-sightedness: ‘...the badly managed Luanshya remains a potential tinder-box; political risk underwriters at Lloyds recently refused to provide expropriation cover because Binani’s proposals included massive redundancies.’³⁰⁵ Please refer to Section 2(I) for further analysis of the award of sale.

It is regrettable to record that 400 redundancies were announced by RAMCZ in early February 2000, to take effect in the following month. This restructuring exercise and programme of job losses comes only three months after the expiration of the original undertaking by the company not to cut the workforce within the first two years.

ii. Trade union rights

The OECD Guidelines require enterprises to respect the right of employees to be represented by trade unions and engage in constructive negotiations ‘with a view to reaching agreements on employment conditions, which should include provisions for dealing with disputes arising over the interpretation of such agreements, and for ensuring mutually respected rights and responsibilities’.³⁰⁶ The thrust of the Guidelines is to engender a positive management approach towards employee representatives.³⁰⁷ The ILO Declaration of Principles affirms the right of workers to establish and join a trade union of their choosing,³⁰⁸ seeks protection against acts of anti-union discrimination,³⁰⁹ interference,³¹⁰ or the hindrance of union representatives,³¹¹ and recognises collective bargaining rights.³¹²

While RAMCZ agreed in the development agreement to honour the collective agreement then in force with the union, there is, of course, nothing in to prevent its renegotiation.³¹³ In 1998, the MUZ did conclude a new collective agreement with the company; yet, as is starkly demonstrated by the subsequent unrest, problems arise when either the company is believed by the workforce to have reneged on agreements relating to conditions of work or else when the union is itself split and the local MUZ executive is accused by large sections of the workforce of complicity with management. As was noted in Section 2(II) in considering the right to just and favourable conditions of employment, the development agreement does not envisage any explicit monitoring role for ZPA or any other independent body to ascertain whether the company is in compliance with any of the agreements it has reached.

The ICFTU, in its annual survey of the violations of trade union rights, attests to the fact that two union leaders at Luanshya were fired by RAMCZ on account of their union activities.³¹⁴ The 'employment protection' clause in the development agreement does not, of course, prevent RAMCZ from seeking voluntary redundancies nor from making dismissals of the kind condemned by Mr. Pwele following the action taken by miners in early October.³¹⁵ The ILO code concerning multinationals confirms that arbitrary dismissal procedures should be avoided.³¹⁶ Dismissal on the grounds of participation in union activities constitutes a violation of articles 4 and 5 of the ILO Termination of Employment Convention and article 6 of the Covenant itself.³¹⁷ The intimidation of the local MUZ leader and other union members prior to and during the industrial action at Luanshya is a matter of record: please refer to the accompanying text-box.

In December 1999, the MUZ distanced itself further from Mr. Pwele, disassociating itself from a letter which the RAMCZ branch chairman had written to the labour commissioner.³¹⁸ In the letter, Mr. Pwele proposed that the union would interview and sign agreements with political aspirants before they would be supported. The MUZ President described the move as contrary to the MUZ constitution.

Mr Pwele was finally suspended from the MUZ. On 11 January 2000, he was expelled from the union by its national disciplinary committee.³¹⁹ Mr. Pwele had refused to recognise the jurisdiction of the committee because his case had not been first reviewed at the branch level. Mr. Pwele was charged with threatening violence and arson, gross misconduct and misbehaviour, unauthorised issuance of Press statements, falsifying and divulging information to unauthorised institutions, and insubordination towards the MUZ president, Mr. Andrew Mwanza. Mr. Pwele rejected the charges and vowed to fight his expulsion.

Shortly after his expulsion from the union, Mr. Pwele was served with a retrenchment letter by Roan Antelope. He joins those 400 other miners who are to be made redundant by the company in early March. Another union official, the MUZ Mpatamatu branch treasurer, is also to lose his job in the restructuring. Mr. Pwele accused the union and company of conspiracy: 'I knew that after expelling me from the union they would retrench me. My expulsion was meant to pave the way for my retrenchment.'³²⁰

iii. Conditions of employment

Recommendations within the OECD Guidelines on employment conditions and industrial relations are situated within the context of prevailing national laws and regulations.³²¹ However, the supplementary nature of the recommendations applies. It is recognised under the ILO Tripartite Declaration that '[w]ages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.'³²² A similar formulation is used in the OECD Guidelines.³²³ Requirements in the ILO Tripartite Declaration are more readily situated in the framework of international standards. Specific attention is paid to employment conditions in developing countries where enterprises should provide 'the best possible wages, benefits and conditions of work, within the framework of government policies.'³²⁴ While the economic position of the enterprise is to be taken into consideration, employment conditions should be 'at least adequate to satisfy basic needs of the workers and their families.'³²⁵ Article 7 of the Covenant constitutes a basis for this requirement in international human rights law.³²⁶

The development agreement confirms that RAMCZ will honour the terms and conditions in the contracts of employment of transferring employees.³²⁷ As with the collective agreement in force with the union, such contracts are open to renegotiation. The company also agrees to adopt the current redundancy terms applicable to transferring employees and agrees that no adverse change will be made to these.³²⁸ However, this does not preclude the company from making other changes to the terms. Within the same clause the circumstance is envisaged where altered terms can be implemented without the transferring employees consent.

Concern over employment conditions would seem to be justified by events which reached a climax in the disturbances of November 1998. The non-payment of housing allowance arrears, proposed deductions from these allowances and revised service charges were viewed as a failure by RAMCZ to honour the collective agreement and a direct threat to the

satisfaction of the basic needs of miners and their families which undermined their right to a decent living. In the twelve months prior to this sustained unrest, there had been a number of other disputes at the mine over employee entitlements.

In January 1998, more than 1000 miners at Luanshya went on strike for two days demanding payment of four months worth of target bonuses which were owed to them. Agreement was reached with RAMCZ management to pay two months arrears and the strike was called off. On 9 June 1998, several former ZCCM miners gathered at the general offices in Luanshya demanding to see mine managers over the payment of their terminal benefits, at that time eight months overdue. Police were called by the company to restore order. These claims were purportedly met by the company in August 1998.

At the end of July 1998, 243 workers contracted by Techpro Zambia, a ZCCM subsidiary, downed tools. Their action paralysed operations at the RAMCZ's smelter in Luanshya. The workers were demanding improved conditions of service, to include a medical scheme for their dependants, before signing new contracts. The workers were hired by Techpro for six months as casuals. The workers were described in the press as 'mere casuals' who were not entitled to certain conditions.

In mid-July 1998 the Lands Tribunal granted an injunction to 3,000 sitting tenants, mainly non-miners, denied the opportunity to buy ZCCM and former ZCCM houses in Luanshya. The injunction restrained both ZCCM and RAMCZ from evicting the tenants from the houses until the case was disposed of in court.

In March 1999, there were further protests by 87 ex-miners, made redundant by Roan Antelope in October 1998, over the failure of the company to pay terminal benefits.³²⁹ A demonstration by the retrenchees at the Luanshya mine on 24 March brought operations to a halt. The demonstrators were assured that the Binani Group chairman, Gokul Binani, who was visiting the Copperbelt, would meet them on 29 March to discuss their grievances. The ex-miners, family members, and widows of former miners, a total of 190 people, duly assembled at the company's offices on the appointed date only to be told that Mr. Binani had left for Lusaka without attempting to resolve the matter.³³⁰ This discourteous treatment appears to contravene the letter and spirit of ILO principle 51.³³¹ Moreover, to comply with the ILO Tripartite Declaration, enterprises should cooperate with the Government 'to provide some form of income protection for workers whose employment has been terminated.'³³² In the case of the ex-miners, this provision is their legal entitlement.

Finally, the development agreement requires the company to comply with the existing ZCCM Training and Human Resources Management Programme until it submits a new programme within the year.³³³ This undertaking appears to be broadly in line with the ILO principle that 'enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise' and the parallel recommendation under the OECD Guidelines for Multilateral Enterprises.³³⁴ In the case of the Luanshya Mine, the Programme is subject to alteration by Roan Antelope if it considers itself unable to comply with the provisions it contains. Please refer to Section 2(II) for further discussion of the extent and limit of the company's training obligations.

While it has not been possible to verify the extent of RAMCZ's compliance with the required Training and Human Resources Management Programme, the ICFTU records that the company has employed expatriates in preference to qualified Zambians.³³⁵ Such practices are contrary to ILO principle 18, whereby multinationals should give priority to the employment and occupational development of nationals of the host country, and appears to violate the principle of non-discrimination.³³⁶

b. Procurement and local business development

One of the much vaunted aspects of privatisation is the multiplier effects generated in the local economy of the Copperbelt *per se*, and in Zambia more generally, as the new proprietors invest in the business. Under the OECD Guidelines for Multinational Enterprises, companies should '[f]avour close co-operation with the local community and business interests' while the ILO Declaration of Principles entreats them 'wherever practicable' to consider the conclusion of contracts with national enterprises and the use of local raw materials.³³⁷ In this respect, there is limited provision within the development agreement to encourage local procurement by Roan Antelope, but the bottom-line is that Zambian businesses must be competitive to be awarded contracts.³³⁸ The financial constraints facing Roan Antelope have slowed the development of operations and limited the business opportunities for local companies.

In addition, Roan Antelope is required to comply with a Local Business Development Programme designed to encourage the establishment of businesses within Zambia to supply the company.³³⁹ However, the actual obligations on the company are qualified. Hence Roan Antelope will utilise local businesses for servicing its operations, but is only required to do so 'wherever feasible and appropriate.'³⁴⁰ The company agrees to supply sufficient experienced staff to assist with implementation of the programme and to review its progress with a view to making modifications which

reflect changing circumstances.³⁴¹ A committee, comprising one member each from Roan Antelope, the Ministry of Mines and Minerals Development, the local council and chaired by a representative from the Ministry of Commerce, Trade and Industry, is formed to monitor the supply of goods and services by reviewing quarterly reports which the company provides.³⁴² Ultimately, however, Roan Antelope may fundamentally amend or alter the Programme if it is unable to comply with its provisions due to 'circumstances or events beyond its control.'³⁴³ The Government either accepts these alterations or the matter is referred to a Sole Expert for determination.³⁴⁴

c. Uncertainties over social provision in the mining communities

The privatisation of Luanshya and Baluba will inevitably have wider social impacts on the local community. The company has assumed ownership, operational control and responsibility for the social assets connected to the mine.³⁴⁵ These comprise the medical and education services (two hospitals, nine clinics, and one trust school), recreational facilities, sports clubs and essential municipal infrastructure, including electricity and water supply and sewerage systems.³⁴⁶ The company agrees to apply existing eligibility criteria for registering dependants entitled to these services.³⁴⁷

Both medical and education services are to be provided not only to employees and their dependants, but also to persons in the wider community eligible to use them under an existing Private Social Services Access Agreement.³⁴⁸ The level of service is to be appropriate to the number of patients/children and offer at least the same standard of care or education as before.³⁴⁹ Charges to miners are to be no greater than those levied by ZCCM, taking into account inflation, while others are charged in accordance with the Private Social Services Access Agreement.³⁵⁰ Almost identical provision is made in respect of the use of recreational facilities and access to municipal services.³⁵¹

There are, however, a number of clauses within the development agreement which create uncertainty over the future of social services, limit the company's responsibilities in time and scope, and sideline employees, the wider community and the local council in resolving disputed claims.

In respect of the running of schools and hospitals, no time-frame is stipulated. While the company may make a decision to keep running these facilities itself, it is not bound to do so and is indeed permitted to contract out the management of these facilities.³⁵² RAMCZ has expressed an interest in developing the hospital at Luanshya but this development may, ultimately, result in increased user fees, pricing treatment beyond the means of all but the highest paid. In the future, company employees, as well as the public, may be expected to meet the cost of such fees. Their ability to do so will depend upon whether or not they are paid a fair market wage. In this respect, it should be noted that the ILO Social Policy (Basic Aims and Standards) Convention requires that the cash value of services as part of remuneration is properly assessed.³⁵³

RAMCZ are only bound to maintain municipal services and infrastructure for two years at the most.³⁵⁴ While the company is required to maintain these services in compliance with public health legislation and standards, it is explicitly exempted from carrying out maintenance which incurs a 'substantial additional expenditure' and from implementing the recommendations in the Environment Impact Statement (EIS) to rehabilitate water and sewerage systems.³⁵⁵ There is an immediate contradiction: the EIS confirms that public health standards are not being met, thereby making it impossible to provide services which comply with these standards without spending money on refurbishment.³⁵⁶

Houses formerly serviced by ZCCM are to be adopted 'as soon as reasonably practicable and in any event within 24 months' by the local council.³⁵⁷ Immediately thereafter, the local council is required to make offers of employment to Transferring Employees engaged in providing municipal services.³⁵⁸ Roan Antelope is thereby freed from meeting the salaries of such staff, but it is difficult to see how the cash-starved local council will be able to find the resources to take on and pay these employees.

In the case of water and electricity provision to owner occupied houses in the mine area, RAMCZ indicated in April 1998 that it would examine options as to how these services would be run and paid for by residents after this two year period is over. It is clear that the company is seeking to reduce its costs for social provision, estimated as \$5.5 million. Its proposal, in the wake of an audit by the accountants KPMG, to levy increased service charges and rates from miners contributed to the recent unrest. Furthermore, a specific clause in the development agreement stipulates that 'Roan Antelope shall not be required to pay the house rent allowance, or any other equivalent payment, to any of the Transferring Employees whilst such services are so maintained.'³⁵⁹ This does not, of course, preclude the company from doing so, but it does set the parameters within which the current dispute over housing allowances has been conducted. The recent audit completed in October 1998 by KPMG resulted in proposed deductions of between K83,000 and K166,000 from the housing allowance owed to miners. It was such proposals which fuelled the November 1998 dispute.

To comply with the ILO Tripartite Declaration, a mutually agreed system should be in place within an enterprise to provide for regular consultation between employers and workers on matters of mutual concern.³⁶⁰ Under the OECD Guidelines, companies ‘considering changes in their operations which would have major effects upon the livelihood of their employees’ should provide reasonable notice to employees and the relevant government authorities ‘so as to mitigate to the maximum extent practicable adverse effects’.³⁶¹

‘Reasonable notice is linked to the recommendation that management co-operate with employee representatives and governmental authorities in order to mitigate the adverse effects of such changes. For such notice to be “reasonable”, it should be sufficiently timely for the purpose of mitigating action to be prepared and put into effect. Notice of changes should be given and the actual changes implemented in such a way that meaningful co-operation can take place. It would conform to the general intention of this paragraph, in light of the specific circumstances of each case, if management were able to give such notice prior to the final decision being taken.’³⁶²

It must also be noted - and this overrides all other considerations - that a clause in the development agreement concedes that if Roan Antelope determines that it is unable to comply with the provisions concerning social facilities and services ‘for any reason whatsoever’, then the Government of Zambia will not take action, provided that certain conditions are met.³⁶³ The company either sets out a timetable for rectifying its non-compliance and compensates employees and the counterparty to the Public Services Access Agreement (i.e., the local council) for loss of service or else it withdraws from provision provided that it pays agreed compensation to the local council in question, increases general levels of pay or other employee benefits (although further details as to the nature and level are not specified), and reaches prior agreement with the union and council.³⁶⁴ The acceptability or otherwise of a proposed change to social provision by the company is considered in a joint committee ‘comprising equal numbers of representatives of the Parties.’³⁶⁵

The impression created is that all those affected meet to discuss the proposed change; however, the strict definition of ‘Parties’ under the Development Agreement refers solely to the signatories, that is the Government of Zambia and RAMCZ.³⁶⁶ Hence unions or employees or a local council or others affected by decisions of the company have no automatic right under the Development Agreement to sit on the joint committee, although it is supposed that they might be invited to do so.

The same exclusive committee also considers complaints by employees or the counterparties to the Private Social Service Access Agreement over the level or availability of services.³⁶⁷ Failure to agree over the validity or otherwise of a complaint, the level of services to be maintained, service standards, charges, the competence of third party contractors, or any proposal made by the company to suspend or withdraw services results in the matter being referred to a Sole Expert for determination.³⁶⁸

d. The role of the Sole Expert in resolving disputes

The Sole Expert is defined simply as ‘a person appointed to resolve any difference of view or disagreement between the parties’ who ‘shall not be, or have been an employee of GRZ or Roan Antelope [the company] or any Shareholder or any of their respective Affiliates or any authority or corporation of GRZ.’ The power of referral to a sole expert for determination rests solely with the Parties to the Agreement and not with affected persons.³⁶⁹ To the detriment of wider participation, the sole expert is appointed by agreement between the Parties to the Agreement, that is the Government and the company, and neither employees, the unions nor the council have any say in who is chosen.³⁷⁰ In addition to determining matters of social provision, the sole expert may be called upon to decide disagreement concerning fair contracts with third parties, changes to the Human Resources Management Programme, insurance cover, the suspension of mining operations, compliance with the Environmental Plan or changes to it, and assignment (sale) of the mine and its assets.³⁷¹ In addition, issues concerning the termination of the agreement or relating to the definition of a major change to the agreement and the validity or otherwise of an objection by the Government to such a proposal, may be referred to the Sole Expert³⁷². In all of these matters, the determination of the Sole Expert is final.³⁷³

e. The diminishment of environmental protection

The Zambian Government introduced a comprehensive Environmental Act in 1990 and established the Environmental Council of Zambia to oversee its implementation. Yet environmental protection in respect of mining in Zambia has been rendered problematic because, firstly, mining activities are governed by a distinct, and less rigorous, statutory instrument under the Mines and Minerals Act; and, secondly, because clauses within the development agreements delay compliance with existing regulations.

In this circumstance, the critical value of environmental recommendations in the OECD Guidelines for Multinational Enterprises is somewhat diminished because the reference point used is domestic regulation.³⁷⁴ At the same time, the fact that ‘multinational and domestic enterprises are subject to the same expectations in respect of their conduct’ and must ‘take due account of the need to protect the environment and avoid creating environmentally related health problems’ lends weight to the argument that exempting the new owners of existing mines from the full force of domestic environmental regulation amounts to preferential treatment which, moreover, threatens the rights of others.³⁷⁵ Furthermore, adherence by multinational mining companies to the recommendation that they should ‘[t]ake appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular...by introducing a system of environmental protection at the level of the enterprise as a whole’ would help end the situation whereby the same company applies diminished standards of protection in the developing world compared to those used in the developed world.³⁷⁶

Under the development agreement, Roan Antelope is explicitly excepted from liability for fines or penalties or third party claims made in respect of the past activities of ZCCM *vis-à-vis* the environment.³⁷⁷ At the same time, as the new proprietor, it is required to comply with environmental and safety laws and regulations, together with the provisions of the Environmental Plan which forms part of the EIS commissioned by ZCCM prior to privatisation.³⁷⁸ It is also obliged to perform Environmental Clean Up Obligations which are outlined in a schedule attached to the Agreement.³⁷⁹

However, subject only to compliance with the Environmental Plan and Clean Up Obligations, the Government confirms that it will not take any action against the company under, or in enforcing, any applicable existing or new environmental laws or regulations which are intended to secure early compliance with these obligations; or to require the company to clean up pre-existing pollutants not part of the clean up obligations; or impose a fine or penalties for non-compliance with environmental laws or new environmental laws when the existing Environmental Plan provides a remedy in accordance with a specified timetable.³⁸⁰ Moreover, fines or penalties in excess of those applying on the date of the Agreement cannot be imposed.³⁸¹ Should the company fail to comply with these minimal obligations, a notice must be issued by the Government after which the company has a further three months to remedy the breach.³⁸² The company has power to dispute this decision of non-compliance and have the matter referred to a nominated Sole Expert.³⁸³ Hence the Environmental Council of Zambia, as the body entrusted with implementing the Environmental Act (1990) in Zambia, is bypassed.

In effect, the company is accorded an extended window of time - that is, to 2011 - before it must implement an Environmental Management Plan originally delivered in 1996.³⁸⁴ The EIS, from which this Plan is derived, was rushed through in less than eight months once the decision to privatise ZCCM was taken. Contrary to provisions in the legislation, the EIS was approved without due public consultation. The views of affected persons and parties were not elicited. The EIS was not made available for public consultation and the Environmental Council did not exercise its powers to convene a public enquiry, despite the major environmental and social consequences of the continued operation, expansion or decommissioning of the mine. The consultants themselves have conceded that, in respect of socio-economic issues, ‘[t]he time allowed for the Study precludes detailed surveys.’³⁸⁵ Despite the listing of development NGOs, community-based organisations and local residents as key informants in the study methodology, such groups and persons are absent from the list of consultations appended to the Luanshya study.³⁸⁶

Under the development agreement, there is limited provision for the Environmental Plan to be modified by the Government, but this mechanism precludes consultation with the public or affected parties over the proposed change and falls well short of the consultation which, in theory at least, would otherwise be triggered by a full EIS. Indeed, no mention is made in the development agreement of the need for public information or consultation. In this respect, there is a failure even to attain the minimal requirement within the OECD Guidelines for Multinational Enterprises which specifies that companies should ‘take measures to support, in an appropriate manner, public information and community awareness programmes’ on issues relating to health and the environment’.³⁸⁷

It is specified within the terms of the development agreement that the Minister of Environment may propose an amendment to the Environmental Plan if there is a threat to public health and safety, if there is the prospect of significant ecological damage which is irreversible or which will only be reversed after the fifteen year window is closed, or if the environmental impact is substantially more adverse than anticipated.³⁸⁸ The company, while it is obliged to consider the proposed amendment, has the power to lodge a written objection setting out its analysis of why it considers the revision unreasonable, the direct cost incurred to implement the change and its appraisal of wider economic and other effects.³⁸⁹ The Government must meet half the cost to the company in preparing this objection.³⁹⁰ The Minister considers the objection and decides whether or not to withdraw the proposed revision to the Environmental Plan.³⁹¹ If this is not withdrawn, the company either accepts the revision or else may appeal to the Sole Expert for determination.³⁹² This may include the drawing up of alternative proposals, schedules or plans to mitigate costs.³⁹³

Overall, there is a shift in power from mandatory compliance with environmental standards on the part of the company to the Government having to justify revisions to the existing Environmental Plan because the main premise in the Development Agreement is that environmental regulations will not be tightened. The company too is entitled to amend the Environmental Plan or Environmental Clean Up Obligations, provided the changes are in accordance with Zambian environmental standards.³⁹⁴ Revisions to the Approved Programme of mining Operations which result in a material, adverse impact of the mining operations on the environment are defined as a ‘major change’ which means the Government has the power, if it wishes, to object to the proposal in question.³⁹⁵ In the event of continued disagreement between the Parties, the matter is referred to the Sole Expert for determination.³⁹⁶ However, the RAMCZ also has powers to challenge the very categorisation of its amendment to the Environmental Plan as a major change.³⁹⁷ If the Sole Expert agrees with the company’s interpretation, then minor amendments are passed automatically and the Government cannot object.³⁹⁸

f. Long term tax concessions and the limitation of exchange controls

In respect of the mining sector, provision for specific financial and tax incentives is made within the Mines and Minerals Act. Moreover, most significant concessions are guaranteed for years to come in the development agreements. The tax and other concessions to the mining industry announced in the 1998 budget and presaged in such development agreements were worth K18 billion in lost Government revenue in the first year alone.³⁹⁹ The total cost to the Government in lost revenue will accumulate year upon year while the concessions remain in place. A positive overall balance will only be achieved when the companies concerned not only begin to make a profit, but begin to make a profit which is eligible for tax.

The development agreement for the Luanshya/Baluba mine guarantees that the Government will not increase or adversely change the tax, royalty or duty rates paid by the mining company for fifteen years.⁴⁰⁰ The concessional tax regime applicable to Roan Antelope’s operations is set out in Schedule 8 to the Agreement and anticipates many of the sector-wide concessions made in the subsequent 1998 budget and confirmed in amendments to existing legislation.

It is made clear that, in the event of any ambiguity between tax legislation and this Schedule, then the latter will apply.⁴⁰¹ This amounts to a *de facto* override of applicable legislation.⁴⁰² Under the rubric of ‘taxation stability,’ the Government undertakes, for a period of fifteen years, not to change the tax regime so as to adversely effect the company’s profits or dividends. This encompasses undertakings neither to increase corporate income tax or withholding tax or reduce allowable deductions and rebates; nor to amend VAT or corporate tax regimes as agreed in the Schedule to the Agreement;⁴⁰³ nor to impose new tax laws to remove the right of non-Zambians employees to remit all income earned out of the country.⁴⁰⁴

Company income tax is thereby fixed at a maximum of 35 per cent or 30 per cent if Roan Antelope were to obtain a full listing on the Lusaka Stock Exchange.⁴⁰⁵ However, further concessions mean that it will be some time before the company makes a *taxable* profit which generates revenue for the Government. The Development Agreement entitles the company not only to offset of losses against profits, but also allows 100 per cent of losses to be carried forward for up to ten years.⁴⁰⁶ Moreover, the company is entitled to write-off 100 per cent of capital expenditure against tax.⁴⁰⁷ Finally, the amount of tax withheld on interest payments and dividends is reduced from 15 per cent to 10 per cent.⁴⁰⁸ The 1998 Budget reaffirms all three provisions for the mining sector as a whole.

Similarly, undertakings are made by the Government for the same stability period neither to increase mining royalties above 2 per cent;⁴⁰⁹ nor to raise import duties on goods and materials above specified limits.⁴¹⁰ While Schedule 8 to the Development Agreement includes a cap on the Import Declaration Fee (IDF) which can be charged to the company for certain non-exempt goods, the IDF itself was abolished altogether in the 1998 budget, a move which cost the Government K20 billion in revenue in the expectation of encouraging modernisation and increased investment in albeit imported machinery.⁴¹¹

Overall, there is an undertaking in the Development Agreement not to impose any other royalties or duties in respect of the company’s normal operations.⁴¹² Whatever agreements the Government concludes with other mining companies in the future, Roan Antelope is given a guarantee that it will not be discriminated against, that is, be treated less favourably, in respect of tax matters.⁴¹³ Overall, while the Government retains its power to alter the tax regime, to do so in a way which adversely affects or discriminates against Roan Antelope will require reimbursement or the use of offsets to ensure the company is fully and fairly compensated.⁴¹⁴ This clause may have significance in the light of 2000 budget and the tax concession won by Anglo American in its purchase of the remaining core ZCCM assets. It remains to be seen whether other operators will demand treatment on the same terms.

The Development Agreement for Luanshya also reiterates the absence of foreign exchange controls in Zambia and the freedom of the company to, *inter alia*, bring in or remit foreign currency and to retain outside of Zambia money made from overseas sales.⁴¹⁵ Once again, the company is exempted for fifteen years from any subsequent foreign exchange controls in specified key areas while it will always be entitled to buy and sell currency on no less favourable terms than other commercial operators should controls be reintroduced.⁴¹⁶

2. Privatisation of the copper mines: threatened and realised forced evictions by ZCCM and private companies

‘Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States Parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.’⁴¹⁷

It is blinkered to view an increase in the incidence of threatened or actual evictions, intimidation and the disconnection of essential services in Zambia solely in relation to changes in land law or housing policy which have proved detrimental to the rights of squatters and those with degraded tenancies. Such violations must be seen in conjunction with the policy to liberalise the economy and prepare for privatisation. A threefold categorisation is useful in understanding this situation. Firstly - as already documented in Section 2(III) - local councils have resorted to intimidation, the cutting of essential services, and evictions in an effort to recoup revenue from rates and rental arrears. Their heightened need to do so on the Copperbelt is a direct result both of the withdrawal of ZCCM from sharing responsibility for essential services as it is privatised and of the policy to sell council houses to tenants lacking the means to pay for their homes or meet subsequent service costs. Secondly, in the run-up to privatisation, ZCCM has itself become implicated in actual or threatened forced evictions. As evidenced in Section 2(III), sitting tenants who do not work for the company have been coerced from their homes. While this pernicious situation is a consequence of procedures drawn up by ZCCM management, it is ultimately a reflection of the Government’s failure to regulate the sale of Government-derived housing stock. Thirdly, and in contradistinction, plans to forcefully evict and resettle residents of squatter settlements on mine land has its root basis not in housing policy, but firmly in the way in which the mines are being privatised and sold. There is increasing evidence that the tolerance or laissez-faire attitude to squatters once shown by the parastatals no longer characterises their position. Nor does it accord with the plans of the new private sector owners. The concern in this subsection is with parastatal and private sector evictions which are directly associated with the sale of the mines.

The right to housing, as codified in the Covenant, is used (a) as the benchmark in international law: whether or not the Zambian Government has met its obligations depends upon the extent to which appropriate safeguards exist to protect against forced evictions carried out by the authorities or by third parties. An account of the extent of squatter settlements on mine land (b) is given together with details of a recent, abortive programme of eviction and resettlement implemented by ZCCM. The fact that the existence of such settlements is increasingly viewed as a problem is a cause for deep concern. The potential for mass eviction and conflict has not gone away. Rather, it will continue to resurface as the mines are sold. (c) A second account is given, by way of example, of recorded evictions and planned displacements affecting local communities at the Kansanshi Mine purchased in 1997 by Cyprus Amax of the USA. (d) Given the use of adjustment loans and technical assistance to support the privatisation of ZCCM, the World Bank ought to have considered the situation of settlers on mine land. This requirement arises from Covenant obligations *vis-à-vis* article 11 on the right to housing and article 22 on the advisability of international assistance; it also concerns a serious failure by the Bank to apply its own policy on involuntary resettlement to its ZCCM-related lending.

a. The Covenant as a benchmark

The Committee’s General Comment 4 on the right to housing, issued in 1991, is considered to constitute ‘one of the most comprehensive legal views on evictions.’⁴¹⁸ The determination is made that ‘instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.’⁴¹⁹ The reports which the Committee has submitted to ECOSOC on the prevailing situation *vis-à-vis* the right to housing in specific countries constitute emerging jurisprudence which places the act of forced eviction firmly in the category of unacceptable actions.⁴²⁰ This view is consistent with a number of resolutions adopted by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and protection of Minorities⁴²¹. All affirm that ‘the practice of forced evictions

constitutes a gross violation of human rights, in particular the right to housing.⁴²² The resolutions of the Commission and Sub-Commission are seen as providing a very strong legal basis for preventive measures against forced evictions at the national and international levels.⁴²³

Following its first General Comment on the right to housing, the Committee has since issued General Comment 7 which is dedicated to the issue of forced evictions. The term 'forced evictions' is defined as 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.'⁴²⁴ States must 'refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.'⁴²⁵ However, evictions carried out by force but 'in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights' are not considered to be 'forced evictions' by this definition nor prohibited.⁴²⁶

It is precisely because evictions carried out with certain safeguards are not deemed incompatible with either Covenant that the Committee has provided clarification of what constitutes legal protection against forced eviction. These are the adoption of laws to provide security of tenure;⁴²⁷ measures, in conformity with the Covenant, to ensure due process and legal remedy;⁴²⁸ the exploration of all feasible alternatives to eviction, in consultation with those affected;⁴²⁹ and the provision of adequate compensation.⁴³⁰ The Zambian Government, in contrast, continues to fail in its obligation to intervene to safeguard the rights of squatters or to provide leadership on this issue. Indeed, recent legislation has only served to heighten their insecurity.

The Zambian Government is obliged to use 'all appropriate means,' including the adoption of legislative measures, to promote all the rights protected under the Covenant.⁴³¹ The Committee has determined that 'legislation against forced evictions is an essential basis upon which to build a system of effective protection' and 'should include measures which...provide the greatest possible security of tenure to occupiers of houses and land...'⁴³²

People living in squatter townships on mine land in the urbanised Copperbelt - many residents of long-standing who have built homes in communities served by schools, clinics and churches - enjoy no security of tenure. Title to the land itself either belongs to ZCCM or else has already passed to those private companies who have completed the purchase of mine packages. Residents neither benefit, therefore, from the albeit degraded occupancy licences and certificates of title issued in local authority designated Statutory Improvement Areas nor have the prospect, however distant, of gaining title to degazetted land.

The Lands Act 1995, in its stark codification of the illegality of occupying vacant land, must heighten the insecurity of squatters and provide any party who is so minded with a root basis for launching evictions. The Act has also removed barriers to the ownership of land by foreign companies and has facilitated the conversion of land held under customary tenure to statutory leasehold. While the consent of chiefs and the local authority is sought before title is converted, local people - including any squatters - are not consulted directly and are therefore unlikely to have any control over the decision reached. Provisions within the Mines and Minerals Act itself constitute a further erosion of squatters rights. For a fuller analysis of Zambian land law and issues of security/insecurity of tenure, please refer to Section 2(III).

b. The threat to squatter settlements on ZCCM land

The sale of ZCCM threatens the eviction not only of certain tenants of mine housing, but also that of tens of thousands of squatters from company owned land as a result of privatisation. A crisis of greater magnitude has only been forestalled because of the delay and confusion in concluding the sale of ZCCM's core assets. The threat of mass eviction has in no way been averted. It is of paramount importance that the rights of those residing on mine land are acknowledged and safeguarded now to preclude forced evictions in the future.

Originally, when privatisation of the mines was timetabled for completion in June 1997, ZCCM appointed a working team to conduct a study of illegal settlements on mine land with a view to carrying out mass evictions and resettlement.⁴³³ The commercial pressures behind its decision are unambiguous:

'One of the issues which has been raised by the would-be buyers of the various [ZCCM mine] packages is the question of illegal settlements in Mine areas on land which is designated for exploration and future development. They have requested that the issue be resolved prior to the completion of the sale process planned for June 1997.'⁴³⁴

ZCCM stated policy is that 'no unauthorised settlements of any kind should be allowed on mine land.'⁴³⁵ However, the company acknowledges that squatters have been allowed to settle on mine land over many years.⁴³⁶

Preparations for the mass forced eviction and resettlement of squatters on mine land

In mid-1997, ZCCM wrote to all local councils requesting their assistance in evicting and resettling squatters. A series of meetings were held between the company and the councils concerned in early June 1997.⁴³⁷ ZCCM officials also visited a number of squatter townships over the same period.

Action plans for eviction and resettlement were drawn up and agreed at each meeting.⁴³⁸ Common to all of these were the identification of those settlements to be targeted; an approach to local MPs by the council concerned to seek their assistance in sensitising local residents; the preparation of eviction notices by the relevant ZCCM Division; delegation of the task of demolishing buildings as they were vacated to the ZCCM Division; the drawing-up of agreements between ZCCM and each council to help with transport, plot allocation and, where necessary, service provision in resettlement areas; and the recruitment of land rangers by ZCCM to assist with the exercise and patrol mine land in order to discourage further illegal settlement in the run-up to privatisation.

It was recognised that the programme would stir up considerable controversy and was liable to be met with concerted resistance in some townships. The councils maintained that settlers should be given assistance in relocating. Compensation to squatters was not viewed as a right or entitlement but many councils advocated that it should be offered on compassionate or humanitarian grounds.⁴³⁹ In the case of St. Anthony township, perceived as the home to militant residents, '[t]o remove these settlers some form of compensation and/or military state force is imperative to pre-empt violent action by settlers.'⁴⁴⁰ While some of the residents on land owned by Konkola Division farmed for a living, the ZCCM report noted that proposed resettlement site at Kawama 'is purely a residential area' continuing 'settlers will not find land there and this may force some people to resist moving.'⁴⁴¹ Furthermore, it was deemed expedient to begin the programme without delay so that it could be completed before anticipated local government elections in September 1997. A number of the action plans fixed dates for delivering mass eviction notices to certain townships within the month.⁴⁴²

The councils did not have the resources to implement resettlement. Hence the costs to ZCCM were estimated at a total of K415 million: K227 million for compensation and K188 million to improve roads, provide water and carry out demolitions and site clearance in designated resettlement areas.⁴⁴³ With the exception of Chingola, according to ZCCM all other councils confirmed that they had sufficient land for resettlement.⁴⁴⁴ However, the short-termism of the entire resettlement component to the programme is starkly demonstrated by the fact that the principal resettlement area - Kawama Compound - is itself liable to be turned into a tailings dam if and when the mines of Konkola Deep and Konkola North are developed.⁴⁴⁵

The number and size of squatter settlements on mine land within Nkana and Nchanga Divisions was viewed as particularly problematic by ZCCM. At the time, negotiations to sell this key package at the core of ZCCM's productive mines to the Kafue Consortium were well-advanced.⁴⁴⁶ On 12 June 1997, ZCCM and the Kitwe City Council met to discuss the proposal made by the company to move 10,000 squatters from mine land in advance of the sale to enable the new buyer to extend mining operations unencumbered.⁴⁴⁷ A resolution was arrived at whereby the Council would provide an alternative area in which to settle those evicted while ZCCM would make provision to enable residents to establish permanent infrastructure in the resettlement area. The townships affected were St. Anthony, Kandabwe and Lute while an area in Kawama was earmarked to receive those displaced.⁴⁴⁸ In St Anthony, the company and council had previously relocated a small number of squatters while the majority had refused to move. Other settlers had subsequently moved into the area.⁴⁴⁹ Kitwe City Council and ZCCM formed resettlement committees comprising area MPs and councillors to sensitise those to be affected by the planned action and to advise them on the need to cooperate with the council and ZCCM. This sensitisation period was to last for only one month before the resettlement exercise would begin.⁴⁵⁰

The ZCCM report lists 41 squatter settlements with a combined population of 44,556 across all six operational divisions of the company.⁴⁵¹ However, these figures are disputed and are likely to be a gross underestimation of the number of people residing on mine land. For example, the 1998 Chingola Town Council estimate for the number of squatters on ZCCM land at Nchanga Division is 15,000 - 20,000 as opposed to the company's 1996 estimate of 3,873. Similarly, for Kamakonde compound within the mining area of Nkana Division, the company records its population as 4,854 whereas Kitwe Town Council cites an estimate of 15,000. It is pertinent to reiterate that the Zambian Government has an immediate obligation under the Covenant to monitor the prevailing housing situation.⁴⁵² In particular, it ought to be in a position to provide detailed information on realisation or denial of the right to housing in respect of vulnerable and disadvantaged groups, *inter alia*, those living in 'illegal' settlements and those evicted or lacking legal protection against arbitrary eviction.⁴⁵³ This notwithstanding, whatever the precise number of settlers on mine land, there is no doubting its magnitude.

Under the Covenant, the procedural protection which must be applied in relation to forced evictions should, *inter alia*, include: an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; timely information on the proposed evictions and, where applicable, information on the alternative purpose for which the land or housing is to be used; the provision of legal remedies; and provision, where possible, of legal aid to enable persons to seek redress from the courts.⁴⁵⁴ The incompatibility of the abortive ZCCM programme of resettlement with the Covenant is brought into sharp relief by these requirements.

In June 1997, ZCCM met with local councils to discuss how thousands of squatters would be evicted and resettled. Action plans were drawn up. As evidenced in the accompanying text-box, these plans were a blueprint for forced eviction. The alternatives to eviction were not considered. Residents of the squatter townships were not genuinely consulted before the plans for mass eviction were drawn-up. The time-frame for implementation was massively compressed. Eviction notices were to be issued in June and August and the exercise was to be completed by September 1997. People were to be given grossly inadequate notice of their pending removal from established communities. All buildings - poorly fabricated and well-built houses alike, churches, schools, shops, clinics - were to be demolished immediately after they were vacated. Furthermore, neither the time nor resources available for the programme were in any way commensurate with the need to demarcate plots, install essential services, and prepare roads in resettlement areas which were to receive a minimum of 50,000 people. Resettlers would then be expected to build their own homes with salvaged roofing sheets and on the back of little or no compensation.

The fact that this action was even contemplated is indicative of the enormous importance attached to the sale of ZCCM. Indeed, the decision to remove squatters from mine land at the insistence of new investors would have to be authorised at the highest level, that is by the President.⁴⁵⁵ Council officials have expressed their doubts that he would concur.⁴⁵⁶ This notwithstanding, it is inconceivable that the President would not have known about ZCCM's planned resettlement programme. Either this programme was an elaborate ruse on the part of the Government/ZCCM in the midst of negotiations - to be seen to be taking action on the squatter issue - or else it was a serious proposal sanctioned at the highest level.

Kitwe City Council and Nkana Division did actually begin implementation of the eviction and resettlement plan, undoubtedly because of the pressure to act arising at the time from the advanced state of negotiations with the Kafue Consortium over the sale of the Nkana/Nchanga package. It is reported in an Oxfam study of land tenure insecurity on the Copperbelt, that:⁴⁵⁷

‘All potential purchasers, we were told, wanted to buy the mines and the mining land ‘unencumbered’, i.e. with all tenants removed. Negotiations on this were said to be ‘quite emotive’ in the cases of Nkana (Kitwe) and Nchanga (Chingola).’

ZCCM and council officials visited Kandabwe township on 1 August 1997 to deliver eviction notices giving those occupying ZCCM land one month in which to vacate the area. That the action was directly linked to the pending sale is reinforced by the fact that the first settlement targeted was within the Nkana Mining License Area and that the eviction notices cited the area as ‘earmarked for mining development.’⁴⁵⁸ The notice further advised residents to contact the council about resettlement to Kawama. As word of the action spread, eighty or so residents threatened the official team and police were called to restore order. The squatters refused to vacate a site upon which they had built houses, churches and retail outlets.⁴⁵⁹ The attempt to begin eviction failed almost before it started because of the resistance from residents.

It is abundantly clear that the councils, in particular, were fully aware of the widespread civil unrest which would result from any attempt to implement the eviction and resettlement programme. While political expediency may have dictated cooperation between the councils and ZCCM in drawing up the resettlement programme, it is clear that council officials believed - and still believe - that the problem presented by the squatters to ZCCM is one of the company's own making. At the time, the councils certainly did not wish to provoke a confrontation with the communities in question.⁴⁶⁰ It is apparent that Kitwe City Council regrets the deterioration in its relations with ZCCM squatters as a result of the eviction plans.⁴⁶¹

The fear of further unrest, coupled with a lack of political will in the run-up to planned local elections, and the eventual collapse of the sale of Nkana and Nchanga to the Kafue Consortium which seriously disrupted and delayed the privatisation of other ZCCM packages, all resulted in *de facto* suspension of the resettlement plan.⁴⁶² However, the problem posed by squatter settlements on mine land persists. With completion of the sale of the core ZCCM mines of Nkana, Nchanga, Konkola, Mufulira and Nampundwe, the plight of squatters on mine land is once more cause for immediate concern. It must be noted that the IFC, in its summary of project information for its financing of Anglo/Konkola Copper Mines, makes specific reference to involuntary resettlement and ‘informal activities and settlements on the concession’ as an important issue to be resolved.⁴⁶³ A number of other mines have already been sold prior to satisfactory resolution of this issue, storing up the potential for future conflict and violation of the right to housing.

c. The privatised Kansanshi Mine: evictions and planned displacements

The sale of Kansanshi mine to the Cyprus Amax of the USA was completed on 14 March 1997. Large-scale mining at the site had ceased in 1986. In a complex deal, the company is to carry out exploration within two years before exercising its option to move to a full feasibility study to secure finance prior to making a final decision on whether or not to commence mining.⁴⁶⁴ Cyprus Amax agreed that an existing small-scale mining operation at the site could continue in the near term under ZCCM/Government of Zambia surveillance.⁴⁶⁵ As was noted in Section 2(II), even though exploration drilling and prefeasibility studies alone were to take two years, less than one year after the completion of the deal, these operations were closed.⁴⁶⁶ At issue is both the subsequent eviction of miners and their families from mine housing and the preparations which are underway for the displacement of villages as the prospect is developed. The handling of these matters is related to the matrix of requirements governing such action under the Covenant to prevent forced evictions.

i. The eviction of miners

Formal production at the small-scale operations ceased on 15 January 1998. Cyprus Amax maintains that the decision to close was taken by ZCCM alone on commercial grounds, although under the terms of the agreement Cyprus Amax could require such termination if the mining was deemed incompatible with its exploration work.⁴⁶⁷ 160 miners and their families and 55 youths on short-term contracts lost their jobs.⁴⁶⁸

After the operations were closed, Cyprus Amax announced its intention to clear the site and demolish the township - high density housing, garden plots, a basic school, a church - still occupied by miners and their families and situated within the Mining Licence Area. The land itself was earmarked for exploration by the company. The miners were told to leave their homes.⁴⁶⁹ This is in stark contradiction to the assurances issued by the Zambian Privatisation Agency when the Kansanshi Mine was sold:⁴⁷⁰

‘Employees living in ZCCM houses owned by ZCCM at Kansanshi will be entitled to live in their homes, *regardless* of whether the land is sold to Cyprus Amax.’ [Emphasis added]

Forty-two almost completed houses were subsequently demolished by Cyprus Amax in February and March 1998 on the grounds that they were poorly built, located in a mining area and liable to collapse due to the use of explosives in exploration for copper.⁴⁷¹ This provoked an angry public response from miners’ representatives. In April 1998, the local branch of the MUZ alleged that ZCCM had originally issued letters offering the houses to miners who had signed contracts to that effect. This is confirmed by Oxfam in its report on a fact-finding visit to Solwezi in August 1998.⁴⁷² However, the paperwork was not processed and the offers withdrawn, ostensibly because Cyprus Amax, as the incoming buyer, had directed ZCCM to reserve all habitable houses for their use as part of the purchase.⁴⁷³ In June, Cyprus Amax issued final eviction notices to residents in the long-established township setting 6 August as the date by which all houses were to be vacated.⁴⁷⁴ The miners and their families - a total of 930 people - began to leave in the same month.

Former miners were paid the terminal benefits due to them by ZCCM. The amount received ranged between K6 million and K20 million.⁴⁷⁵ No counselling was available to ex-miners on how they might invest this money with the result that many have sunk money into unsustainable businesses and have failed to buy houses.⁴⁷⁶ The payment of terminal benefits by ZCCM should not, of course, be confused with the requirement for compensation for eviction.

ii. Wider displacement

Under ZCCM, the Kansanshi Mine Licence Area covered 4,244 hectares, although mining activities were confined to 51 hectares by 1997.⁴⁷⁷ The Mine Surface Area covered 7,200 hectares. It is assumed that the corresponding licence granted to Cyprus Amax as purchaser of the mine covers the same land. Much of the land adjacent to the Mining Licence Area is under customary tenure. The company has been undertaking extensive exploration and has stated its intention to extend the mining area. To this end, it has sought and obtained the prior approval of the chiefs and local authorities.⁴⁷⁸

The future of three villages is in jeopardy - Kyafukume, Kametele and Mushitala.⁴⁷⁹ The latter, located one kilometre from the existing mine compound, is most immediately threatened by development. After approaches from the company seeking his consent, the chief called a meeting in February 1998 to inform Mushitala villagers that they would be required to move by 2000 and would be resettled in the forested area of Mbonge. In addition to houses, the village has a school, hospital and church. Cyprus Amax has agreed to provide a new school and hospital. It will also pay for transport to the resettlement area. However, it is by no means clear that the villagers will be assisted to build new homes or compensated for disruption and loss of livelihood. Oxfam maintains that local people were neither consulted directly nor were they in a position, if so minded, to challenge the decision of the chief. The root basis for this failure to elicit the

views of directly affected people lies in the Mines and Minerals act itself. Section 56(1)(c) stipulates that a license holder requires only 'the written consent of the chief and the local authority for the district in which the village is situated' before commencing operations. This effectively allows grassroots' opinion to be by-passed.

iii. Specific observations vis-à-vis resettlement in the Solwezi area and protection from forced evictions

Relations between the company and Solwezi Town Council appear to be good. When the area was struck by floods in January 1998, 600 low cost houses were washed away. To assist with the housing and support for the flood victims, Cyprus Amax gave K80 million to the Council for relief work.⁴⁸⁰ The remainder of materials from the demolished mine township were also donated by the company. The Council is using the money to demarcate 1,000 plots in a new site-and-service called Kasamba.⁴⁸¹ Those displaced by the flood, 650 families in total, are to be given priority in the allocation of plots. Existing residents of Zambia and Chawma shanty compounds will be resettled next. Remaining plots will be allocated to former miners.⁴⁸²

Given the elective nature of the agreement to develop the deposits at Kansanshi, it is by no means certain that Cyprus Amax will open a new mine. Although the exploration phase is to take up to five years, the company has already estimated reserves of 100 - 200 million tonnes and as expressed itself as 'cautiously optimistic' over a move to production.⁴⁸³ The development of Kansanshi will require a temporary construction workforce of 2000. It has requested land from the Council on which to build serviced accommodation.⁴⁸⁴ After the main period of construction is over, the workforce required at the mine will drop to 400. Surplus housing will be given to the Council. This transfer, if realised, will add to Solwezi's serviced housing stock.

However, it is profoundly misplaced to consider human rights, including economic and social rights, in terms of a zero-sum argument. The fact that some people have benefited from the actions of Cyprus Amax does not alter, let alone cancel out, the apparent denial of the right to housing suffered by others.

1) Genuine consultation

'The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected...'⁴⁸⁵

It is alleged that Cyprus Amax refused to consult the community over its decision to begin evictions and demolish the township: 'According to local people there was no willingness to negotiate with the miners - it was a question of 'take it or leave it'. The miners were isolated, and people did not really even know who they should be negotiating with.'⁴⁸⁶ The same source records that Cyprus Amax refused to discuss its decision to demolish the church at Kansanshi and threatened to charge the Parish if it defied the order and kept the church open.⁴⁸⁷ Furthermore, Oxfam has expressed its doubts over whether there has been genuine consultation with villagers affected by the proposed mining-related displacement.

2) Adequate compensation

'States Parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.'⁴⁸⁸

The Kansanshi branch of the MUZ is adamant that the miners were discriminated against: they lost their right to buy and were not offered surplus ZCCM houses in other mining towns. They also appear to have been inadequately compensated for the loss of their homes, gardens and community. It is reported by Oxfam that Cyprus Amax made funds available to ZCCM Nchanga Division which paid the ex-miners between K600,000 and K1,200,000 (approximately \$360 - \$720) in compensation, although the development NGO was unable to confirm this with ZCCM. The former miners were also given permission to salvage the fabric of the houses, but many were moving out of the area and the removal of materials was not feasible.

The Catholic church at the Kansanshi mine belonging to St Kizito Parish in nearby Solwezi was demolished in August 1998. It had served a local population in and outside the mine of about five hundred. The Franciscan Fathers of the parish had a letter from ZCCM Nchanga Division, dating back to March 1991, granting them permission to occupy land inside the Mine License Area.⁴⁸⁹ The Parish was provided with a certificate exempting it from the need to register the land while ZCCM offered the assurance that it had 'no objection to their continuing to develop the plot.'⁴⁹⁰ The letter

confirms that the parish was being encouraged to build a permanent structure to serve the needs of the local Christian community. The church was duly completed during the same year at a cost of K7 - 8 million.⁴⁹¹

The actual destruction of the church was witnessed and recorded on videotape by Oxfam in its visit to Kansanshi. The Parish was given permission to salvage roofing sheets from the building but, as of September 1998, both ZCCM and Cyprus Amax had refused to provide compensation.⁴⁹²

3) *Homelessness and vulnerability*

‘Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.’⁴⁹³

The ZCCM Kansanshi impact statement of the previous year anticipated that ex-miners were likely to move into informal settlements around Solwezi because of a desire to remain close to local amenities.⁴⁹⁴ No measures were put in place to mitigate the impact of this relocation. Others, despite having lived in Solwezi for most all of their lives, felt they had little option but to be repatriated to now unfamiliar rural areas in Luapula and Northern Provinces. ZCCM, with backing from Cyprus Amax, agreed only to pay the transport costs of those miners and their families who moved out of the district.⁴⁹⁵

It is apparent that no provision was made either locally or in distant villages to rehouse the miners and their families. The extent to which this resulted in homelessness is unknown. Oxfam was sufficiently alarmed by the prospect of impoverishment among those who were displaced to recommend that the Zambian authorities ‘should engage in proper monitoring of those workers who have been repatriated to ascertain their circumstances.’⁴⁹⁶

d. World Bank support for the privatisation of ZCCM: the failure to apply the operational directive on involuntary resettlement

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities Resolution 1991/12 recognises that ‘forced evictions can be carried out, sanctioned, demanded, initiated or tolerated by a number of actors, including...bilateral and international financial institutions and aid agencies.’ Hence international financial institutions can be seen as actors behind forced evictions⁴⁹⁷. It is further recognized in the same resolution that ‘misguided development policies can result in mass forced evictions’ while a subsequent resolution of the Sub-Commission invites all international financial, trade, development and other related institutions and agencies to take fully into account pronouncements under international law on the practice of forced evictions⁴⁹⁸.

The argument has already been made that the advisability of the Bank’s assistance measures, as these impinge upon the realisation of rights under the Covenant, is a matter of concern for the Committee.⁴⁹⁹ To reiterate, the Committee recognises a first general principle of the indivisibility and interdependence of human rights under which ‘international agencies should scrupulously avoid involvement in projects which, for example, involve...large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation’;⁵⁰⁰ and recognises a second general principle that ‘[m]any activities undertaken in the name of “development” have subsequently been recognized as ill-conceived and even counter-productive in human rights terms’.⁵⁰¹ To operationalise the principle of the advisability of international assistance measures contained in article 22, the Committee therefore draws to the attention of all relevant organisations that the rights recognised in the Covenant are to be taken into account during each phase of a development project.⁵⁰²

The privatisation of ZCCM is, of course, a key component of the Bank and IMF-backed structural adjustment programme in Zambia. In General Comment 4 on the right to housing, the Committee asserts that ‘[i]nternational financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to housing.’⁵⁰³ In General Comment 7, the Committee not only recognises that development projects financed by international have resulted in forced evictions, but draws specific attention to the guidelines on resettlement drawn up by the World Bank in this regard: ‘Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States Parties to the Covenant.’⁵⁰⁴ Any argument that invokes a lack of overall development to justify evictions and abridgement of internationally recognised human rights is rejected by the Committee.⁵⁰⁵

The resolutions of the Commission and Sub-Commission, together with the cited Covenant articles and General Comments, place the actions of the Bank as these relate to the right to housing and forced evictions firmly in the human

rights arena and specifically within the remit of the Committee. For the Bank to be answerable to the Committee in this regard, it must be demonstrated that the measures it has adopted in Zambia, by action or omission, are implicated in forced evictions. It is argued, firstly, that Bank lending and technical assistance has supported the privatisation of ZCCM; second, that privatisation of the mines, as envisaged by the Government in agreement with the Bank, threatens mass displacement; and third that, despite its support for a program likely to give rise to involuntary displacement, the Bank has failed in its obligation to apply its own operational directive on involuntary resettlement.

i. Bank lending and technical assistance to support the privatisation of ZCCM and foster a pro-private sector mining regime

The fact of the Bank's close involvement in shaping the mining sector in Zambia is a matter of record, as already recounted in the subsection detailing the use of adjustment lending and technical assistance to foster the privatisation of ZCCM. At this juncture, it is sufficient to recall that the bulk of IDA funds of \$21 million under the 1991 Mining TAS was spent on the failed plan to revive ZCCM's fortunes and on the initial development of a framework to encourage private sector investment in mining. Bank staff were directly involved in formulating an emergency plan for ZCCM. Almost \$10 million has been spent subsequently on the services of Rothschilds and Clifford Chance in drawing up the ZCCM privatisation plan.⁵⁰⁶ The adoption of the ZCCM privatisation plan *per se* was made a specific Bank condition for the release second tranche of the ERIP Credit.⁵⁰⁷ The implementation of a pro-private sector mining policy was a covenanted requirement of the same credit.⁵⁰⁸ A further component of ERIPTA was to improve ZCCM's technical capacity to monitor the Bank-backed Emergency Plan introduced to keep the company solvent. A Bank Technical Review Mission looked at ZCCM's problems in November 1995 and November 1996.⁵⁰⁹ \$3.6 million of the ERIPTA Credit was on-lent direct to ZCCM for technical skills strengthening, advisory services and staff support to the Board of Directors.⁵¹⁰ At the same time, the Bank claims that the ERIPTA project, because of the nature of the reforms supported, was prepared with 'the full participation of the Government and the agencies/institutions concerned.' Yet, the list of those consulted does not include development NGOs or community groups.⁵¹¹ Certainly, there was no attempt under ERIPTA to elicit the views of the 50,000 - 100,000 residents living without secure tenure on mine land despite the fact that poverty alleviation is a stated program objective. Nor did the project seek to consult with those local councils struggling to cope with additional burden of service provision and municipal administration heaped upon them as ZCCM withdraws from carrying out its social functions. A dialogue with the councils would quickly have established the number and scale of squatter townships on mine land and the absence of policy guidance on this issue.

ii. Privatisation of ZCCM and the threat of involuntary displacement

The fate of squatter settlements and other residents on mine land under privatisation was always at issue once the intention to privatise ZCCM was taken. It could not have been otherwise. ZCCM is the second largest holder of title to land in Zambia after the State. Hundreds of thousands of people, whether classified as illegal or legal, reside, live and work on mine land. As has been documented, ZCCM's 1997 study of illegal settlements and its controversial programme of involuntary resettlement is incontrovertible evidence that such occupancy of mine land was, and remains, highly problematic in the eyes of the industry in the context of privatisation, investment and planned expansion: 'ZCCM is being privatised[;] therefore, on the assumption that the new investors will bring with them enough capital to develop these mines further, the squatters that had [sic] been 'allowed' to settle on mine land cannot now continue to do so at the expense of developing the mines.'⁵¹² As the sale of ZCCM commenced, local councils in the Copperbelt were under no illusion that the buyers wanted to buy the mines 'unencumbered'.⁵¹³

Many of the 1997 Environmental Impact Statements for each of the existing thirteen ZCCM Mining Licence Areas note with concern that informal settlements have developed within many Mine Surface Areas and Mine Licence Areas. Attention was drawn to the potential that existed for conflict between ZCCM, the new buyers, the councils, politicians, and the residents over the future of the squatter settlements on mine land. These statutory studies recommended that urgent consideration should be given to planning the future of such settlements on mine land with sufficient lead time to negotiate solutions with the squatters, non-governmental support groups and relevant government departments, especially local government.⁵¹⁴

Faced with this clear evidence that the existence of extensive squatter settlements on mine land was not only fully recognised, but was viewed as problematic in the context of privatisation, it is inconceivable that the Bank was unaware of the issue. The Bank acknowledges that development-induced involuntary displacement gives rise to severe economic, social and environmental problems: productive assets and sources of income are lost; people are located to an alien environment where their productive skills are of less use; community structures and social networks are weakened; and kin groups are dispersed.⁵¹⁵ The Bank recognises that subsequent involuntary resettlement causes severe long-term hardship and impoverishment unless appropriate measures are planned and implemented. Given the prevailing situation in Zambia, it is strongly contended that it was incumbent upon the Bank to apply its operational directive on involuntary

resettlement in its appraisal of lending instruments geared towards the privatisation of ZCCM.⁵¹⁶ Its failure to do so threatens further involuntary displacement without due safeguards or an adequate plan for resettlement. In such a circumstance, forced evictions will continue to occur and result in the violation of human rights under both Covenants.

iii. The Bank's failure to apply Operational Directive 4.30 on involuntary resettlement

There is a recognition by the Bank that the potential for violating individual and group rights under domestic and international law makes compulsory resettlement unlike any other project activity.⁵¹⁷ The World Bank's *Operational Directive 4.30 Involuntary Resettlement* applies to all projects that cause involuntary displacement: 'Planning and financing resettlement components or free-standing projects are an integral part of preparation for projects that cause involuntary displacement.'⁵¹⁸ It pertains to all relevant Bank lending operations: indeed, specific reference is made to its applicability to IDA credits.⁵¹⁹ The directive is understood to be applicable to programme assistance and investment lending.⁵²⁰

The objective of the resettlement policy 'is to ensure that the population displaced by a project receives benefits from it.'⁵²¹ The directive codifies a number of principal policy considerations. First, involuntary displacement should be avoided or minimised where feasible.⁵²² Second, where displacement is unavoidable, resettlement plans should be developed (see the accompanying text-box).⁵²³ Resettlement should be conceived as a development program in which resettlers benefit. Displaced persons should be compensated for their losses at replacement cost; assisted in the move and for a transition period; and assisted to improve, or at least restore, their former living standards and earning capacity. A third requirement that land, housing, infrastructure, and other compensation should be provided to the adversely affected population arises from this: 'The absence of legal title to land...should not be a bar to compensation.'⁵²⁴ Two final considerations are the encouragement of participation in planning and implementing resettlement in both the displaced and host communities and the fostering of social and economic integration.⁵²⁵

The Resettlement Plan

Where large-scale population displacement is unavoidable, a detailed resettlement plan, timetable, and budget are required.⁵²⁶ Resettlement plans should make provision, *inter alia*, for:⁵²⁷

- delegating who has responsibility for organizing resettlement;⁵²⁸
- community participation;⁵²⁹
- a socio-economic survey;⁵³⁰
- the review of the legal framework governing resettlement and land law;⁵³¹
- the identification of the resettlement site(s) after considering alternatives;⁵³²
- the payment of compensation;⁵³³
- land acquisition and the transfer of title to resettlers;⁵³⁴
- the allocation of resources to provide serviced housing with access to infrastructure and social amenities;⁵³⁵
- and access to training, employment and credit.⁵³⁶

Applying OD 4.30 on involuntary resettlement: project preparation, appraisal, implementation and evaluation.

It is emphasised throughout the operational directive that the issue of involuntary displacement should be dealt with from the earliest stages of project preparation.⁵³⁷ At this stage, 'the feasibility of resettlement must be established, a strategy agreed upon, the resettlement plan drafted, and budget estimates prepared'.⁵³⁸ The submission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.⁵³⁹ The Bank's appraisal mission ascertains the adequacy of the plan and whether the borrower has the resources and capacity to implement it.⁵⁴⁰ The resulting Staff Appraisal Report and the Memorandum and Recommendation of the President should summarize the plan and state that it meets Bank policy requirements. During implementation, resettlement components should be supervised throughout by Bank staff.⁵⁴¹ Finally, resettlement and its impact on the standards of living of the resettlers and the host population must be evaluated.⁵⁴²

The operational directive on involuntary resettlement specifies the responsibilities of Bank staff at the stages of project identification, preparation, appraisal, implementation and evaluation. Under the rubric of identification, 'the possibility of involuntary resettlement should be determined as early as possible and described in all project documents.'⁵⁴³ The construction or establishment of mines is specifically noted as one example of a project which displaces people involuntarily.⁵⁴⁴ The parallel potential for displacement arising in the context of privatisation is obvious. As plans were prepared for splitting up and privatising the conglomerate, the existence of squatter settlements on ZCCM land

presented the immediate possibility of involuntary resettlement; yet this determination was not made by the Bank and there appears to be no reference to the issue in project documents relating to the pertinent credits.⁵⁴⁵

It is incumbent upon the Bank's Task Manager to inform borrowers of the Bank's own resettlement policy, discuss policies, plans and institutional arrangements with the resettlement agencies appointed by the borrower, and ensure the provision of necessary and timely technical assistance. This includes the use of project preparation facility resources, of the type used so readily by the Bank in Zambia to support the Rothchild's ZCCM privatisation plan. There is no evidence, during the project identification stage of each proposed credit, that the Task Manager or senior Bank staff questioned Government/ZCCM policy towards squatter settlements or the compatibility of existing and developing land law with the existing World Bank guidelines on resettlement or with underlying principles of international law.

Once the Bank neglected to identify the need to apply the directive on involuntary resettlement to its ZCCM-related lending and technical assistance, its further consideration through stages of the project cycle was precluded (please refer to the text-box).

Oxfam, in its recent study of land tenure insecurity on the Copperbelt, concludes that 'there is no indication that the Bank, despite its long-standing technical and financial support for the privatisation of ZCCM, has implemented these [involuntary resettlement] guidelines.' The report continues '...no adequate resettlement plan has been prepared by the Government, ZCCM and the new owners and that currently there is almost no assistance provided to families who are evicted from mine land.' In the light of this, the recommendation is for immediate action by the Bank to redress its neglect of the squatter issue.⁵⁴⁶

'The first priority is for the World Bank to implement its resettlement guidelines (OD 4.30) and assess the numbers of squatters who are entitled to compensation and/or other forms of assistance as part of its support to Zambia's privatisation programme. World Bank resettlement specialists should carry out a full land acquisition assessment.'

Notes

¹ The invitation to submit written material was reiterated by the Committee in E/C.12/1993/WP.14 and is codified as Rule 69(1) in its Rules of Procedure (E/C.12/1990/4 & Rev.1). See also ECOSOC Resolution 1987/5, para. 6; and Resolution 1988/4, para.16.

² The Committee, and its individual members, have recognised the importance of this issue in the context of its Day of General Discussion on Globalisation and its Impact on Economic, Social and Cultural Rights. '[T]he international community should begin seriously to tackle the question of the role of private actors in the promotion of human rights. Why did international human rights rules apply only to governments and not to corporations, whose power was increasing as that of States was declining?' (Alston, E/C.12/1998/SR.20, para. 7).

³ The provisions of humanitarian law as expressed in the Geneva Conventions and the Additional Protocols have direct applicability to private parties as well as to states. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) is confirmation that private actors can be held to account under international law. Article 4 reads 'Persons committing genocide or any of the other acts enumerated [in the Convention] shall be punished, whether they are constitutionally responsible rulers, public officials, or *private individuals*.' [Emphasis added]. The Nuremberg trials demonstrated that individuals could be tried for crimes against humanity, a principle that has been reiterated in recent years with the establishment of the international tribunals for the former Yugoslavia (1993) and Rwanda (1994). In addition, the Rome Statute of the International Criminal Court, recently adopted on 17 July 1998 at the end of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, will provide, pending its ratification, such a permanent court with jurisdiction over individuals with respect to genocide, and crimes against humanity, war crimes, and crimes of aggression. (See article 5, Rome Statute of the International Criminal Court, A/CONF.183/9).

⁴ Statement on globalisation and economic, social and cultural Rights, para. 2. [Emphasis added]. (The statement is reproduced in E/1999/22, Chapter VI, paras. 515 ff.).

⁵ UDHR, preambular paragraph 7.

⁶ The ICCPR and the ICESCR confirm that private actors have responsibilities under human rights law. Common preambular paragraph 5 states: '...the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant...'

⁷ Furthermore, the universal responsibility for human rights is reinforced by article 29 that states that 'Everyone has duties to the community'.

⁸ See common article 5(1): 'Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.'

⁹ 'The experience of the relevant specialised agencies ... including the United Nations working groups and special rapporteurs in the field of human rights should be taken into account in the implementation of the Covenant and in monitoring State Parties' achievements.' (Limburg Principles, reproduced in E/CN.4/1987/17, para. 5).

¹⁰ 'The realization of economic, social and cultural rights,' Second Report, E/CN.4/Sub.2/1991/17.

¹¹ 'The question of the impunity of perpetrators of human rights violations,' Second Interim Report, E/CN.4/Sub.2/1996/15.

¹² Cited from 'The relationship between the enjoyment of human rights, in particular, international labour and trade union rights, and the working methods and activities of transnational corporations,' Background document, E/CN.4/Sub.2/1995/11, para. 142. See also, 'The impact of the

activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter,' E/CN.4/Sub.2/1996/12.

¹³ 'Progress report of the Intergovernmental Group of Experts on the Right to Development on its first session,' E/CN.4/1997/22, para. 86.

¹⁴ *Ibid.*, Annex III, Proposals for the drafting of chapter III of the report on measures for the implementation and promotion of the Declaration on the Right to Development, subpara. 10. Likewise, in its second report, the Group of Experts insists: 'There should be coherence between respect for the right to development and the functioning of the international trading system. In particular, less economically developed nations should not suffer losses from trade rules.' ('Report of the Intergovernmental Group of Experts on the Right to Development on its second session,' Chapter I. United Nations system and other international organizations, E/CN.4/1998/29.

¹⁵ *GC 12*, para. 19.

¹⁶ *Ibid.*, para. 27.

¹⁷ *Ibid.*, para. 20.

¹⁸ E/C.12/1/Add.13, para. 14.

¹⁹ E/C.12/1/Add.23, para. 29. See also E/C.12/1998/SR.6, especially paras. 21 and 36 ff.

²⁰ In its commentary to the UK submission in 1995, the Human Rights Committee was 'concerned that the practice of the State Party contracting to the private commercial sector core State activities which involved the use of force and the detention of persons weakens the protection of rights under the Covenant.' (A/50/40, para. 423).

²¹ In its consideration of Algeria's policy of devolving security functions to private 'legitimate defence groups', the Human Rights Committee has noted that '... serious questions arise as to the legitimacy of the transfer of such power by the State to private groups, especially in view of the power which the State itself confers upon them and the very real risk to human life and security entailed by the exercise of that power... The Committee recommends that the government urgently takes measures to ensure that it maintain within its police and defence forces the responsibility of maintaining law and order and the protection of life and security of the population.' (A/53/40, para 356).

²² Commission on Human Rights Resolution 1996/14, reiterated in Resolution 1997/9. [Emphasis added].

²³ Commission on Human Rights Resolution 1995/81. Likewise, the Secretary General's comprehensive report to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1995 outlined the extent to which corporate practices were at odds with human rights precepts. ('The relationship between the enjoyment of human rights, in particular, international labour and trade union rights, and the working methods and activities of transnational corporations,' E/CN.4/Sub.2/1995/11).

²⁴ Inter-American Commission on Human Rights (1997), 'Report on the Situation on Human Rights in Ecuador,' OEA/Ser.L/V/II.96, Chapter 8, Conclusions, p.94.

²⁵ The Committee itself in *GC 9* has encouraged the incorporation of the Covenant into domestic law. This would provide redress to those whose social, economic and cultural rights are violated by third parties, to include private companies. However, few States have taken the step of incorporation.

²⁶ Furthermore, transnational companies are often able to escape justice by claiming jurisdictional and other legal privileges: 'The violations committed by TNCs in their many trans-boundary activities do not come within the competence of a single state, and, to prevent contradictions and inadequacies in the remedies and sanctions decided upon by states individually or as a group, should form the subject of special attention.' (E/CN.4/Sub.2/1996/15, para. 132).

²⁷ The Draft Articles on State Responsibility were adopted, after a first reading, by the full Commission at its 48th session in 1996. Subsequently, after discussion based on two reports prepared by the duly appointed Special Rapporteur on State Responsibility, the Drafting Committee has revised and adopted Part I of the Draft Articles. It is proceeding with work on the other Parts and Chapters. The Commission has given due priority to the work, and the aim is to complete a second reading of the Draft Articles by 2001. As the revised text has not yet been considered for adoption by the full Commission, it remains provisional. Citations therefore refer to the original text as adopted by the Commission, although annotations record changes made to date by the Drafting Committee in its second reading in respect of Part I, Chapters 1 & 2 (1998); and Part I, Chapters 3, 4 & 5 (1999). The original Draft Articles of State Responsibility (1996) are reproduced in the report of the ILC on its 48th session, A/51/10, Chapter III, State Responsibility. The source for the revised text is 'Draft articles provisionally adopted by the Drafting Committee,' A/CN.4/L.569.

²⁸ Article 7(2) of the original draft corresponds to article 7 in the Drafting Committee's revised text, while the reference to 'territorial governmental entities,' originally under article 7(1), is removed.

²⁹ 'First report on State responsibility,' Addendum, A/CN.4/490/Add.5, para. 187. Furthermore, because what is considered a governmental function varies from state to state, and over time, four factors are assessed in arriving at this classification: the content of the powers; how they are conferred on the entity; the purpose for which they are exercised; and the extent to which the entity is accountable to government (*idem*, para. 193).

³⁰ Commentary to article 7, para. 19 (cited in A/CN.4/490/Add.5, para. 187).

³¹ Both Nchanga Consolidated Copper Mines Ltd and Roan Consolidated Mines Ltd, owned respectively by Anglo American of South Africa and Roan (formerly Rhodesian) Selection Trust, were partly nationalised in 1969. In 1973 the Government terminated its special concessions to the mining companies and in 1979 increased its shareholding from 51 per cent to just over 60 per cent prior to the formation of ZCCM two years later. See Bull & Simpson (1993), 'ZCCM - privatisation's golden opportunity'.

³² This is confirmed in the Commentary to article 7, para. 18 (cited in CN.4/490/Add.5, para. 187): 'the existence of a greater or lesser state participation in its [the company's] capital, or, more generally, in the ownership of its assets...do not emerge as decisive criteria for the purposes of attribution'.

³³ Respectively, ICESCR articles 11 and 12.

³⁴ A/CN.4/490/Add.5, para 216.

³⁵ The content of Article 10 in the revised draft remains close to that embodied in the original. There are a few textual changes, *inter alia*: the conduct of an organ of State or entity empowered to exercise elements of the governmental authority shall be considered an act of State even if it 'exceeded its authority' (replacing 'exceeded its competence according to internal law') or 'contravened instructions concerning its exercise' (replacing 'contravened instructions concerning its activity').

³⁶ A/CN.4/490/Add.5, paras. 238 ff.

³⁷ It should be noted that discussions are currently underway to revise the OECD Guidelines and the mechanism by which they are applied.

³⁸ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 1.

³⁹ OECD Guidelines for Multinational Enterprises, introductory paragraph 1. The positive role of multinational enterprises is conveyed simply as 'the promotion of social and economic welfare.'

⁴⁰ OECD Guidelines for Multinational Enterprises, introductory paragraph 2; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 2.

⁴¹ A precise legal definition of a Multinational Enterprise is not given in either the ILO Declaration nor the OECD Guidelines. They may be of private, State or mixed ownership (ILO and OECD). Characteristically such enterprises are established in different countries and are so linked to that one or more of them may be able to exercise a significant influence over the activities of others (OECD). The ILO definition is similarly concerned with geography: multinational enterprises include enterprises which 'own or control production, distribution, services or other facilities outside the country in which they are based.' See ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 6; OECD Guidelines for Multinational Enterprises, introductory paragraph 8.

- ⁴² ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 6; OECD Guidelines for Multinational Enterprises, introductory paragraph 8.
- ⁴³ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 11; OECD Guidelines for Multinational Enterprises, introductory paragraph 9.
- ⁴⁴ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 7.
- ⁴⁵ Specific references are made to the OECD Guidelines within the Preamble, para. 4, of the OECD Principles on Corporate Governance. Furthermore, in the annotations to the principle of disclosure and transparency, reference is made to the relevancy of the Guidelines. See the OECD (1997b) briefing, *The OECD Guidelines for Multinational Enterprises*, GD(97)40, Chapter IV. Disclosure and transparency, p.19.
- ⁴⁶ OECD Principles of Corporate Governance, Preamble, para. 1.
- ⁴⁷ *Ibid.*, Preamble, para. 5. The term 'patient' is not further defined; however it is assumed to refer to investment which is sustainable and non-exploitative.
- ⁴⁸ The three other parts to the Declaration are *The National Treatment Instrument (NTI)* on the equal treatment of foreign and domestic enterprises; an instrument to improve cooperation on *International Investment Incentives and Disincentives*; and an instrument seeking to minimise or avoid *Conflicting Requirements* imposed by different countries on multinational enterprises. See OECD (1992a), *The OECD Declaration and Decisions on International Investment and Multinational Enterprises - Basic Texts*. Major reviews in 1979, 1982, 1984, and 1991 contain clarifications, comments and explanations on the Guidelines. For an overview of the adoption, revision and implementation process, please see the OECD (1997b) briefing, GD(97)40.
- ⁴⁹ See OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 28; also *idem*, Chapter II, p.7.
- ⁵⁰ ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 4: 'The principles set out in the ILO Declaration are commended to governments, employers' and workers' organisations of home and host countries and to the multinational enterprises themselves.'
- ⁵¹ OECD (1997b) briefing, GD(97)40, Chapter I. Introduction, p.4.
- ⁵² As of May 1997, Argentina and Chile have adhered to the Declaration and Decisions.
- ⁵³ OECD Guidelines for Multinational Enterprises, introductory paragraph 3.
- ⁵⁴ *Ibid.*, introductory paragraph 3.
- ⁵⁵ The OECD Council, meeting on 27 - 28 April 1998, called for the development of corporate governance guidelines and standards. An Ad Hoc Task Force on Corporate Governance was tasked with developing the Principles. See OECD (1999), *OECD Principles of Corporate Governance*, SG/CG(99)5, introductory paragraph, p. 2.
- ⁵⁶ *Idem*.
- ⁵⁷ OECD Guidelines for Multinational Enterprises, introductory paragraph 6.
- ⁵⁸ OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 21.
- ⁵⁹ OECD Guidelines for Multilateral Enterprises, introductory paragraph 7: 'Every State has the right to prescribe the conditions under which multinational enterprises operate within its national jurisdiction, subject to international law and the international agreements to which it subscribes.' See also OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 21.
- ⁶⁰ The recommendation is likewise addressed to Governments. However, nothing in the Declaration shall 'limit or otherwise affect obligations arising out of ratification of any ILO Convention.' In other words, primacy is given to the binding undertakings of State parties.
- ⁶¹ See ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, paras. 8 and 9: all concerned parties should respect the Universal Declaration and the two International Covenants, as well as ILO standards. Furthermore, in para. 5, multinational enterprises and other concerned parties are advised to consider ILO Conventions and Recommendations in formulating social policy and action.
- ⁶² As the central concern in the context of this submission is with the normative value of the OECD Guidelines, the mechanism in place for their implementation in OECD Member countries is not reviewed in depth. As an overview: It is the OECD Committee on International Investment and Multinational Enterprises (CIME) which provides clarification, consultation review and amendment of the Guidelines and responds to requests from Member countries and the social partners - the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) - for consideration of various aspects of the Guidelines. At the country-level, a system of National Contact Points has been established in government offices in the Member countries to promote the Guidelines and to assist in solving problems which may arise between business and labour. There is a procedure to clarify application of the Guidelines in respect of individual cases and enterprises. Labour and business organisations, through the BIAC or TUAC, first approach the National Contact Point for consideration. If the issue cannot be resolved at the national level, it may be referred to the CIME for clarification. The interpretation offered is not meant to represent a judgement on the behaviour of an enterprise, whose identity is withheld, although full use is made of the details of the case. These procedures are set down in an OECD Council Decision on follow-up to the Guidelines: please refer to OECD (1993), *The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts*; see also the OECD (1997b) briefing, GD(97)40, Chapter III. Discussions are currently being held to revise the mechanism by which the Guidelines are applied.
- ⁶³ Statement on globalisation and economic, social and cultural rights.
- ⁶⁴ *Ibid.*, para. 2.
- ⁶⁵ *Ibid.*, para. 3.
- ⁶⁶ *Ibid.*, para. 7.
- ⁶⁷ Since the failure of the OECD to adopt the MAI, subsequent WTO talks at Seattle in late 1999 also failed to result in agreement on the deregulation of global investment. For a critique of the MAI and the social and environmental costs of the deregulation of investment, see Vallianatos & Durbin (1998), *License to Loot: the MAI and how to stop it*.
- ⁶⁸ Under article 18, the UN specialised agencies are called upon to submit reports on progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities. The Committee is entrusted with the task of considering these reports. (See Rules of Procedure, E/C.12/1990/4/Rev.1, Rules 66 and 67).
- ⁶⁹ See, for example, ECOSOC Resolution 1988(LX), para. 6, reproduced in E/C.12/1989/4; reiterated in the Committee's *Rules of Procedure*, Rule 66. See also ECOSOC Resolution 1979/43, para.10; ECOSOC Resolution 1982/23, para.(d); ECOSOC Resolution 1984/9, para. 5, also reproduced in E/C.12/1989/4; and ECOSOC Resolution 1985/17, reproduced in E/C.12/1989/4. The ILO is one of the few agencies which has regularly contributed to the work of the Committee. Nevertheless, its failure to formally report on the Declaration in any contribution to the Committee should not preclude such consideration. Furthermore, under article 17 of the Covenant, and within the Committee's own reporting guidelines, States are requested to reference in their State reports relevant information furnished to the UN specialised agencies. Information submitted under the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which is relevant to supervision of the Covenant, is thereby brought within the remit of the Committee.
- ⁷⁰ Limburg Principles, para. 5.
- ⁷¹ See *GC 3*, para. 9.
- ⁷² See, respectively, ICESCR articles 11, 12, 7, and 13.
- ⁷³ *GC 4*, para. 8(b).
- ⁷⁴ *Ibid.*, para. 8(f).
- ⁷⁵ See ICESCR, article 7(a)(ii); ILO Social Policy Convention, article 5(1). The latter was ratified by Zambia on 23 October 1979.

- ⁷⁶ ILO Social Policy Convention, article 5(2).
- ⁷⁷ GC 3, para. 9.
- ⁷⁸ Kienbaum Development Services GmbH (1993), *Strategic Options for the Privatisation of Zambia Consolidated Copper Mines*, p.60.
- ⁷⁹ Lungu & Silengo (1997), 'The socio-economic assessment impact of privatization on the Zambian Copperbelt: the case of Mufulira and Konkola,' para. 2.0.
- ⁸⁰ *Ibid.*, para. 6.0.
- ⁸¹ The figure for ZCCM and subsidiary employment is from ZCCM (1996b), *ZCCM Annual Report 1996*, p.2. The percentage of formal sector employment is estimated on the basis of the Central Statistical Office figure of 484,967 formal sector employees in Zambia at the end of 1995.
- ⁸² LCMS (1996), table 5.5.
- ⁸³ Kienbaum (1993), p.89.
- ⁸⁴ *Ibid.*, p.90.
- ⁸⁵ ZCCM (1998), 'Capital Expenditure on Social Assets and Infrastructure 1983 - 1997'.
- ⁸⁶ *Idem.*
- ⁸⁷ Development Agreement between the Government of Zambia and Roan Antelope Mining Corporation of Zambia plc, 14 October 1997, Schedule 4 [hereafter 'Development Agreement']. All facts and figures in this paragraph are from the same source.
- ⁸⁸ Development Agreement, Schedule 4.
- ⁸⁹ Lungu & Silengo (1997), para. 6.1.
- ⁹⁰ *Idem.*
- ⁹¹ Cited in *idem.*
- ⁹² *Ibid.*, Issue 10: Water Supply.
- ⁹³ *Idem.*
- ⁹⁴ ZCCM (1997b), *Nchanga EIS*, Volume 4.2, Appendix H: Water Supply and Sewage, for example, p. 18, recommendation ix; p. 23 (iii); p.36 (iv); p.40 (iii); p.41 (iii).
- ⁹⁵ *Ibid.*, Appendix H: Water Supply and Sewage, p. 7. The figures are already adjusted for leakage. As significant, unaccounted for losses are unlikely, the high supply must reflect non-ZCCM demand.
- ⁹⁶ *Idem.*
- ⁹⁷ ZCCM (1997b), *Nchanga EIS*, Volume 4.2, Appendix H: Water Supply and Sewage, p. 20.
- ⁹⁸ *Ibid.*, Appendix H: Water Supply and Sewage, p. 34.
- ⁹⁹ *Ibid.*, Appendix H: Water Supply and Sewage, p. 22.
- ¹⁰⁰ *Ibid.*, Appendix H: Water Supply and Sewage, p. 37.
- ¹⁰¹ *Ibid.*, Appendix H: Water Supply and Sewage, pp. 33 and 35 - 36.
- ¹⁰² *Ibid.*, Appendix H: Water Supply and Sewage, p. 17.
- ¹⁰³ *Ibid.*, Appendix H: Water Supply and Sewage, p.18. Equivalent to 250 litres per person each day.
- ¹⁰⁴ *Ibid.*, Appendix H: Water Supply and Sewage, pp. 22 - 23.
- ¹⁰⁵ *Ibid.*, Appendix H: Water Supply and Sewage, pp. 33 and 36.
- ¹⁰⁶ *Ibid.*, Appendix H: Water Supply and Sewage, pp. 22 and 39. The total projected cost of the entire Kitwe water and sewage rehabilitation project, to be supported principally by the Bank/ADB, is recorded as \$33.13 million. This will only bring the system back to former capacity, not required capacity. See *idem.*, pp. 4 - 5. See also Kitwe Water and Sewerage Service Department (1994), 'Report of the Acting Director of Water and Sewerage Services Department.'
- ¹⁰⁷ Kitwe Water and Sewerage Service Department (1994), paras. 2.0 and 2.1.
- ¹⁰⁸ See *intra*, Section 2(III).
- ¹⁰⁹ Operating costs in 1992 for Codelco, the state-owned mining company in Chile, were 64.8 cents/lb compared to 67.9 cents/lb at ZCCM. Indirect costs at ZCCM were 39.5c/lb cf. 21.3c/lb at Codelco. (Kienbaum (1993), p.53).
- ¹¹⁰ *Ibid.*, p.60.
- ¹¹¹ See *ibid.*, p.90; also p.91.
- ¹¹² Kienbaum cite the example of Codelco-Chile where increases in expenditure in 1992 of 6 per cent on the company's social functions contributed to lower absenteeism, lower accident rates and an increase in productivity of 6.2 per cent (see Kienbaum (1993), p.91).
- ¹¹³ *Ibid.*, p.90.
- ¹¹⁴ *Ibid.*, p.91.
- ¹¹⁵ *Ibid.*, pp. 91 - 92.
- ¹¹⁶ While schools and hospitals lend themselves to independent operation, Kienbaum envisaged that complex legal issues surrounding their status needed time to be resolved. It therefore recommended that the new owners continue to run such facilities until these could be rationalised and contracted-out or sold to specialist private-sector providers. See Kienbaum (1993), p.91.
- ¹¹⁷ *Ibid.*, p.92.
- ¹¹⁸ *Ibid.*, p.90.
- ¹¹⁹ *Ibid.*, p.92.
- ¹²⁰ ERIP ICR, para.10
- ¹²¹ Bull (1994a), 'ZCCM - the future lies in unbundling'.
- ¹²² Dr. Mpanda. See Bull (1996), 'ZCCM - Light at the end of the tunnel?'
- ¹²³ The ZCCM management plan to resurrect the company is roundly criticised by Bull in 'ZCCM cries for a policy to survive,' *Times of Zambia*, 7 May 1994.
- ¹²⁴ See Bull (1994), 'ZCCM - the future lies in unbundling,' an advert taken out in the *Times of Zambia* in response to a previous piece sponsored by senior ZCCM board members: 'ZCCM Replies,' advert taken out in the *Times of Zambia*, 14 September 1994. This advert was itself a response to Bull's original article which appeared in the September 1994 issue of *Profit Magazine*.
- ¹²⁵ It is suggested that the Mineworkers Union of Zambia itself favoured the sale of ZCCM as a single entity to Anglo while seeking to attract other mining companies to investment in exploration and the development of new mines. See Muchindu (1998), 'Issues on the Privatisation of the Mines'.
- ¹²⁶ 'ZCCM was a powerful company able to resist privatisation because of its deep links with parliamentarians. It was also partially owned by Anglo-American (about 26 per cent) complicating the decision to privatise....The first preparatory study for privatization made recommendations which Anglo-American did not accept.' (*PIRC & ESAC PAR*, para. 3.9). The Bank has described the failure to privatise ZCCM expeditiously after the completion of the initial Kienbaum study as 'a missed opportunity' which would have 'helped prevent its deteriorating financial condition and might have given the private sector significant growth impetus.' (*Idem.*, para. 2.27, esp. pp. 29-30).
- ¹²⁷ ZCCM (1996b), *ZCCM Annual Report 1996*, Historical Summary, p.43.
- ¹²⁸ ERIP ICR, para.11. The legal covenant under Schedule 3,7 of the ERIP requires the Government to '[a]dopt and furnish IDA a satisfactory plan to privatize ZCCM.'
- ¹²⁹ See 'Cabinet Resolution: Privatisation of the ZCCM Assets,' reproduced in ZPA (1998b), *ZPA Progress Report No. 12*, p.29; see also Chikwese (1997), 'Zambia Consolidated Copper Mines Limited (ZCCM) - Progress Report'.

¹³⁰ZCCM (1996b), *ZCCM Annual Report 1996*, p.14

¹³¹See ZCCM (1996b), *ZCCM Annual Report 1996*, Chairman's Statement (appended), p.2. A memorandum of understanding was signed between the Government and Anglo American on 11 February 1997.

¹³²Statement from ZCI on privatisation of ZCCM. ZCI proposes the arrangements outlined be recorded in the form of a legally binding agreement. A copy of the statement can be found appended to the Ministry of Finance (1997) press release, 'Sale and Purchase Agreement signed on ZCCM's Konkola North Mining Prospect'.

¹³³The ZCI appointed directors would also abstain from voting on any motion involving an offer or tender for any part of ZCCM by ZCI, Anglo American or subsidiary or associate companies.

¹³⁴Chibe (1997), 'Privatisation of Zambia Consolidated Copper Mines'; see also Chikwese (1997).

¹³⁵*ERIPTA ICR*, para. 12.

¹³⁶Oxford Analytica (1998), 'Zambia: copper consequences'.

¹³⁷'Selling the family copper,' *The Economist*, 6 November 1999, p.86.

¹³⁸'Going it alone - at last and at what cost!' *Mining Magazine*, vol. 184, no. 1, January 2000.

¹³⁹Serious market manipulation by Sumitomo's chief copper trader and others came to light in June 1996. Copper prices plummeted amid uncertainty over the extent of the scandal. An international investigation was launched by the UK's Securities and Investments Board into the London Metals Exchange's effectiveness of regulation. See Anyaduke (1999), *Copper: a new material for the millennium*, p.1 and pp.20 ff.

¹⁴⁰Under the OECD Guidelines for Multinational Enterprises, enterprises should '[r]efrain from participating in or otherwise purposely strengthening the restrictive effects of international or domestic cartels or restrictive agreements which adversely affect or eliminate competition...' (Recommendation 4(3) [emphasis added]). However, the recommendation continues 'and which are not generally or specifically accepted under applicable national or international legislation'. Furthermore, the overarching qualifier is conformity with 'official competition rules and established policies' of the countries in which an enterprise operates. *Vis-à-vis* the Guidelines, the accusation of the Zambian Government that a consortium was formed with the specific intention of driving down the price paid for the ZCCM package is weakened by the fact that no action was taken or protests voiced prior to the collapse of negotiations. Yet this failure *ab initio* of the Government to act undoubtedly reflects the power of the mining companies concerned.

¹⁴¹See, for example, the May 1999 address to the London Institute of Mining and Metallurgy by Anglo American Executive Director and head of the company's coal and base metals division, James Campbell (1999), 'The Changing role of mining corporations in economic development' [abridged].

¹⁴²The current cost of the project to be implemented by Anglo is \$523 million; previous estimates costed the full implementation of KDMP as originally planned at between \$700 - 800 million.

¹⁴³'Going it alone - at last and at what cost!' *Mining Magazine*, vol. 184, no. 1, January 2000.

¹⁴⁴Statement to Parliament, Dr. Syamakayumbu Syamujaye, Minister of Mines and Mineral Development, 27 January 2000.

¹⁴⁵OECD Guidelines for Multinational Enterprises, recommendation 4(1).

¹⁴⁶The qualifier 'while conforming to official competition rules and established policies of the countries in which they operate' applies. (OECD Guidelines for Multinational Enterprises, recommendation 4). In Zambia, Anglo American was able to use its position to alter the envisaged bidding process by negotiating exclusive options and to break-up recommended sale packages to its advantage. Once more, the starting point is not necessarily competition rules and policy, but prior influence.

¹⁴⁷ICESCR, article 2(1).

¹⁴⁸*GC 3*, para. 9.

¹⁴⁹Article 1 clauses (1) and (2) respectively, ILO Social Policy (Basic Aims and Standards Convention, 1962 (No. 117)).

¹⁵⁰Article 2, ILO Social Policy Convention.

¹⁵¹Article 3(1), ILO Social Policy Convention.

¹⁵²Article 3(2)(b), ILO Social Policy Convention.

¹⁵³The Asset Holding Company was incorporated under the Companies Act on 29 March 1999.

¹⁵⁴*ZMTS PID*, para. 6.

¹⁵⁵The Operations, Maintenance and Repair Fund and the Rehabilitation Fund.

¹⁵⁶*GC 4*, para. 12.

¹⁵⁷For example, it is noted in the study on the socio-economic impact of privatising Mufulira and Konkola mines that '...the municipal council has not been involved in the discussions making it completely unprepared for the eventual tasks it may have to inherit such as water supply, refuse collection and road maintenance.' (See Lungu & Silengo (1997), Issue 6: Lack of Wide Consultation Among Stakeholders).

¹⁵⁸*ZMTS PID*. The projected appraisal date in the PID of 20 October 1999 was given as November 1999, together with a projected approval date of March 2000. However, a later PID of 9 February lists these dates, respectively, as 22 February and 25 May 2000.

¹⁵⁹For an overview of the reform of the water sector in Zambia, visit the website of the Water Sector Development Group at <www.zament.zm/zament/water/wsdg/>.

¹⁶⁰See 'Water sector masterplan!' *Times of Zambia*, 22 November 1997; 'Three team up in water venture,' *Times of Zambia*, 24 December 1997; 'Water reforms on course,' *Times of Zambia*, 10 February 1998.

¹⁶¹The Water Supply and Sanitation Act (1997) establishes the National Water Supply and Sanitation Council and defines its functions and powers; and it provides for the establishment, by local authorities, of water supply and sanitation utility companies. The latter are to supply water and provide sanitation services on an efficient and sustainable basis under the general regulation of the National Water Supply and Sanitation Council. For more detail on reform of the water sector, see the information provided by the Water Sector Development Group, the secretariat charged with co-ordinating and implementing reform, at <www.zamnet.zm/zamnet/water/wsdg/>.

¹⁶²Cf. *GC 3*, para. 9; also *GC 4*, para. 14.

¹⁶³*GC 3*, para. 10.

¹⁶⁴*Idem*.

¹⁶⁵Declaration on Social Development, Commitment 9(e).

¹⁶⁶ZCCM losses were estimated to be \$25 million per month at the beginning of 1998. See Bull (1997/8), 'ZCCM - the story nears its close,' p. 17. By November 1998, Bull estimated losses of between \$1 - \$2 million each day (see 'Economy Watch,' *The Post*, 16 November 1998). The Zambian resident vice-president of Citibank has recently been cited in press reports as stating that ZCCM has been milking the taxpayer of at least \$1 million per day over the last two years to October 1999 (see 'Relief as Anglo buys the assets of Zambia Consolidated Copper,' *Business Day*, 28 October 1999).

¹⁶⁷Article 22 covers 'virtually all United Nations organs and agencies involved in any aspect of international development cooperation.' (*GC 2*, para. 9). Specific reference is made to the IMF and the World Bank Group (IDA, IBRD, IFC).

¹⁶⁸*GC 2*, para. 7.

¹⁶⁹*Ibid.*, para. 8(d).

¹⁷⁰The component of the project aimed at the development of a new mining code and fiscal regime conducive to private investment was evaluated by the Bank as successful. Overall, however, the project was considered unsatisfactory because of the failure of its main objective, to improve the performance of ZCCM. A third non-copper related component was to assist Maamba Collieries to reduce costs and prepare a long run strategy. This

concluded that the company was not viable as a parastatal operation. Maamba was subsequently offered for sale under the privatisation programme and sold to Benicon of South Africa. See *Mining TAS ICR*, Operations/Project Data Document.

¹⁷¹*ERIP ICR*, para. 1.

¹⁷²Summarised in *ERIP ICR*, Table 5, Key Indicators for Project Implementation and Operation, pp.17 ff. See also *idem*, Table 6 - Status legal covenants, especially Schedule 3.1, Schedule 3.2, and Schedule 3.6. Other requirements included the enactment of legislation to restructure the Bank of Zambia and to regulate both the insurance industry and pension provision.

¹⁷³The ERIPTA was designed to support the reform program required under the Bank's ERIP adjustment credit.

¹⁷⁴*ERIPTA M&R*, para. 10.

¹⁷⁵*Ibid.*, para. 8. This was worth \$1.2 million in IDA support - see *idem*, para.11(iv).

¹⁷⁶*Ibid.*, Schedule B, para D (a) and (c).

¹⁷⁷*ERIP ICR*, para.15.

¹⁷⁸*Idem*. A new fiscal regime favourable to the mining industry was implemented by amending the Income Tax Act, the Customs and Excise Act and the Investment Act.

¹⁷⁹'Mines' sale - the inside story,' Times of Zambia, 8 April 1998.

¹⁸⁰The Interim Short Term Corporate Plan (ISTP) for FY93/94 - FY95/96.

¹⁸¹*Mining TAS ICR*, Operations/Project Data Document Summary, under 'Project sustainability'.

¹⁸²*ERIP ICR*, para. 30.

¹⁸³Under the ERIPTA credit a \$2 million project preparation facility advance was made available to fund the hiring of legal/financial advisors. See *ERIPTA M&R*, para.11(i); see also *ERIP ICR*, para.25.

¹⁸⁴*ERIP ICR*, para. 25.

¹⁸⁵*Ibid.*, para. 29.

¹⁸⁶*Ibid.*, para. 30.

¹⁸⁷*ERIPTA M&R*, Schedule B - performance indicators.

¹⁸⁸*Inter alia*, the number of privatizations, the number of new private enterprises advertised, the amount investment commitments as part sale agreements.

¹⁸⁹*PIRC & ESAC PAR*, para. 3.9.

¹⁹⁰*Ibid.*, para. 2.27, p. 29.

¹⁹¹*Ibid.*, respectively paras. 17, 4.7 and 3.9; also paras. 2.27, 5.2 and 6.4.

¹⁹²Cited in fn. 3, *PIRC & ESAC PAR*.

¹⁹³*ERIP ICR*, para.11. The legal covenant under Schedule 3.7 of the ERIP requires the Government to '[a]dopt and furnish IDA a satisfactory plan to privatize ZCCM.'

¹⁹⁴*ERIP ICR*, para. 12.

¹⁹⁵*ESAC II R&R*, para. 39; also para. 57(e).

¹⁹⁶*ERIP ICR*, para. 12.

¹⁹⁷*PSREPC R&R*, para. 36; see also para. 5: 'In 1998, multilateral balance of payments support was also held up due to the delays in privatising ZCCM.'

¹⁹⁸See Government of Zambia (1999a), *Letter of Intent to the IMF*, 10 March 1999, Table 2 - Zambia: Prior Actions, Structural Performance Criteria, and Benchmarks During the First Annual Arrangement Under the Enhanced Structural Adjustment Facility, January 1, 1999 - December 31, 1999. The other two required actions relate to the revocation of a number of ad hoc tax exemptions and the formulation of an implementation plan for civil service retrenchments.

¹⁹⁹*PSREPC R&R*, para. 2.

²⁰⁰*PSREPC R&R*, para. 39; also para. 55(c).

²⁰¹For example, German support of DM20 million is understood to be conditional on the prompt and timely privatisation of ZCCM and support from the UK, worth an extra £54 million, is similarly thought to be dependent upon the Zambian Government reaching agreement over a renewed IMF/Bank adjustment program.

²⁰²IMF (1999a), 'IMF Approves ESAF Loan for Zambia'. It is noted: 'The damaging impact on Zambia's economy from delays faced in the privatization of the ZCCM have [sic] amply demonstrated the need for a rapid completion of this process.'

²⁰³See Government of Zambia (1999a), *Letter of Intent to the IMF*, Table 2. See also Government of Zambia (1999b), 'Memorandum of Economic and Financial Policies,' para. 34.

²⁰⁴IMF Directors, while welcoming 'recent progress made in the sale of the major assets of the ZCCM to a prominent international mining house' noted that 'the sales agreement had not yet been finalized, and strongly urged the authorities to do everything in their power to expedite the transfer of the assets.' (IMF (1999b), 'IMF Concludes Article IV Consultation with Zambia').

²⁰⁵K341 billion were transferred. See *SCR* (1999), Statistical Appendix, table 13. To convert into US\$, the prevailing exchange rate of \$1 = K1862 has been used.

²⁰⁶Government of Zambia (1999b), 'Memorandum of Economic and Financial Policies,' paras. 30 - 31. The debt is net and has already been adjusted in line with expected receipts from the privatisation of ZCCM's remaining assets. Of the total debt, \$110 million is owed to the Copperbelt Energy Consortium. \$50 million of the debt owed to CEC is to be rescheduled beyond 1999.

²⁰⁷Attachment 6 to the Rothchild's Report on the Privatisation of ZCCM, reproduced as exhibit AM1 to the affidavit of Abel Mkandawire (ZPA chairman), 10 September 1997, First Quantum Mineral Limited vs. Zambia Privatisation Agency, Zambia Consolidated Copper Mines Limited, and Binani Industries Limited, The High Court for Zambia, case 1997/HP/2065.

²⁰⁸*ERIPTA M&R*, para. 11.

²⁰⁹*ZKCM SPI*. The projected IFC Board date to consider finance for the project is 27 January 2000.

²¹⁰*Ibid.*

²¹¹*Ibid.*

²¹²*PSREPC R&R*, para. 24.

²¹³*Ibid.*, paras. 24 - 25.

²¹⁴*Ibid.*, para. 38. \$58 million is to cover redundancy payments and \$7 million is earmarked for retraining, outplacement, financial counselling, job search seminars, and skills bridging programs. Finalisation of a redundancy program acceptable to IDA is required. An unqualified independent audit certifying that ZCCM has implemented the redundancy program is a condition for the release of the second tranche of the credit. Furthermore, it also a requirement of the PSREPC that the ZCCM Board approves and begins satisfactory implementation of a restructuring plan for the remaining ZCCM holding company detailing its objectives, functions, organisational arrangements and staffing levels. (*Idem*, para. 39).

²¹⁵*PSREPC R&R*, Annex I, Letter of Development Policy, paras. 17 ff.

²¹⁶The Panafican News Agency, 19 January 2000.

²¹⁷The Bank recognised the possibility of delay in the privatisation of ZCCM beyond 1999, but believed the risk was 'mitigated by the detailed agreements that have been reached between the Government, ZCCM and the prospective buyers....' (*PSREPC R&R*, para. 61).

²¹⁸*PSREPC R&R*, para. 52.

- ²¹⁹See *GC 2*, respectively paras. 8 and 8(d).
- ²²⁰ICESCR, article 7(a)(i).
- ²²¹Ratified by Zambia on 20 June 1972.
- ²²²ICESCR, article 2(2).
- ²²³*ZMTS PID*, 'Objectives,' para. 2.
- ²²⁴*Ibid.*, para. 1(b).
- ²²⁵*Ibid.*, para. 1(b).
- ²²⁶*GC 2*, para. 7.
- ²²⁷*ZMTS PID*, para. 1(c).
- ²²⁸*Cf. GC 3*, para. 8.
- ²²⁹Statement on globalisation and economic, social and cultural rights, paras. 2 - 3.
- ²³⁰ICESCR, article 2; see also *GC 3*, para. 9.
- ²³¹*ZMTS PID*, para. 1(c).
- ²³²*Ibid.*, para. 7.
- ²³³Statement on globalisation, para. 3. The Committee refers to health and education services. By implication, the use of economic criteria to regulate access to any service which underpins a basic right recognised in the Covenant must be accompanied by due safeguards.
- ²³⁴Statement on globalisation and economic, social and cultural rights, para. 5.
- ²³⁵OECD Guidelines for Multilateral Enterprises, introductory paragraph 7.
- ²³⁶*Idem.*
- ²³⁷See OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 21.
- ²³⁸Development Agreement between the Government of Zambia and Roan Antelope Mining Corporation of Zambia plc, 14 October 1997, clause 20.1.
- ²³⁹ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 8.
- ²⁴⁰*Idem.*
- ²⁴¹ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 5.
- ²⁴²*Idem.*
- ²⁴³ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 9. Respectively, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - ratified by Zambia on 23/10/1979; and Employment Policy Convention, 1964 (No. 122) - ratified by Zambia on 23/10/79.
- ²⁴⁴ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 9.
- ²⁴⁵E/CN.4/Sub.2/1991/17.
- ²⁴⁶The full article reads: 'All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.' (Declaration on the Right to Development, article 2(2)).
- ²⁴⁷ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 10; OECD Guidelines for Multinational Enterprises, 2. General Policies, para. (1).
- ²⁴⁸ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 10; Guidelines for Multinational Enterprises, 2. General Policies, para. (2). The main situation envisaged under the Guidelines in which enterprises are required to consider Government policy objectives and priorities with regard to economic and social progress is the cutting back or closure of operations. The right of the enterprise to reach decisions is upheld, although 'a prudent company should seek clarification of government policies through advance consultations with the government concerned.' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 23). Notwithstanding the exemplar of closure or rationalisation, any decision with far-reaching social and economic impact - as in the case of social provision on the Copperbelt - gives rise to the same requirements.
- ²⁴⁹'Mines' sale - the inside story,' *Times of Zambia*, 8 April 1998.
- ²⁵⁰Mineral royalty tax had already been reduced by the Government from three to two per cent.
- ²⁵¹Withholding tax had already been reduced by the Government from 15 per cent to 10 per cent.
- ²⁵²'Mines' sale - the inside story,' *Times of Zambia*, 8 April 1998.
- ²⁵³'Finally, we have a deal!' *Times of Zambia*, 23 January 1999.
- ²⁵⁴KDMP will enjoy a lower power tariff of 2.7 cents per kilowatt-hour, while the rate to other mines is 3.3 cents/kWh. See 'Finally, we have a deal!' *Times of Zambia*, 23 January 1999.
- ²⁵⁵Konkola is the wettest mine in the world. The cost of running pumps to remove underground water accounts for 30 per cent of operational costs in comparison to an average industry cost of 9 per cent.
- ²⁵⁶'In addition, we will refrain from introducing any tax reductions, new exemptions, rebates, or any other preferential tax treatment in 1999, except for the suspension of import duties on agricultural machinery and equipment, and the specific tax concessions that were made in the context of the privatization of the ZCCM.' (Government of Zambia (1999b), 'Memorandum of Economic and Financial Policies,' para. 16). See also Government of Zambia (1999a), *Letter of Intent to the IMF*, Table 2.
- ²⁵⁷IMF (1999b), 'IMF Concludes Article IV Consultation with Zambia'.
- ²⁵⁸Dr. Katele Kalumba, Minister of Finance, *Budget Address*, 28 January 2000, especially para. 107. See also the following commentaries: 'Kalumba presents a K124 bn deficit budget,' *The Post*, 31 January 2000; 'K423 bn set aside to settle ZCCM debt,' *Times of Zambia*, 29 January 2000; 'As police get large chunk...', *Times of Zambia*, 29 January 2000; 'Zambia reduces tax for its mine buyers,' *Business Day*, 31 January 2000.
- ²⁵⁹See 'K423 bn set aside to settle ZCCM debt,' *Times of Zambia*, 29 January 2000.
- ²⁶⁰'Income Tax Bill passes second reading,' *Times of Zambia*, 16 February 2000.
- ²⁶¹Lusaka Central MP Dipak Patel (Independent).
- ²⁶²'Zica nods concessions,' *Times of Zambia*, 16 February 2000
- ²⁶³Development Agreement, clause 15.3.
- ²⁶⁴Principle III. A.: 'The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.'
- ²⁶⁵In order to satisfy the obligation to take steps, article 2(1) refers to 'all appropriate means, including particularly the adoption of legislative measures.' The Committee recognises that appropriate legislation is highly desirable and may even be indispensable in ensuring the realisation of certain rights recognised in the Covenant. However, the use of all appropriate means encompasses, for example, the adoption of measures in the policy sphere. See *GC 3*, paras. 3 ff.
- ²⁶⁶OECD (1999), SG/CG(99)5, Annotations to the OECD Principles of Corporate Governance, III. The role of stakeholders in corporate governance.
- ²⁶⁷OECD (1999), SG/CG(99)5, Annotations to the OECD Principles of Corporate Governance, III.A.
- ²⁶⁸ILO Social Policy (Basic Aims and Standards) Convention, respectively Articles 2 and 3(1).
- ²⁶⁹ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 34. See also the ILO Social Policy (Basic

Aims and Standards) Convention, article 11(7).

²⁷⁰See ZPA (1998b), *Progress Report No. 12*, p. 39.

²⁷¹ZCCM (1997c), 'Sale of Chibuluma Mine'; also ZCCM (1997d), *Employee Privatisation Update*, p. 1 ff.

²⁷²ZMTS PID.

²⁷³ICESCR, article 7(a)(ii).

²⁷⁴ILO Social Policy Convention (No. 117), article 11(7).

²⁷⁵ICCPR, article 19.

²⁷⁶DRD, article 2(3). See also article 8(2).

²⁷⁷OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 25: 'The purpose of this chapter [on disclosure] is to encourage greater transparency of the enterprise as a whole through the publication of a body of information sufficient to improve public understanding. This can alleviate concerns arising from the complexity of multinational enterprises and the difficulties in clearly perceiving their diverse structures, operations and policies.'

²⁷⁸OECD Guidelines for Multinational Enterprises, recommendation 3. Qualifiers apply. Although the onus is upon enterprises to disclose information, due regard is given to 'their nature and relative size in the economic context of their operations and to requirements of business confidentiality and to cost...'

²⁷⁹A clause within recommendation 3 reads 'as a supplement, in so far as necessary for this purpose, to information to be disclosed under the national law of the individual countries in which they operate.'

²⁸⁰OECD Guidelines for Multinational Enterprises, recommendation 7(2)(b). 'The term "meaningful" must be applied in the circumstances of each case, but it has operational value to persons experienced in labour relations' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 29).

²⁸¹OECD Guidelines for Multinational Enterprises, recommendation 7(3). 'While the Disclosure of Information Guidelines address the provision of information to the general public, employees of multinational enterprises may need and should have access to more specific information, beyond that available to the general public, and in a form suitable for their interests and purposes. Enterprises should provide information on aspects of the performance of the enterprise which will also enable users to assess, inter alia, likely future developments. In so doing, they should be guided by the information items enumerated in the Disclosure of Information chapter of the Guidelines.' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p.30, para. (d)(i)). Recommendation 7(3) is, however, qualified by the subclause 'where this accords with local law and practice'. Moreover, '[c]onsiderations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.' (Chapter IV. Commentary on the Guidelines, p.30, para. (d)(i)). However, the onus on disclosure remains.

²⁸²ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 54. See also ILO Recommendation (No. 129) concerning Communications between Management and Workers within Undertakings. The provision of information to workers' representatives on performance of the entity or enterprise as a whole is qualified 'where this accords with local law and practices'.

²⁸³The chapter on Disclosure of Information addresses the parent company directly when referring to the publication of '...factual information on the structure, activities and policies of the enterprise as a whole'. (OECD Guidelines for Multinational Enterprises, recommendation 3; see also OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 22). At the same time, the Guidelines are addressed to both parent companies and local entities within the multinational enterprise according to the actual distribution of responsibilities among them. (OECD Guidelines for Multinational Enterprises, introductory paragraph 8). Domestic enterprises too are subject to the same expectations in respect of their conduct wherever the Guidelines are relevant. (*Idem*, introductory paragraph 9). Whereas recommendation 3 relates to public information, a separate general provision requires enterprises (that is, parent companies) to supply their entities with supplementary information the latter may need in order to meet requests by national authorities. (See OECD Guidelines for Multinational Enterprises, 2. General policies, para. 3).

²⁸⁴See, OECD Guidelines for Multinational Enterprises, recommendation 3, respectively paras. (a), (b) and (e). This is specified at the level of the enterprise as a whole. However, recalling introductory paragraphs 8 and 9, similar information, where applicable and available, ought to be provided at the level of subsidiary and domestic companies. Other subjects for disclosure relate to research and development expenditure (recommendation 3(g)), intra-group pricing policies (recommendation 3(h)), accounting policies and segmentation of information (recommendation 3(i)). The information required under each category is elaborated in OECD (1988), *Multinational Enterprises and Disclosure of Information: Clarification of the OECD Guidelines*.

²⁸⁵See, OECD Guidelines for Multinational Enterprises recommendation 3, respectively paras. (c), (d) and (f): '...the term "geographical area" means groups of countries or individual countries as each enterprise determines is appropriate in its particular circumstances.' (*Idem*, fn. 5).

²⁸⁶Principle IV. Disclosure and Transparency, OECD Principles of Corporate Governance.

²⁸⁷Principle IV. A. (2), (6) and (7), OECD Principles of Corporate Governance.

²⁸⁸OECD (1999), SG/CG(99)5, Annotations to the OECD Principles of Corporate Governance, IV. A.(2).

²⁸⁹*Idem*.

²⁹⁰OECD (1999), SG/CG(99)5, Annotations to the OECD Principles of Corporate Governance, IV. A.(6).

²⁹¹Principle IV. D, OECD Principles of Corporate Governance.

²⁹²Development Agreement, clause 6.6.

²⁹³ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 25.

²⁹⁴Development Agreement, clause 6.7.

²⁹⁵Development Agreement, clause 22.1.

²⁹⁶Development Agreement, clause 22.2(a). Major changes relate to 'elimination or material dilution' in the capacity of processing facilities, mine production or the mine plan which reduce or delay Government tax or royalty revenue or adversely affect the environment (clause 22.3). Major changes are themselves automatically approved within thirty days unless the Government objects (clause 22.4(b)). Where there is disagreement over whether a modification constitutes a major change, this is decided by the Sole Expert (clause 22.2(b)). Similarly, when the Government objects to a major change, RAMCZ may refer the matter to the Sole Expert for determination (clause 22.4(d)). In either case, the decision of the Sole Expert is final (respectively, clauses 22.2(b) and 22.4(e)).

²⁹⁷Development Agreement, clause 22.6.

²⁹⁸Under clause 6.6 of the Development Agreement, it is specified that a minimum number of employees necessary to operate the mine is identified in the Training and Human Resources Management Programme. However, this will be set at a relatively low threshold and can be set aside if the Government is notified 90 days in advance of any reduction below this level.

²⁹⁹See OECD Guidelines for Multinational Enterprises, 2. General Policies, paras (1) and (2); also OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 23.

³⁰⁰*Idem*.

³⁰¹ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 26. See also para. 17 on prior and continued consultation by multinationals with the authorities and workers' and employers' organisations to keep manpower plans, as far as practicable, in harmony with national social development policies.

³⁰²OECD Guidelines for Multinational enterprises, recommendation 7(6). The Guidelines do not intend rigid rules and recognise the sensitivity of certain business decisions 'in terms of possible serious damage to a particular enterprise' which make it difficult for management to give early

- notice; '[h]owever, these considerations would only apply in exceptional circumstances. There is no business sector or business activity where such circumstances can be considered usual.' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 31, para. (g)(ii)).
- ³⁰³*Idem*.
- ³⁰⁴'Economy Watch,' *The Post*, 16 November 1998.
- ³⁰⁵'Nkana held back in Anglo-ZCCM deal,' *Africa Analysis*, 29 October 1999.
- ³⁰⁶OECD Guidelines for Multinational Enterprises, recommendation 7(1).
- ³⁰⁷OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, pp. 28 - 29.
- ³⁰⁸ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 41. See also ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) , article 2.
- ³⁰⁹ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 41. See also ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), article 1(1).
- ³¹⁰ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 42. See also ILO Convention (No. 98), article 2(1).
- ³¹¹ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 46.
- ³¹²*Ibid.*, para. 48. See also paras. 49 - 51 on the conduct of collective bargaining and the recognition of collective agreements.
- ³¹³Development Agreement, clause 6.11.
- ³¹⁴ICFTU (1999b), *Annual survey of violations of trade unions rights 1999*, p.46.
- ³¹⁵Development Agreement, clause 6.7(b).
- ³¹⁶ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 27. See also ILO Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.
- ³¹⁷The corollary of the right to work in article 6 of the ICESCR is protection from unjust deprivation of employment. For a discussion of this, see *intra*, Section 2(II), p. 82.
- ³¹⁸'Pwele disowned,' *Times of Zambia*, 18 December 1999.
- ³¹⁹'MUZ expels Pwele,' *Times of Zambia*, 13 January 2000.
- ³²⁰'RAMCZ retrenches Pwele,' *Times of Zambia*, 8 February 2000.
- ³²¹The qualifying subclause reads 'Enterprises should, within the framework of law, regulations and prevailing labour relations and employment practices, in each of the countries in which they operate...' (OECD Guidelines for Multinational Enterprises, recommendation 7). In respect of industrial relations, the ILO Declaration of Principles, para. 40, refers to the observance of industrial relations 'not less favourable than those observed by comparable employers in the country concerned.'
- ³²²ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 33.
- ³²³Enterprises are required to '[o]bserve standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country'. (OECD Guidelines for Multinational Enterprises, recommendation 7(4)).
- ³²⁴ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 34.
- ³²⁵*Idem*.
- ³²⁶ICESCR, article 7(a)(ii), in respect of the right to just and favourable conditions of work, recognises that remuneration must provide all workers, as a minimum, with 'A decent living for themselves and their families in accordance with the provisions in the present Covenant'. This requirement goes beyond the fulfilment of basic needs and, given the status in international law of the Covenant, must be overriding.
- ³²⁷Development Agreement, clause 6.10.
- ³²⁸*Ibid.*, clause 6.12.
- ³²⁹'Operations 'halted' at Luanshya mine,' *The Post*, 24 March 1999.
- ³³⁰'Ex-RAMCZ workers demonstrate,' *The Post*, 30 March 1999.
- ³³¹'Multinational enterprises should enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation.' (ILO Declaration of Principles, principle 51).
- ³³²ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 28.
- ³³³Development Agreement, clause 6.1; also Schedule 6, 'Training and Human Resources Management programme'.
- ³³⁴ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 30. See also OECD Guidelines for Multinational Enterprises, recommendation 7(5). This recognises that companies should 'to the greatest extent practicable, utilise, train and prepare for upgrading members of the local labour force in co-operation with representatives of their employees and, where appropriate, the relevant governmental authorities'.
- ³³⁵ICFTU (1999b), *Annual survey of violations of trade union rights 1999*, p. 46.
- ³³⁶On the issue of discrimination, see ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 19.
- ³³⁷Respectively, ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 20; and OECD Guidelines for Multinational Enterprises, 2. General Policies, para. (4).
- ³³⁸The company agrees to identify and register local businesses which are capable of supplying materials, equipment and services (Development Agreement, clause 4.1). Such prequalified business must be afforded the opportunity to tender and the Roan Antelope shall not discriminate against them *provided* that they are competitive in terms of price, quality, delivery etc. (*Idem*, clause 4.2).
- ³³⁹Development Agreement, clause 5.1(a). The Local Business Development Plan, written in general terms and just one page in length, is attached as Schedule 2 to the Agreement. In Schedule 2, the company states that it will provide a more detailed plan within the year, although it is unclear whether this constitutes a binding commitment.
- ³⁴⁰Development Agreement, Schedule 2.
- ³⁴¹Development Agreement, clause 5.1(c) and (b) respectively.
- ³⁴²*Ibid.*, clause 23.2.
- ³⁴³*Ibid.*, clause 5.2(a).
- ³⁴⁴*Ibid.*, clauses 5.3 and 5.4 respectively.
- ³⁴⁵*Ibid.*, clause 9.1.
- ³⁴⁶A full list of social assets is given in Schedule 4 to the Development Agreement.
- ³⁴⁷Development Agreement, clause 9.1.
- ³⁴⁸*Ibid.*, clause 9.2(a) on health; clause 9.3(b) on education.
- ³⁴⁹*Ibid.*, clause 9.2(b)(ii) and (c) on health; clause 9.3(c)(ii) and (d) on education.
- ³⁵⁰*Ibid.*, clause 9.2(d) on health; clause 9.3(e) on education.
- ³⁵¹Respectively, *ibid.*, clauses 9.4 and 9.5(b) - (d).
- ³⁵²*Ibid.*, clause 9.6.
- ³⁵³Article 11(7), ILO Social Policy (Basic Aims and Standards) Convention (No. 117), 1962.
- ³⁵⁴Development Agreement, clause 9.5.
- ³⁵⁵*Ibid.*, clause 9.5(a)(i).
- ³⁵⁶ZCCM (1997e), *Luanshya & Baluba EIS*, Volume 4.2, Appendix H, Water Supply, Sewage and Stormwater Management. See also *idem*,

Executive Summary, Volume 1, p.7.

³⁵⁷Development Agreement, clause 9.5(a)(iii).

³⁵⁸*Ibid.*, clause 9.5(a)(iv).

³⁵⁹*Ibid.*, clause 9.5(a)(ii).

³⁶⁰ILO Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 56. See also Recommendation (No. 94) concerning Consultation and Cooperation between Employers and Workers of the Level of Undertaking; Recommendation (No. 129) concerning Communications within the Undertaking.

³⁶¹OECD Guidelines for Multinational enterprises, recommendation 7(6). The particular example of a change with major effect referred to within the recommendation relates to closure associated with collective redundancies or dismissals. However, the same responsibilities must apply when other changes with major adverse effects on the livelihoods of employees occur, such as the curtailment of social provision. Furthermore, '[t]his paragraph must be read together with the General Policies chapter which provides that enterprises take account of the established general policy objectives of Member countries in which they operate and their economic and social priorities.' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 31, para. (g)(i)).

³⁶²OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 31, para. (g)(ii). See also *intra*, fn. 302 which outlines the exceptional circumstances under which difficulties in giving early notice are recognised.

³⁶³Development Agreement, clause 9.7.

³⁶⁴*Ibid.*, clause 9.7, respectively subclauses (i)(a) - (c).

³⁶⁵*Ibid.*, clause 9.9.

³⁶⁶*Ibid.*, clause 1.1, 'Definitions and Interpretations,' p.6.

³⁶⁷*Ibid.*, clause 9.9.

³⁶⁸Respectively, *ibid.*, clause 9.9 (a) - (e).

³⁶⁹*Ibid.*, clause 19.10.

³⁷⁰*Ibid.*, clause 19.11. In the event that the parties themselves fail to agree over who is to be appointed as the sole expert, the matter will be decided by the President of the London Court of International Arbitration.

³⁷¹*Ibid.*, clause 19.10, relating to, respectively, clauses 3.3(c), 6.4, 7.3, 8.8, 12.5, 12.8, and 16.5(b)(ii).

³⁷²*Ibid.*, clause 19.10, relating to, respectively, clauses 18.6(c), 22.2(b) and 22.4(d).

³⁷³*Ibid.*, clause 19.18.

³⁷⁴The relevant subclause reads 'within the framework of laws, regulations and administrative practices in the countries in which they operate'. See OECD Guidelines for Multinational enterprises, recommendation 8.

³⁷⁵OECD Guidelines for Multinational enterprises, recommendation 8. See also *idem*, introductory para. (9). 'This chapter does not single out multinational enterprises for special attention. On the contrary, a key feature of the Guidelines is their non-discriminatory nature. The Guidelines do not imply differences in the treatment or behaviour of multinational and domestic enterprises or that particular enterprises should adhere to higher standards - both groups of enterprises are subject to the same expectations with respect to their conduct whenever the Guidelines are relevant to both.' (OECD (1997b) briefing, GD(97)40, Chapter IV. Commentary on the Guidelines, p. 36).

³⁷⁶OECD Guidelines for Multinational enterprises, recommendation 8(3)(b). The use of environmental auditing is specifically mentioned in this context.

³⁷⁷Development Agreement, clause 12.13.

³⁷⁸*Ibid.*, clause 12.1.

³⁷⁹*Ibid.*, clause 12.2.

³⁸⁰*Ibid.*, clause 12.3(a) - (c).

³⁸¹*Ibid.*, clause 12.3(d). Fines may only increase in line with inflation.

³⁸²*Ibid.*, clause 12.4.

³⁸³*Ibid.*, clause 12.5; see also 12.4.

³⁸⁴The Environmental Management Plan is presented as Volume 2 of the EIS, commissioned by ZCCM from the consultants Steffen Robertson and Kirsten. The complete EIS was published in March 1997. The Environmental Management Plan was presented in September 1996. See ZCCM (1997e), *Luanshya & Baluba EIS*, Volumes 1 - 4.

³⁸⁵See ZCCM (1997e), *Luanshya & Baluba EIS*, Volume 4.1, Appendix C: Socio-Economic Issues, Attachment C1: Scope of work and methodology, para. 2.2.2.

³⁸⁶See *ibid.*, Appendix C: Socio-Economic Issues, Appendix 1: Key informant interviews - Luanshya Division. A business owner was interviewed on behalf of Rotary International.

³⁸⁷OECD Guidelines for Multinational enterprises, recommendation 8(3)(f).

³⁸⁸Development Agreement, clause 12.6(a) - (b).

³⁸⁹*Ibid.*, clause 12.7.

³⁹⁰*Idem.*

³⁹¹Development Agreement, clause 12.8.

³⁹²*Idem.* If and when the company accepts the revision, the Environmental Plan is modified accordingly under clause 12.9.

³⁹³Development Agreement, clause 12.8.

³⁹⁴*Ibid.*, clause 12.11.

³⁹⁵*Ibid.*, clause 22.3; also clause 22.4.

³⁹⁶*Ibid.*, clause 22.4(d) - (e).

³⁹⁷*Ibid.*, clause 22.2(b).

³⁹⁸*Ibid.*, clause 22.2(a).

³⁹⁹*Budget Address 1998*, para. 116.

⁴⁰⁰Development Agreement, clauses 13 - 15.

⁴⁰¹*Ibid.*, clause 13.1.

⁴⁰²Cf. 'While Schedule 8 is not intended to override applicable legislation, in the event of any ambiguity between applicable legislation and Schedule 8, GRZ and Roan Antelope agree that the provisions of Schedule 8 shall apply....' (Development Agreement, clause 13.1).

⁴⁰³Under Schedule 8, provision (4), VAT on mine products is zero rated while the company may reclaim input VAT on goods and services which will be credited 'within a reasonable period of time' on the basis of Roan Antelope's monthly VAT returns.

⁴⁰⁴Development Agreement, clause 15.1(a), (b) and (e). The Government also undertakes not to impose VAT on metal or other exchange arrangements (clause 15.1(c)). Furthermore, non-Zambian employees and their dependants may import or export household and personal effects free of duty or tax (clause 15.1(d)).

⁴⁰⁵Development Agreement, Schedule 8, provision (1)(ii).

⁴⁰⁶*Ibid.*, Schedule 8, provision (1)(iii). In addition, all mines and facilities owned by a company are now considered a single entity for the purpose of allowable deductions so that 100 per cent of losses can be offset (Schedule 8, provision (6)). A previous restriction limiting the offset to 20 per cent of losses for those mines with a common owner, but which were not adjacent, was thereby removed. This was confirmed in the 1998 budget.

⁴⁰⁷Development Agreement, Schedule 8, para. (1)(v).

⁴⁰⁸Development Agreement 15.1(a); also Schedule 8, provision (5).

⁴⁰⁹The rate of Mineral Royalty Tax is confirmed in the Development Agreement at 2 per cent by value, minus transport and processing costs (Schedule 8, provision (2)(i) - (ii)). Once more, this anticipates the 1998 budget announcement and represents a reduction of one percentage point in over the prior rate. Furthermore, royalty payments are themselves deductible against liability for income tax for the fifteen year stability period (Schedule 8, provision (2)(iii)). In addition, when the cash operating margin - that is, company revenue minus operating costs - is less than zero, the payment of royalty tax can be deferred at the Government's discretion (Schedule 8, provision (2)(iv) - (v)).

⁴¹⁰Development Agreement, clause 15.2; also Schedule 8, provision (3)(i). The import duty is not to be raised above five per cent on goods and materials required for approved and normal operations (clause 15.2(a)(i)). At the time of the Agreement - and the same still applies - machinery or equipment imported into Zambia for use in the mining sectors was exempt from duty. The duty used to be 20 per cent. This concession was introduced to encourage capital investment, but it simultaneously results in a loss of revenue for the Government. In the case of other goods and materials outside of the approved and normal operations, the limit is set at the 20 per cent threshold (clause 15.2(a)(ii)).

⁴¹¹In the event that the Import Declaration Fee is reintroduced, the Development Agreement fixes the maximum Import Declaration Fee (IDF) at 5 per cent by value of goods imported, save where these goods comprise capital expenditure and are already exempt under the Third Schedule of the Mines and Minerals Act (Schedule 8, provision (3)(ii)).

⁴¹²Development Agreement, clause 15.2(b). The Government is already precluded from increasing its Rural Electrification Levy (clause 15.2(a)(iii); also Schedule 8, provision (3)(iii)).

⁴¹³Development Agreement, clause 15.3.

⁴¹⁴Ibid., clause 15.4.

⁴¹⁵Ibid., clause 11.1.

⁴¹⁶Ibid., clauses 11.2 and 11.4.

⁴¹⁷GC 7, para. 10.

⁴¹⁸See 'Forced Evictions: Analytical Report compiled by the Secretary General,' E/CN.4/1994/20, para. 106; also para. 5. Since the time of writing, the Committee has adopted General Comment 7 which considers forced evictions in respect of the right to housing. In addition to the Committee's action on State reports and its General Comments, other sources of jurisprudence on the matter of forced evictions are provided in the Committee's guidelines on reporting and the questions addressed to State parties appearing before it on the occurrence and extent of forced evictions carried out (see Reporting Guidelines, Article 11 of the Covenant, The right to adequate housing, para.3(iv)).

⁴¹⁹GC 4, para. 18.

⁴²⁰ See E/CN.4/1994/20, para. 100. Especially important in this regard are the reports of the Committee in which the Dominican Republic and Panama were declared to be in violation of article 11 (1) of the Covenant, the latter due to the extent and manner of the evictions it had carried out. In respect of the Dominican Republic, see Report of the 5th session, E/1991/23, paras. 234 - 249; see also Report of the 6th session, E/1992/23, Draft Decision II; Report of the 7th session, E/1992/23, Draft Decision III. In respect of Panama see Report of the 6th session, E/1992/23, paras. 95 ff., esp. para. 135; see also Report of the 7th session, E/1993/22, paras. 197 - 200 and Draft Decision I; Report of the 10th session, E/1995/22, paras. 211 - 215; Report of the 11th session, E/1995/22, paras. 356 - 362. After consideration of additional information supplied by Panama at the Committee's 7th session failed to answer all the questions relating to forcible evictions, the Committee offered technical assistance in the form of a visit to Panama. This decision was endorsed by ECOSOC Resolution 1993/294 and Panama finally agreed to the visit in December 1994. For a report on the Committee's findings, see E/C.12/1995/8.

⁴²¹ See, for example, Resolution 1991/12 of the Sub-Commission and Resolution 1993/77 of the Commission; see also the Sub-Commission's follow-up Resolutions, for example, 1993/41, and 1998/I.17; and Sub-Commission Resolution 1991/26 on the appointment of a Special Rapporteur on the right to adequate housing whose mandate included the question of forced evictions.

⁴²²See, for example, Resolution 1998/I.17, para. 1.

⁴²³E/CN.4/1994/20, para. 6.

⁴²⁴GC 7, para. 4.

⁴²⁵Ibid., para. 9.

⁴²⁶Ibid., para. 4.

⁴²⁷Ibid., para. 10.

⁴²⁸Ibid., para. 14. See also *idem*, para. 10.

⁴²⁹Ibid., para. 14.

⁴³⁰Ibid., para. 14.

⁴³¹In accordance with article 2 (1).

⁴³²GC 7, para. 10. The measures must also 'conform to the Covenant' and 'be designed to control strictly the circumstances under which evictions may be carried out.'

⁴³³As well as ascertaining the extent of squatter settlements on mine land, the ZCCM team were tasked with soliciting the involvement of local community leaders and settlers; with identifying resettlement sites; with acquiring land when required; with drawing up plans for basic services; and with planning and implementing resettlement in line with the sale and transfer of the mines to new owners. (ZCCM (1997f), *Report on Illegal Settlements in Mine Areas*, p.1).

⁴³⁴Ibid., p.1, para. 1.0.

⁴³⁵Ibid., p.1.

⁴³⁶Ibid., Executive Summary.

⁴³⁷According to the ZCCM report, the meetings were held between 2 - 6 June 1997. However, according to press reports the key meeting with Kitwe City Council was held on 12 June 1997. All meetings were conducted between the dedicated ZCCM working party, Divisional management at each mine, Council personnel and local Councillors (when they attended). See ZCCM (1997f), *Report on Illegal Settlements in Mine Areas*, p.1.

⁴³⁸These are reproduced in tabular form in Appendix 1 of the *Report on Illegal Settlements*.

⁴³⁹Chingola Town Council emphasised that people should be sensitised to resettlement, that reasonable notice should be given prior to implementation of the plan and that the demolition of permanent structures warranted compensation. The Council noted that many had lived in the townships for a long time and deserved to be treated humanely. The ZCCM report records the view of Kitwe City Council that 'illegal settlers have no legal or moral right to any form of compensation for being resettled' but that this could be considered by ZCCM or Government on 'humanitarian grounds.' See ZCCM (1997f), *Report on Illegal Settlements in Mine Areas*, respectively pp. 2 and 6.

⁴⁴⁰Ibid., p.8. St. Anthony is located on Nkana Division land within the administrative jurisdiction of Kitwe City Council.

⁴⁴¹Ibid., p.13.

⁴⁴²Nkana Division was to deliver eviction notices to illegal settlers in Kandabwe, St. Anthony, Kamwefu and Kansengu by 30 June 1997. Konkola Division was to issue evictions notices to all squatters on mine land by 30 June 1997. In the case of the largest squatter township - PPZ Chililabombwe with 6,000 residents - the deadline was 31 August 1997. See *ibid.*, pp. 9 and 14 respectively.

⁴⁴³Ibid., p.16. The figures exclude compensation for five farms and seventeen houses built with authorisation from Ndola City Council but in the wayleave of transmission lines from ZCCM Power Division. See also 'ZCCM needs K500m squatters fund,' *Times of Zambia*, 1 August 1997.

⁴⁴⁴ZCCM (1997f), *Report on Illegal Settlements in Mine Areas*, Executive Summary. The Chingola Municipal Council proposed to ask the

Government to degazette forest reserves in the locality to provide land for resettlement - an extremely drawn-out process with no guarantee of success. See *idem*, p.2.

⁴⁴⁵A 1997 socio-economic impact study confirms that an increase in the tailings area would occur when the mines at Konkola North and Deep were fully operational. They characterised the resulting need to relocate 3000 residents of Kawama as a 'very costly and politically volatile venture.' If a displacement akin to ZCCM's abortive 1997 programme were to occur, the population at Kawama would multiply many times over. See Lungu & Silengo (1997), 'The socio-economic assessment impact of privatization on the Zambian Copperbelt: the case of Mufulira and Konkola,' part 8.0, issue 9.

⁴⁴⁶The sale subsequently collapsed, to the consternation of the international community and industry insiders, sending shock waves through the Zambian economy.

⁴⁴⁷'Move squatters now says ZCCM,' *Times of Zambia*, 13 June 1997.

⁴⁴⁸These three townships are specifically mentioned in newspaper reports. See 'Move squatters now says ZCCM,' *Times of Zambia*, 13 June 1997. However, in the ZCCM *Report on Illegal Settlements*, the action plan agreed with Kitwe City Council refers to the issuing of the first eviction notices in St. Anthony, Kandabwe, Kamwefu and Kansengu. See *intra*, fn. 438.

⁴⁴⁹'Move squatters now says ZCCM,' *Times of Zambia*, 13 June 1997.

⁴⁵⁰'Kitwe, ZCCM plan for resettlement,' *Times of Zambia*, 17 June 1997.

⁴⁵¹*Ibid.*, Appendix 4. The operating divisions studied were Nchanga, Mufulira, Nkana, Luanshya, Konkola and Power.

⁴⁵²*GC 4*, para. 13; also *GC 7*, para. 22. See also *GC 2*, para. 3 on the obligation to monitor.

⁴⁵³*GC 4*, para. 13; also Reporting Guidelines, Article 11 of the Covenant, para. 3(b) paras. (iii) and (iv).

⁴⁵⁴See *GC 7*, para. 16, respectively subclauses (a) - (c), (g) and (h). Other procedural safeguards are: '(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise...'

⁴⁵⁵Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 42 and p.53.

⁴⁵⁶*Ibid.*, p.53.

⁴⁵⁷*Ibid.*, p.41, citing the evidence of a meeting with ZCCM officials, Kitwe, 18 August 1998.

⁴⁵⁸Part of the eviction notice is quoted in 'Squatters chase eviction squad,' *Times of Zambia*, 2 August 1997.

⁴⁵⁹*Ibid.*

⁴⁶⁰The Town Clerk of Chingola is cited as stating that the Council has 'no intention of taking on the squatters.' Kitwe City Council indicated that, although there was no controversy between themselves and ZCCM, they had warned the company of the dangers of eviction. See Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, respectively p. 49 and p. 53.

⁴⁶¹'In the past the Council had reasonable relations with ZCCM squatters, but once the issue of evictions emerged they have encountered a lot of hostility and St. Anthony's people are said to encourage others to resist eviction.' Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.53.

⁴⁶²There have been other relatively low-key attempts to tackle localised problems. Settlers farming restricted mine land at Lima settlement on the Kalalushi road near Kitwe faced eviction by the company in advance of the sale of Nkana Division. The Council invited those affected to agree on a blanket plan for their relocation to council land on the banks of the Kafue river. (Continuation of article 'I Ordered settlers to stay put - Official,' *Times of Zambia*, 8 August 1997).

⁴⁶³*ZKCM SPI*.

⁴⁶⁴The deal is in three stages: (i) Cyprus Amax paid \$3 million cash and, within 2 years, was to invest \$5 m on exploration drilling and a prefeasibility study; (ii) if it then elects to proceed, a further payment \$10 million to the Government/ZCCM is required and it must commit an additional \$15 million for exploration and a bankable feasibility study; (iii) if the project is deemed viable, and Cyprus Amax elects to develop, a final payment of \$15 million will be made to the Government/ZCCM and the company will provide all the necessary finance to bring the mine into production. If the project does not proceed beyond stages (i) and (ii), the asset will revert to the Government/ZCCM and Cyprus Amax will pay 50 per cent of any shortfall in committed expenditures. Provided the deal goes through all three stages, the Government/ ZCCM will receive a total of \$28 million in cash and retain a 20 per cent interest in the mine. See ZPA (1997b), *Progress Report No. 10*, p. 42.

⁴⁶⁵Stipulated under the terms of a Small Scale Mining Agreement. See *ibid.*, p.42; and ZPA (undated), 'The Zambia Consolidated Copper Mines (ZCCM) Kansanshi Mine Sale: Questions and Answers.'

⁴⁶⁶The sale of Kansanshi is listed by the ZPA as completed on 14 March 1997. Formal production at the small-scale operations ceased on 15 January 1998. Cyprus Amax maintains that the decision to close was taken by ZCCM alone on commercial grounds, although under the terms of the agreement, Cyprus Amax could require such termination if the mining was deemed incompatible with its exploration work. See 'Kansanshi Mine Shut,' *Times of Zambia*, 14 January 1998; 'Kansanshi workers refute claims,' *Times of Zambia*, 28 January 1998; ZCCM (1997a), *Employee Privatisation Update*, Number 2, p.6; also Knight-Ridder Money Center, Story #16117, 13 January 1998; also Cyprus Amax (1998), 'Cyprus Amax Kansanshi PLC - Update of 1997 Exploration Activities'.

⁴⁶⁷See ZCCM (1997a), *Employee Privatisation Update*, Number 2, p.6; also Cyprus Amax (1998), 'Cyprus Amax Kansanshi PLC - Update of 1997 Exploration Activities'.

⁴⁶⁸See *intra*, Section 2(II), p.74 and p.92.

⁴⁶⁹Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 64.

⁴⁷⁰See ZPA (undated), 'The Zambia Consolidated Copper Mines (ZCCM) Kansanshi Mine Sale: Questions and Answers,' question 8: 'What will happen to the current ZCCM workforce at Kansanshi, given that construction of a new mine may not start for several years?' Answer: 'Cyprus Amax has agreed that while they are conducting their studies, ZCCM will have the right to continue mining on the current scale at Kansanshi. ZCCM is currently considering how this might be achieved and will keep its employees at Kansanshi informed. Employees living in ZCCM houses owned by ZCCM at Kansanshi will be entitled to live in their homes, regardless of whether the land is sold to Cyprus Amax.'

⁴⁷¹'Pruned Kansanshi miners cry for houses,' *Times of Zambia*, 13 April 1998.

⁴⁷²Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 64.

⁴⁷³'Pruned Kansanshi miners cry for houses,' *Times of Zambia*, 13 April 1998.

⁴⁷⁴Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 64.

⁴⁷⁵*Idem*.

⁴⁷⁶This is despite the fact that statutory impact studies commissioned by ZCCM recognised how 'many retrenchees struggle to cope with retrenchment' and that 'reckless spending of retrenchment benefits and the frequent failure of ill-considered business ventures' is common. (See ZCCM (1997g), *Kansanshi EIS*, Volume 4.1, Appendix C: Socio-Economic Issues, p.25). See also Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.65: 'Some put it [their terminal benefits] into doomed commercial ventures, like buying taxis, only to find the cars they had required were not roadworthy. Most failed to use their terminal benefits to buy houses, with the result that whole families are now living in cramped accommodation and have suffered a sharp deterioration in their quality of life.'

⁴⁷⁷ZCCM (1997g), *Kansanshi EIS*, Volume 1, Executive Summary, p. 6.

⁴⁷⁸Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 63.

⁴⁷⁹*Ibid.*, p.66.

⁴⁸⁰Speech for Solwezi Disaster Relief delivered by a Cyprus Amax spokesman on 16 January 1998. For press coverage, see 'Cyprus Amax

Kansanshi spends \$7m on explorations,' *Times of Zambia*, 17 February 1997; 'Veep sounds further flooding alarm,' *Times of Zambia*, 17 February 1998; and 'Food rushed to hunger stricken areas,' *Times of Zambia*, 19 February 1998.

⁴⁸¹Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.67.

⁴⁸²*Idem*. Oxfam reports that people will be given 14-year leases.

⁴⁸³See interview with Dave Watkins, senior vice-president of explorations, cited in Buchanan (1998), 'Slow progress for Zambian copper'.

⁴⁸⁴Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.67.

⁴⁸⁵GC 7, para. 16.

⁴⁸⁶Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p.64.

⁴⁸⁷Confirmed by the Parish Priest, Father Cavalio. See Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, pp. 65 - 66.

⁴⁸⁸GC 7, para. 14 which continues: 'In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States Parties to ensure 'an effective remedy' for persons whose rights have been violated and the obligation upon the 'competent authorities (to) enforce such remedies when granted'.

⁴⁸⁹ZCCM (1991), Letter from W.L.A. Yasini, Administrative Secretary, Property Management Department, ZCCM Nchanga Division, to the Franciscan Fathers of St. Kizito Parish, 27 March.

⁴⁹⁰At the time, registration was normally required under the Land Perpetual Succession Act, Cap 288 of the Laws of Zambia, unless an exemption certificate was issued.

⁴⁹¹Confirmed by the Parish Priest, Father Cavalio. See Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, pp. 65 - 66.

⁴⁹²St Kizito Parish (1998), 'Report on the Kansanshi Chapel,' as cited in *ibid.*, p.66.

⁴⁹³GC 7, para. 17.

⁴⁹⁴ZCCM (1997g), *Kansanshi EIS*, Volume 4.1, Appendix C: Socio-Economic Issues, p.27.

⁴⁹⁵See Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, pp. 65 - 66.

⁴⁹⁶*Ibid.*, p. 66.

⁴⁹⁷It is reiterated in the Commission on Human Rights Resolution 1993/77 that 'the ultimate legal responsibility for preventing forced evictions rests with states'. In the authoritative report by the Secretary General on forced evictions it is noted that when a government accepts development assistance from international and monetary agencies that 'liability does not shift entirely to the provider of finance': the corollary, by implication, is therefore that a significant proportion of liability does indeed remain with the provider of finance (see E/CN.4/1994/20, para. 40).

⁴⁹⁸Resolution 1993/41 of the Sub-Commission. This recommendation was recently reaffirmed in resolution 1998/1.17, para. 6.

⁴⁹⁹See *intra*, Section 1, especially p.10 and pp.18 ff.

⁵⁰⁰GC 2, para. 6.

⁵⁰¹*Ibid.*, para. 7.

⁵⁰²*Ibid.*, paras. 8 and 8(d). Efforts to consider the rights contained in the Covenants apply in project design, implementation and evaluation.

⁵⁰³GC 4, para. 19.

⁵⁰⁴GC 7, para. 19.

⁵⁰⁵The Committee cites the Vienna Declaration and Programme of Action, Part I, para. 10 in this regard. See GC 7, para. 19.

⁵⁰⁶Under the ERIPTA credit a \$2 million project preparation facility advance was made available to fund the hiring of legal/financial advisors. See *ERIPTA M&R*, para. 11(i); see also *ERIP ICR*, para. 25.

⁵⁰⁷*ERIP ICR*, para.11. The legal covenant under Schedule 3,7 of the ERIP requires the Government to '[a]dopt and furnish IDA a satisfactory plan to privatize ZCCM.'

⁵⁰⁸See *ERIP ICR*, Table 6 - Status legal covenants, Schedule 3,1. The Government of Zambia issued its Mining Sector Policy Statement in December 1995.

⁵⁰⁹*ERIPTA M&R*, para. 5.

⁵¹⁰*ERIPTA M&R*, para. 12; also *idem*, Credit and Project Summary.

⁵¹¹The list is given as Government, the business community, workers representatives, professional associations and consumer groups. (*ERIPTA M&R*, para. 20)

⁵¹²ZCCM (1997f), *Report on Illegal Settlements in Mine Areas*, Executive Summary.

⁵¹³Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, p. 41.

⁵¹⁴See, for example, ZCCM (1997h), *Nkana EIS*, Volume 4.1, Appendix C, Socio-Economic Issues. Many of the recommendations are repeated in other statements.

⁵¹⁵OD 4.30, para. 2

⁵¹⁶In 1980 the World Bank issued its initial resettlement policy *OMS 2.33: Social Issues Associated with Involuntary Resettlement in Bank-Financed Projects*. In 1986, after a review of the policy, new recommendations were adopted by Bank management and issued formally as an Operations Policy Note (OPN 10.08). This strengthened the 1980 guidelines by emphasizing that every project with resettlement must develop a new productive base for resettlers. In 1988, the Bank published its policy on resettlement in its World Bank Technical Paper, No. 80, written by Michael Cernea. In 1990 the resettlement policy was revised and reissued as Operational Directive 4.30: Involuntary Resettlement. This policy is once more under review: please refer to *intra*, fn. 545.

⁵¹⁷Shihata (1993), 'Legal aspects of involuntary resettlement'.

⁵¹⁸OD 4.30, para. 1; see also *idem*, para. 3.

⁵¹⁹OD 4.30, fn. 1.

⁵²⁰Sector investment loans are specifically alluded to in OD 4.30, para. 26. However, whereas the submission of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement, subprojects under sector investment loans are to be screened by the implementing agency to ensure consistency with OD 4.30 before being approved individually by the Bank. The OECD Development Assistance Committee states that there should, in principle, be no difference between programme assistance and project assistance in the care with which loans are prepared. Social and political risks must be taken into account in programme design and special efforts made to counter them. (See OECD (1992b), *DAC Principles for Effective Aid*). Oxfam has drawn upon this interpretation to recommend that the Bank, in its revision of policies and procedures on resettlement, should ensure that these continue to apply fully to programme assistance and investment lending. (See Oxfam (1997), *Safeguarding Standards in Resettlement*, pp. 2 - 3). It should be noted that technical assistance loans are classified by the Bank as investment lending (see OP. 1.00).

⁵²¹OD 4.30, para. 3.

⁵²²*Ibid.*, para. 3(a).

⁵²³*Ibid.*, para. 3(b).

⁵²⁴*Ibid.*, para. 3(e).

⁵²⁵*Ibid.*, para. 3(c) - (d).

⁵²⁶OD 4.30, para. 4. Small-scale displacement is seemingly defined as involving 'less than 100-200 individuals.' By corollary, large-scale displacement is defined above this threshold. See *idem*, fn.8.

⁵²⁷Summarised under OD 4.30, para. 5(a) - (k). The final two components required in a resettlement plan are (j) environmental protection and management; and (k) implementation schedule, monitoring, and evaluation.

⁵²⁸OD 4.30, para. 6. The responsibility for implementing resettlement rests with the borrower; however, the Bank has a responsibility to ensure the plan is drawn-up and implemented in accordance with OD 4.30. See *idem*, paras. 25 and 31.

⁵²⁹OD 4.30, paras. 7 - 10.

⁵³⁰*Ibid.*, para. 11.

⁵³¹*Ibid.*, para. 12.

⁵³²*Ibid.*, para. 13.

⁵³³*Ibid.*, para. 14 - 16.

⁵³⁴*Ibid.*, para. 17.

⁵³⁵*Ibid.*, para. 19.

⁵³⁶*Ibid.*, para. 18.

⁵³⁷See *ibid.*, paras. 1, 3 and 28.

⁵³⁸*Ibid.*, para. 29.

⁵³⁹The only exception to this is under sector investment loans: a resettlement plan *per se* is not required when the resettlement needs of each subproject are not known in advance. In this circumstance, the borrower must still agree 'resettlement policies, planning principles, institutional arrangements, and design criteria that meet Bank policy and requirements as a condition of the loan.' See OD 4.30, respectively paras. 30 and 26.

⁵⁴⁰'The appraisal mission should ascertain (a) the extent that involuntary resettlement and human hardship will be minimized and whether borrowers can manage the process; (b) the adequacy of the plan, including the timetable and budget for resettlement and compensation; (c) the soundness of the economic and financial analysis; (d) the availability and adequacy of sites and funding for all resettlement activities; (e) the feasibility of the implementation arrangements; and (f) the extent of involvement of beneficiaries. At negotiations, the borrower and the Bank should agree on the resettlement plan. The resettlement plan and the borrower's obligation to carry it out should be reflected in the legal documents.' OD 4.30, Appraisal and Negotiation, para. 30.

⁵⁴¹OD 4.30, para. 31.

⁵⁴²This is to be done in the project completion report submitted to the Operations Evaluation Department. See OD 4.30, para. 32.

⁵⁴³*Ibid.*, para. 28.

⁵⁴⁴*Ibid.*, fn. 4.

⁵⁴⁵Principally ERIP, ERIPTA, the Mining Technical Assistance credit, and PSREPC. At the time of approval of all relevant loans, OD 4.30 was in force. This is the directive which should have applied to the Bank's ZCCM-related lending. The Bank is currently converting 'operational directives' to 'operational policies' and 'Bank procedures' and 'good practice'. The planned replacements for OD 4.30 are OP 4.12 and BP 4.12. However, these have not been adopted. Commentators consider the replacements to offer weaker protection for those affected by involuntary resettlement. See, for example, Oxfam (1997), *Safeguarding standards in resettlement*. For an overview of the conversion process, see Friends of the Earth (1997), 'The conversion of World Bank's Operational Directives into Operational Policies, Bank Practice and Good practice documents'.

⁵⁴⁶Hansungule et al. (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt*, Recommendations, p.72.

Supplement - The sale of ZCCM

1. *The sale packages*

Package A - Nkana and Nchanga Divisions, originally including the Chibuluma Copper Mine	Package H - Ndola Precious Metals Plant
Package B - Luanshya Division	Package J - Power Division
Package C - Mufulira Division	Package L - Chingola Refractory Ore Dumps
Package D - Chambishi Copper Mine	Special package - Konkola North Development Area
Package E - Kansanshi Copper Mine	Special package - Konkola Deep Mining Project
Package F - Nampundwe Pyrite Mine	Prior sale - Bwana Mkubwa disused mine and tailings
Package G - Chambishi Cobalt and Acid Plant	

2. *The sale process as originally envisaged*

The original timetable for privatisation of ZCCM required all bids to be lodged by 28 February 1997. By 31 March 1997 the preferred bidder for each package was to be announced. It was envisaged that negotiations for each sale would be completed and contracts signed by the end of June with full completion and transfer of assets to the new owners by 30 September 1997. Packages or parts of packages not sold were to be re-tendered or transferred to a specially formed management company to be disposed of at a later date.

Bidding for Bwana Mkubwa, Kansanshi and Konkola North was concluded early while the Konkola Deep Mining Project, which was the subject of a prior agreement with Anglo American, was not put out to tender.¹ With these exceptions, ZPA duly announced on 28 February 1997 that twenty-six bids had been received from fifteen companies or bidding groups for the remaining nine ZCCM packages. Each package had attracted at least one bid. The bids were to be evaluated over four weeks by ZPA, ZCCM, and N.M. Rothschild and Clifford Chance as advisers to the sale. Preferred bidders would be selected and negotiations initiated. The final deal and decision to sell to a particular buyer in each case was to be subject to approval by the Cabinet and international lenders.

3. *The long delay in selling the core of ZCCM*

Package A (main part) - the sale of the core **Nkana/Nchanga Divisions** has only just been finally concluded in 2000, despite the fact that their successful disposal was, from the outset, key to the privatisation of ZCCM as a whole. The two divisions contribute to over half of ZCCM's current copper output and 80 per cent of cobalt production.

The single serious buyer for the package to emerge from the original bidding process in February 1997 was the Kafue Consortium. This consisted of three major international mining companies - Phelps Dodge of the USA, Noranda of Canada, and Avmin of South Africa - and the UK Commonwealth Development Corporation to provide development finance. In March 1997, Francis Kaunda was appointed by the President to head up the ZCCM negotiations in contravention of the Privatisation Act. He was initially successful in driving up the price bid by the Kafue Consortium in June 1997, although he failed to close the deal. This was worth \$160 million in cash, \$150 million in debt assumption, \$400 million in committed investment and \$350 million in conditional investment. ZCCM was to retain a 12 per cent holding in the company.² In October 1997, a lower offer by the consortium to reflect a fall in copper prices was accepted. This was worth \$150 million in cash, takeover of debt worth \$75 million and committed investment of \$400 million.³ ZCCM was to retain a 12 per cent holding in the new company and benefit from profit sharing worth up to \$75 million. In November 1997, by which time the price of copper had fallen by 35 per cent over its June 1997 level, the offer price was again adjusted. However, this time the Kafue Consortium prepared a memorandum of understanding to act as a pledge in honouring the terms of the deal. The Government refused to sign and continued negotiations. Further reduced offers were tabled by the consortium (renamed the Copperbelt Consortium) in March/April 1998: \$105 million in cash with the assumption of \$35 million debt and retention of the ZCCM profit sharing component, although premised on more stringent conditions.⁴ Reports in the Zambian press have subsequently claimed that the Consortium sought to include Ndola Lime, Nampundwe Mine and a port facility at Dar-es-Salaam as part of the deal. This approach, and a final reduced offer in May 1998 to reflect the fact that ZCCM's losses had escalated, were both rejected. The Consortium dissolved and all its former members finally pulled out of negotiations in June 1998.

Initial efforts to attract another serious buyer for the package were to no avail. The Government invited Anglo American to report into the possibility of repackaging the remaining bulk of ZCCM. In August 1998, Anglo indicated that it would be willing to operate Nkana and Nchanga on a management contract. In October 1998, it affirmed its interest in buying Konkola, Nkana, Nchanga and Nampundwe pyrite mine as a single package and indicated that, in the event of agreement being reached on the sale, it would relinquish its option of buying the Mufulira smelter.⁵ This would allow the Mufulira Mine to be sold as a viable unit. The Government had already been approached by Reunion Mining, a UK-listed African mining company, with a view to purchasing Mufulira on condition that the smelter and refinery were part of the sale. A memorandum of understanding confirming Anglo American's proposed single-package purchase was signed by the company, ZCCM and the Government in January 1999. The purchase price was to be \$90 million cash with \$300 million as investment commitments to rehabilitate Nkana, Nchanga and the existing Konkola mine. However, before the sale could be concluded, a number of preconditions had to be met: the securing of third party 'non-recourse' financing; an agreement with an international mining company to partner Anglo in the venture; confirmation on the part of Government that ZCCM would implement a redundancy programme on the basis of finance secured from multilateral donors; and the completion of a favourable due diligence study.

The hopeful deadline for the completion of the privatisation by 31 March 1999 passed. Anglo entered into talks with several major mining houses over partnership arrangements, but no deal was struck. Without the assurance of a partner to spread the risk of investment, Anglo successfully modified its proposal of January 1999. The Government signed a revised memorandum of understanding agreeing to the sale on 27 October 1999. Heads of Agreement were officially signed on 15 December 1999, setting a deadline of 31 January 2000 for completion of the sale.

The main changes are the withdrawal of the offer to buy Nkana and the scaling down of investment commitments. Otherwise, the rudiments of the deal remain the same and the mines are to be sold on terms which are highly favourable to the South African company. Anglo is to pay \$30 million up front and \$60 million on deferred terms for an 80 per cent stake in all three mines, a total of just \$90 million. However, Anglo subsidiary ZCI will simultaneously sell its holding in ZCCM for \$30 million on deferred terms to the Government to cover the initial purchase price. As a result, the Zambian Government will not receive a net cash transfer unless and until the deferred payments are realised. ZCCM will retain a 20 per cent interest in the new company, Konkola Copper Mines plc, and is to benefit from copper and cobalt participation schemes, although the amount earned will be capped.⁶

The Nkana mine has been excised from the package on Anglo's insistence, but not some of the associated plant. The mine is high cost and has been starved of investment. However, Nkana remains crucial to Anglo's ventures because the company will need to merge their mined and concentrated copper with product from Nkana to ensure an adequate smelting mix. Hence, although Anglo will not buy Nkana mine, it has negotiated the right to veto its sale if the purchaser cannot guarantee investment and development of reserves in a way suited to its own requirements.⁷ Anglo/KCM will retain control over the smelter, acid plants and refinery at Nkana, which it will manage under contract with a three year option to buy. The company will build a new concentrator.

In terms of initial investment, the expectation is that \$260 million will be committed in capital expenditure to rehabilitate Nchanga, the existing Konkola mine and facilities, and Nampundwe over the next two to three years. Anglo is to provide investment capital of at least \$208 million, but a sizeable proportion of the initial investment is to be delivered by the International Finance Corporation and the UK's Commonwealth Development Corporation. The former is to invest \$30 million in equity and loans. A similar level of investment is to come from CDC: both corporations will each hold a 7.5 per cent stake in KCM. Anglo/KCM is to commence implementation of the Konkola Deep Mining Project within eighteen months. The cost of developing KDMP is calculated at \$523 million.⁸

An agreement to sell Nkana mine itself to First Quantum of Canada, with financial backing from metal traders Glencore International AG of Switzerland, was announced on 20 December 1999. The same partnership is also purchasing Mufulira. The Nkana assets comprise the mining operation, concentrator and cobalt plant. On 10 January 2000, Heads of Agreement were signed. A purchase price of \$43 million was agreed, \$20 million up-front and \$23 million deferred. The new owners will acquire a 90 per cent interest in the new company, with ZCCM retaining a 10 per cent holding.⁹ Investment commitments amount to \$154 million over the next three years with a further \$340 to be delivered subject to a positive evaluation report.

The sale of remaining ZCCM assets was to have been concluded by 31 January 2000. However, on the passing of this deadline, Glencore announced that completion would be delayed into February. Likewise, on 27 January 2000, Anglo announced that its own purchase would not be concluded by the set date. Postponement was blamed on a delay in finalising finance and redundancy arrangements. The sales of Mufulira/Nkana to First Quantum/Glencore and of the core of ZCCM to Anglo American were both finally concluded on 31 March 2000.

The Konkola Deep Mining Project - A memorandum of understanding was originally signed on 11 February 1997 between the Government and a consortium led by Anglo American to conduct feasibility studies into developing mining at Konkola South.¹⁰ The exclusive arrangement reflected Anglo's powerful position as the principal minority shareholder in ZCCM. ZCCM was to retain a 20 per cent holding in the project. As well as the existing Konkola mine, the concession encompasses massive untapped copper deposits. Initial reserves are estimated at 350 million tonnes of high-grade copper ore, sufficient to sustain mining for thirty years. These deposits are to be explored and mined through the Konkola Deep Mining Project. The memorandum of understanding included the option to buy the Konkola concentrator, together with the refinery and modern smelter at Mufulira, in order to process the mined copper ore.

Completion of the agreement was, however, conditional on the prior sale of Nchanga and Nkana Divisions and the completion of a due diligence study.¹¹ While Nchanga and Nkana remained unsold, Anglo American was able to avoid committing itself to the final purchase of Konkola while safe in the knowledge that the exclusive deal prevented rival bids for the concession. After the collapse of the bid by the Kafue consortium to buy Nkana and Nchanga, Anglo has been able to negotiate the sale of Konkola as part of the overall package deal on highly favourable terms.

Package C - Mufulira Division - The long delay in disposing of the Mufulira package must reflect the uncertainty over its future created by the original memorandum of understanding over Konkola signed with Anglo American. The mine itself extends deep underground and mining is technically difficult. The refinery and modern electric smelter are seen as crucial to the Divisions profitability. As well as extracting copper from the ore produced by the Mufulira mine, excess capacity in the smelter can be sold at a profit to process copper product from other mines. The option of Anglo to hive-off the smelter and refinery from the Mufulira package was perceived as a threat to the very future of the Mufulira mine and caused significant controversy.

Following the collapse of the Kafue deal and moves by Anglo American to renegotiate its own options, the Mufulira mine was repackaged. In early November 1998, Reunion Mining of the UK announced that it had signed a memorandum of understanding with the mine's existing management with a view to tabling a combined bid. The sale was to have been completed by the end of March 1999, but difficulties in squaring the deal with shareholders in the midst of a takeover bid by the Polish company KGHM, which was to have partnered Reunion in the Mufulira purchase, delayed its conclusion. KGHM was in line to buy the mine until First Quantum/Glencore negotiated its purchase as part of the wider deal to buy Nkana. The Mufulira package provides the all important smelter and refinery, as well as a concentrator and the underground mine.

4. The sale of the other ZCCM packages

Package E - Kansanshi Copper Mine at Solwezi in North Western Province was sold by competitive tender in advance of the main ZCCM package sale. Large scale mining at the site had ceased in 1986. The sale, to Cyprus Amax of the USA, was completed on 14 March 1997. The deal is a complex one. The sales agreement specifies that Cyprus Amax will buy and redevelop the mine in three stages moving from initial exploration, through further exploration and a bankable feasibility study as the basis for finance, to final investment to bring the mine into production. If the company elects to proceed at each stage, the final cash price paid for the mine will total \$28 million and investment could total \$300 million.

Konkola North - The decision was taken by the Government in January 1996 to split the existing Konkola Mining Licence into two areas. The first newly created licence covers the existing Konkola Mine and the lucrative Konkola Deep Mining Project. An exclusive agreement for these assets was negotiated with Anglo American outside of the main privatisation. The second license relates to the remaining Konkola North concession, which has no operating mine, but includes a shaft which was closed in 1956. This package was sold by competitive tender to Avmin (a subsidiary of Anglovaal of South Africa) with ZCCM retaining 15 -20 per cent interest. The deal is complex. Initial committed investment of \$12 million over two years is to be spent on exploration and a pre-feasibility study. After a six month decision period, if the company elects to conduct a final feasibility study, a further \$14 million will be invested over two years. Provided the development moves through all stages, the total cash consideration paid for the mine amounts to \$8.5 million.

Package B - Luanshya Division, comprising the mine and a metallurgical complex, was sold to the Binani Group of India. The sale was concluded on 15 October 1997. The division now operates under the name of the Roan Antelope Mining Company of Zambia Plc or RAMCZ. The cash consideration in the sale was \$35 million and ZCCM retains a 15 per cent shareholding in the company. Under the terms of the sale, \$20 million in equity capital is to be invested in the company immediately out of a total of \$69 million is to be invested over the next five years. The money will be used to refurbish and improve mining, milling operations, the smelter at Luanshya and the concentrator at Baluba. Preliminary feasibility studies have indicated that there are reserves of 44 million tonnes at Muliashi (North). If a full

feasibility study turns out to be favourable and other conditions are met, a new open pit mine will be opened at the site and an additional \$103.5 million invested in new mining projects over ten years. However, the mine has not been successfully managed, the planned development has not been delivered, and its very future hangs in the balance.

Package A (excised part) - Chibuluma Mine was originally part of Package A with the Nkana/Nchanga mines at its core. While the Kafue Consortium, the leading bidder at the time for Nkana/Nchanga, wanted Chibuluma to remain as part of Package A, the smaller mine was excised and sold to the Metorex Consortium of South Africa. The cash consideration was \$17.5 million with investment commitments of \$34 million over three years. The company plans to close Chibuluma Mine (West) within 5 years and develop Chibuluma South within 36 - 48 months. Retrenched workers will be partly reabsorbed in the South Mine. ZCCM retains a 15 per cent holding.

Package D - Chambishi Mine was sold to China Non Ferrous Metals Industries Corporation after the original winning bidder, the Ivanhoe Capital Corporation of Canada, pulled out of the sale. The mine was sold for a total cash price of \$20 million, the majority of which is on deferred terms and conditional on feasibility studies. Provided the mine is developed as planned in three phases and exploration of the ore bodies at Chambishi West and South East proves fruitful, the company will commit \$110 million in investment. Once more, ZCCM retains a 15 per cent holding.

Package J - Power Division was sold to the Copperbelt Energy Consortium made up of Midlands Power International Limited and the National Grid Company plc (both UK-based companies) in partnership with five Zambian senior management staff. The sale was completed on 24 November 1997. The cash consideration paid was \$50 million for an 80 per cent holding, with ZCCM retaining the balance of shares. In terms of investment, the company will invest \$22.5 million within five years. An additional \$34.5 million of investment over the next fifteen years is contingent on certain conditions and plans being realised.

Package H - Ndola Precious Metals Plant attracted only one bid from First Quantum of Canada. The bid was rejected. The plant was later sold in September 1998 to Binani Industries of India for \$350,000 cash and \$1.4 million recapitalisation. It now operates under the name of Minerva. Once more, Binani's management of the company has attracted criticism and a deterioration in working conditions has sparked a series of disputes with employees. Please refer to Section 2(II) for more details. **Package G - Chambishi Cobalt and Acid Plants** was originally to have been purchased by the Kafue Consortium. Instead, the sale of the package, together with the Nkana Slag Dumps, to Avmin of South Africa was announced in August 1998 for \$50 million cash and \$90 million in investment commitments.

Notes

¹ The bidding for Konkola North and Kansanshi closed on 30 May 1996 and 6 December 1996 respectively. To complete the picture, and outside of the main privatisation, the abandoned Bwana Mkubwa copper mine at Ndola was sold to First Quantum in December 1996. The company has built an acid plant to process the copper tailings left from previous operations and will undertake further exploration of the mine area.

² John Phiri, 'Mines' sale - the inside story,' *Times of Zambia*, 8 April 1998.

³ Ibid.; also Theo Bull, 'ZCCM - the story nears its close,' *Profit*, December 1997/January 1998, pp. 17 - 19.

⁴ John Phiri, 'Mines' sale - the inside story,' *Times of Zambia*, 8 April 1998.

⁵ In the initial bidding process concluded in February 1997, no offers were made to purchase the Nampundwe Pyrite Mine outright; however, the Kafue Consortium offered to manage the mine for three years on a contract basis. This offer was withdrawn when the overarching sale to the Consortium of Nkana/Nchanga collapsed.

⁶ The Government/ZCCM 20 per cent stake comprises a 5 per cent free and 15 per cent repayable delayed participation in Konkola Copper Mines plc. The cap on revenue from copper and cobalt participation schemes is fixed at \$125 million over the life of the company.

⁷ Originally it was agreed that if Nkana was not sold by January 2000, Anglo would take over the running of the mine on a management contract and retain first refusal over its eventual sale. However, this arrangement appears to be no longer relevant given the sale of Nkana to First Quantum/Glencore. However, the latter deal remains to be concluded.

⁸ Previously, the cost of developing KDMP as originally planned had been estimated at between \$700 - \$800 million.

⁹ This comprises a 5 per cent free and 5 per cent repayable carried interest.

¹⁰ The original consortium comprised ZCI/Anglo American (with a 40 per cent stake in the consortium), Gencor of South Africa (30 per cent) and Falconbridge of Canada (30 per cent). Falconbridge itself was a replacement for the Western Mining Corporation of Australia. However, Gencor pulled out of the deal on 21 May 1997, followed by Falconbridge on 25 March 1998. In 1999, Anglo and the Chilean mining company Codelco were engaged in talks over the joint development of Konkola, but these did not result in a partnership agreement.

¹¹ Furthermore, under the original memorandum of understanding of 11 February 1997, the consortium had the option to relinquish ownership of the Konkola mine, concentrator and plant at Mufulira prior to a decision to proceed with KDMP.

Section 3

Austerity and the denial of social rights

Introduction

The three social rights in the Covenant which are given consideration in this section are the rights to health, education and social security.¹ Their realisation or denial is examined in relation to the overarching and legally binding obligations applicable to all rights in the Covenant.²

The analysis is divided into four main parts: (I) an overview of social policy and spending is followed by a review of the education, welfare and health sectors (II - IV). Close reference is made throughout to the corresponding rights in the Covenant and the apparent degree of compliance or non-compliance.

I. Social policy and spending: an overview

The question of the allocation of resources to the social sectors is of paramount importance. Whether or not the Zambian Government is using its maximum available resources is one factor which determines compliance with the Covenant. At the same time, any review of absolute and relative social expenditure must take into consideration the conditionality applied by the World Bank. Ultimately, however, the progressive realisation of social rights is dependent not only upon resource allocations, but also the nature of the steps taken to ensure their implementation. Attention is focused on the common elements of reform - rationalisation, decentralisation, cost recovery, private provision - as part of the Government's overall Public Sector Reform Programme.

A. The use of maximum available resources by the Zambian Government to secure social rights

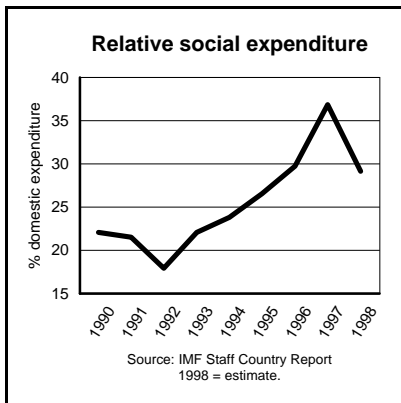
Introduction

The Zambian Government may consider that its maximum available resources are spent on realising economic, social and cultural rights, but it cannot be presumed by this to have met its obligations under the Covenant. This determination is made by the Committee. Resource constraints certainly do not free a government from striving to ensure the widest possible enjoyment of rights; nor from monitoring the extent to which rights are not being realised; nor from devising strategies or programmes for their promotion.³

If there is no apparent justification for the reduction of specific social expenditure, the Committee has shown that it will conclude that there is non-compliance with the Covenant. When considering the Zambian Government's spending on the poor, two factors are vital: firstly, whether the amount spent on the social sectors represents a higher or lower proportion of total public expenditure from one year to the next; secondly, the overall or absolute amount of money the Government has to spend on the social sectors.

1. Relative social expenditure

Out of eight African countries, Zambia ranked next to bottom above Nigeria in respect of the percentage of Government expenditure spent on social provision in 1991.⁴ The proportion of social spending in the highest ranked country, Ghana, was over three times that spent in Zambia.⁵ This situation did not change for the better in the first years of the MMD Government. Social spending in relation to domestic expenditure decreased by over three percentage points in 1992.⁶ Year on year social allocations were down by a sixth. During 1992 and 1993, social sector allocations averaged only 20 per cent of domestic expenditure. This contrasts with the period 1981-85 when this share stood at 29 per cent. Up to 1993, the Government was criticised by the World Bank and other donors for not spending enough money on social services:



'The volume and share of social sector spending has fallen dramatically, and the Government has not been able to reorient its savings from cutting subsidies or from other items to ameliorate that decline...Government has not been able to keep its promises to protect spending in social sectors and to increase their share of total spending.'⁷

The introduction of adjustment loan agreements on social spending after 1993 is reflected in an increase in the proportion of Government domestic expenditure on social provision. ESAC I required the Government to improve budget allocations to and within the social sectors during 1994.⁸ The Government complied with this requirement, although the Bank admits that the budgetary increases under ESAC I were only 'a stop-gap measure, aimed at avoiding a real decline in spending rather

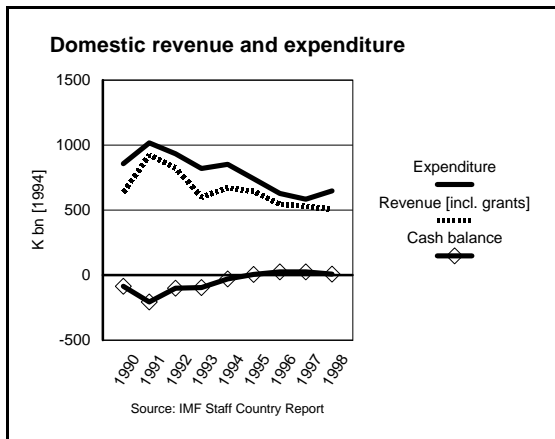
than a significant or sustainable improvement.'⁹ Legal covenants in the ERIP and ESAC II required the Government to maintain levels of social sector spending in 1995 and 1996 respectively.¹⁰ The Bank confirms compliance with the specified levels of social sector spending agreed under both credits.¹¹ During 1997 and 1998, the Bank reports that the Government maintained the social budget even though this was not a condition of an IDA credit.¹² The Bank's latest adjustment loan, the Public Sector Reform and Export Promotion Credit, specifies slightly increased relative social expenditure during 1999 and ties the second tranche release of funds to actual disbursements.¹³

Despite this conditionality, it was not until 1996 that social spending stood once again at 29 per cent of domestic expenditure, bringing relative allocations in line with the levels recorded a decade earlier. However, in the case of Zambia it is the catastrophic decline in overall levels of funding of the social sectors in real terms which is the cause of most concern. The underlying question is whether other loan agreements on the stabilisation measures required of the Zambian Government have so constrained public expenditure as to effectively exclude the delivery of increased social support.

The Bank uses limited social conditionality to seek benefits for the poor or, in other terms, to promote economic and social rights. At the same time, the Bank has fostered an all-encompassing web of economic conditionality which has systematically diminished the capacity of the Zambian Government to respond to the social hardship experienced by the vast majority of Zambians. What begins as concern over the compliance of the MMD Government with social conditionality and its obligations under the Covenant ends with concern over the advisability of the measures employed by the Bank to realise economic and social rights.

2. Absolute expenditure and stabilisation

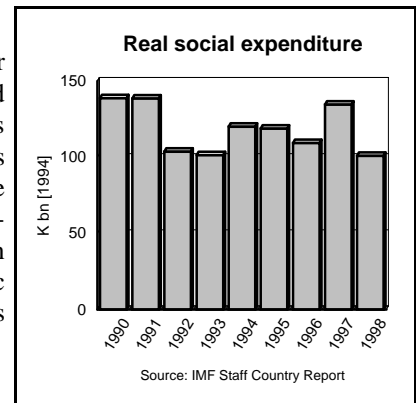
The stabilisation programme is that part of overall economic reform which is designed to bring the Government's finances under control in order to balance the books and reduce inflation. The MMD Government has agreed a number of measures with the World Bank and IMF centred upon the careful control of public spending. Key steps have included the introduction of cash budgeting to ensure the Government does not release funds it does not have; the placing of limits on the amount of money the Government borrows for public expenditure, known as the public sector borrowing requirement; and maintaining the amount of revenue the Government receives through taxation.



Despite some positive results of significance to the poor - the most notable of which is the control of hyper inflation¹⁴ - closing the budget gap has been accomplished mainly by severe cuts in Government expenditure rather than by raising revenue. Between 1991 and 1997, government expenditure fell from 40 per cent to 27 per cent of GDP.¹⁵ In real terms, it fell by almost a half from K1019 billion to K586 billion over the same period.¹⁶

It is apparent that budget cuts have had a devastating impact upon social spending as a component of overall Government expenditure. Since the MMD Government came to power in 1991, spending on the social sectors in absolute and real terms has plummeted as a result of the IMF/Bank-backed stabilisation program. Taking an average of expenditure in any one year, over the period 1981-85 almost two and a half times as much was spent on the social sectors in real terms than during the period 1991 to 1993¹⁷.

According to a joint UNDP and Government of Zambia report, and accounting for population growth, real per capita social spending in Zambia in 1991 was at a third of 1980 levels.¹⁸ The report does not provide figures for the MMD Government's own record on expenditure. This is rectified in the accompanying graph. It is apparent that the absolute amount of social spending at constant prices in any one year to 1998 has never bettered the 1991 level. On average over the period 1992 - 1998, the yearly social expenditure has been K26 billion less than the K138 billion spent in 1991. The protection of relative levels of social spending in the domestic budget written into loan agreements must always be considered in relation to this massive reduction in expenditure itself required by the Bank.



B. The adequacy of the steps taken for the progressive achievement of social rights

Introduction

The quantitative aspect to social service provision is, of course, of the utmost importance as social rights cannot be realised without the allocation of resources. However, there is also a significant qualitative aspect to social service delivery. The question remains as to whether the steps taken by the Zambian Government, which fall mostly in the policy sphere, have achieved the progressive realisation of social rights in the areas specified, notwithstanding real reductions in social expenditure. An account is given in a first subsection of the common elements of social reform in Zambia in the context of the overarching Public Sector Reform Programme. A second subsection maps the influence of the Bank on the social aspects of this reform through its adjustment lending. A final subsection seeks to highlight some of the preliminary concerns raised by the overall nature of social reform before considering the education, social welfare and health sectors in some depth. The principal obligations arising from the Covenant are summarised: this is the datum against which the Zambian Government's record on welfare, health and education must be assessed.

1. Common policy elements within the Public Sector Reform Programme

Before considering the health, social welfare and education sectors in their own right, it is pertinent to identify a number of common policy elements reflected in the Government's overall Public Sector Reform Programme (PSRP). Public services were acknowledged by the MMD administration as 'ineffective, inefficient, and generally unresponsive to the country's development needs.'¹⁹ The PSRP was therefore designed to tackle problems of inappropriate organisational structures, poor personnel management, and excessive centralisation of the service delivery system. A threefold strategy was adopted: first, the introduction of restructuring plans for each ministry; second, the development of improved procedures for personnel management, including performance related pay; and third, the decentralisation of social service provision and the strengthening of local government.²⁰ These objectives were to be pursued in the context of an ongoing review of long-term staffing levels and wages in order to restructure the public sector in line with Zambia's

financial means.²¹ Such action goes to the heart of reform: superimposed across public sector restructuring is the requirement to reduce expenditure which itself arises from the stabilisation programme. Savings have been achieved by the introduction of cash budgeting, a hiring freeze in the civil service, a reduction in staff levels through voluntary and compulsory redundancies, and by the control of wage increases.²² The role of successive Bank adjustment credits - ERC, PIRC I, and ESAC I and II - in driving through civil service reform has already been documented.²³ Please see Section 2(II) for a consideration of the scale and impact of mass public sector redundancies.

Changes in the social sector reflect this overarching agenda of public sector reform. Common elements are decentralisation, sector-wide coordination, cost-recovery, the promotion of private sector initiatives, and primary service provision. Beginning in 1994, the institutions responsible for health and education have been reorganised with an emphasis on the decentralisation of service delivery. Similarly, the implementation of social safety net measures have been devolved to community groups.²⁴ Sector investment programmes, by which both domestic and external resources are coordinated by the Government within a common framework, have been developed for health, education and water supply/sanitation.²⁵ Cost-sharing was introduced in the form of user fees for health care and parents must pay term fees and other indirect costs for education. The Government's rationale that cost recovery is 'only to augment the total quantity and quality of services, not to preclude access to those with few resources' will be tested later.²⁶ Deregulation of the education and health sectors has opened the way for private providers of these services. The final common element - an emphasis on basic services within each sector - is manifest in policies designed to promote primary education and cost-effective primary health care.²⁷

2. The role of the World Bank in social sector reform

Once more, the Government's implementation of broad social sector reform has been underpinned by Bank adjustment lending in ways which go beyond the protection of spending.²⁸ A principal component of ESAC I (FY 94) required the Government to strengthen and decentralise social service delivery and improve budget allocations to and within the social sectors.²⁹ Reform was to be achieved, *inter alia*, by decentralising budgetary and decision-making authority and by transferring certain social functions to NGOs and community groups. Budgets for health, education, water supply, and existing social safety nets were to be restructured alongside the revision of implementation policies in specific social sectors.³⁰ ERIP (FY 95) stipulated minimum spending targets for social services and required the adoption of legislation for a new basic social security pension scheme and independent social security institutions.³¹ A condition of second tranche release of ESAC II (FY 96) was the development of national policies on the provision of essential drugs, nutrition, and NGO participation in the delivery of social services.³² In its *Letter of Development Policy* appended to the credit, the Government agreed to introduce targeting guidelines and implement a policy to deliver help through the Public Welfare Assistance Scheme to enable very poor families to pay school and medical fees.³³ Under the PSREPC (FY 99), the Government has agreed to implement its national policy on nutrition. There is a renewed undertaking to initiate implementation of the revamped PWAS, although clearly this should already have occurred under ESAC II.³⁴

In line with the Government's emphasis on primary services, ESAC II, in addition to specifying overall levels of social spending, required the protection of expenditure on certain subcomponents including, *inter alia*, the supply of drugs, District Health Boards, two welfare schemes, the recurrent costs associated with primary schools, and water/sanitation operation and maintenance.³⁵ While social budget protection is normally expressed in percentage terms to allow the Government to vary absolute allocations depending on revenue, this key spending was fixed on account that the sums involved, at six per cent of total budget, were relatively small.³⁶ Under the PSREPC, the Government agreed to maintain non-personnel spending in priority areas concerned with social safety nets, welfare assistance, poverty alleviation, drought relief and water and sanitation.³⁷ However, protection appears to apply to relative rather than absolute allocations and fewer priority areas are monitored than before.³⁸

The effectiveness of these specific agreements on social reform, together with their suitability for poverty alleviation, will be examined alongside Government action in the subsections which follow.

3. Preliminary concerns and the yardstick of the Covenant

Before reviewing the social reforms outlined in more detail and considering their impact upon the enjoyment of social rights in each specific arena of education, social welfare and health, it is pertinent to recognise a number of preliminary concerns. First, it is questionable whether action to rationalise staffing levels and to impose tight budgetary controls is driven primarily by the desire to eliminate inefficiency or by the underlying need to reduce public expenditure at whatever social cost. A contradiction arises when agreements within Bank adjustment credits simultaneously require cuts in public expenditure while seeking improved social support: given the magnitude of the reduction in social sector

spending in real terms, it is simply not possible to square the circle and deliver improved services through restructuring alone. Second, it is difficult to resolve the introduction of cost-sharing with the rights of all Zambians, including the majority with little or no resources, to education and health care. Furthermore, the positive aspects of social sector reform must also be assessed in practice to determine whether decentralisation has yielded greater local level participation and improved accountability; whether resources have been concentrated on primary service delivery of most benefit to the poor; and whether sector investment programmes have resulted in the optimal coordination of scarce resources.

Above all else, the ultimate yardstick is the Covenant. On the one hand, all developing countries face difficulties in ensuring that, *inter alia*, the rights to health, education and social security are realised. Zambia is no exception to this. Hence the Committee, in its interpretation of the nature of State parties obligations under the Covenant, confirms, first, that the concept of progressive realisation is a recognition of the fact that the full realisation of all economic, social and cultural rights will generally not be achieved in a short period of time.³⁹ This clause is pragmatic and reflects real world conditions. Second, the Committee, in determining whether a State party has met its minimum core obligation to ensure the satisfaction of essential levels of each of the rights in the Covenant, must take into consideration resource constraints.⁴⁰

While it will be demonstrated that many Zambians are denied enjoyment of the rights to health, education of social security, this situation does not, therefore, necessarily constitute a clear-cut violation of the Covenant. To do so requires demonstrating how the Zambian Government has failed to fulfil a number of specific obligations.

On the other hand, while the Committee recognises that progressive achievement is a 'necessary flexibility device,' this does not imply that a recalcitrant State has discretion in determining when it is obliged to deliver a particular right nor can it invoke the clause on the availability of resources to obviate its obligation to fulfil, *inter alia*, rights to health, education or social security. It is the Committee, not a State party, which makes an assessment of compliance; and it does so according to a number of principles.

First, the clause *achieving progressively* obliges a State Party to move expeditiously and effectively towards the goal of full realisation.⁴¹ Maintaining the status quo in respect of the realisation of rights under the Covenant is untenable. To move away from that goal by the adoption of deliberately retrogressive measures can only be justified when there is a severe shortage of resources or when the totality of protection across all other rights in the Covenant improves as a result.⁴²

Second, a State is obliged to use its maximum available resources and it is the Committee which determines whether this requirement is met and whether retrogression is justified on this basis.⁴³ The Committee has interpreted the Covenant as establishing a minimum core obligation to ensure the satisfaction of minimum, essential levels of each of the rights it contains. Circumstances in which any significant number of people in a country are deprived of, *inter alia*, essential foodstuffs, essential primary health care, and the most basic education, constitute a prima facie failure on the part of Government to discharge its obligations under the Covenant.⁴⁴ The Zambian Government must demonstrate that every effort has been made to use all the resources at its disposal to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.⁴⁵

Furthermore, a third distinct undertaking in the Covenant is *to take steps*.⁴⁶ The overall goal of full realisation of the rights may be achieved progressively, but the active steps which are necessary to arrive at that goal must begin once the Covenant is ratified. The steps themselves must be deliberate, concrete, and targeted.⁴⁷ This refers not only to the adoption of laws but to *all appropriate means*. Laws must be capable of being applied in practice and a Government must also make use of policy measures to realise rights.⁴⁸ The final overarching undertaking obliges a State party to the Covenant to guarantee to exercise each right without *discrimination*.⁴⁹ This is of immediate effect.

In the substantive consideration of each of the social rights which follows, and in accordance with the specific obligations of the Zambian Government, an attempt is made: (i) to evidence the prima facie denial of minimum, essential levels of each of the rights in question whereupon the onus is placed on Zambia to justify the prevailing situation; (ii) to distil out evidence of stasis or retrogression; (iii) to subject the availability of resources to closer scrutiny in order to test the argument of constraint; and (iv) to analyse the use of policy measures as concrete and targeted steps towards the realisation of each right. This encompasses two aspects: the implementation of deliberately retrogressive policies; and the denial of specific rights through omission, that is, the absence of essential policy measures.

Notes

- ¹ ICESCR, respectively articles 12, 13 & 14, and 11.
- ² ICESCR, article 2. Each State party, including the Zambian Government, must ensure that the principle of *non-discrimination* is guaranteed; that rights are *achieved progressively*; and that it *takes steps* to see this is the case to *the maximum of its available resources*.
- ³ *GC 3*, para. 11.
- ⁴ *PSHDZ*, Table 6.1, p. 96.
- ⁵ In Ghana, social expenditure accounted for 46. per cent of total government expenditure. The comparable figure for Zambia was just 14.6 per cent. These figures are from *PSHDZ*, in which social expenditure is taken to cover education, health, food and social welfare programmes, housing, urban and regional development and community and social services. The apparent anomaly between the figures cited for Zambia in this report and later IMF figures upon which the graph in the text is based is largely explained by the fact that the latter records social expenditure in relation to public expenditure rather than overall government expenditure. In the IMF figures, social expenditure is taken to comprise broadly comparable categories of education, health, social welfare, housing/community services.
- ⁶ Social expenditure declined from 21.5 per cent of public expenditure in 1991 to just under 18 per cent in 1992.
- ⁷ *PA*, para. 4.68.
- ⁸ *PIRC & ESAC PAR*, paras. 2.20, 2.25 and 3.21.
- ⁹ *Ibid.*, para. 4.10; also para. 3.21.
- ¹⁰ ERIP specified levels of social spending at 33 per cent of total non-interest expenditure spending in 1995. Non-interest spending is total government expenditure minus domestic and foreign debt service which are 'non-discretionary,' that is they must be paid. Because non-interest spending is lower than total government expenditure, the relative allocation to the social sectors required is increased. It was also a loan condition under ERIP that the share of non- personnel spending be maintained at more than 24 per cent of social sector spending. (See *ERIP ICR*, table 6). ESAC II included similar conditionality whereby the Government was to maintain the social sector budget at a minimum of 35 per cent of discretionary domestic expenditure in 1996. Discretionary expenditure is calculated by subtracting non-discretionary elements - principally domestic debt service, election costs and wage adjustments - from domestic revenue. It is therefore broadly in line with non-interest domestic spending. (See *ESAC II R&R*, Annex J, Social Sector Spending in 1996, pp. 73 - 74).
- ¹¹ *ERIP ICR*, para. 6.
- ¹² The Bank quotes allocations of over 36 per cent, presumably of discretionary spending, across both years. See *PSREPC R&R*, para. 50.
- ¹³ The social component of the discretionary domestic budget is set at 36 per cent. See *PSREPC R&R*, para. 51; also *idem*, para. 55 (f) and Letter of Development Policy, Annex A, Social spending in 1999, p.56.
- ¹⁴ The measures taken did bring inflation under control and this averted the catastrophe of a spiral of escalating prices. This is of obvious advantage to the poor as it stabilises the price of food and other essential goods and services. Clearly poor people are less able to protect themselves against rising costs than the better off who are likely to have savings. However, the annual rate of inflation between 1991 and 1996 never fell below 35 per cent. At the end of 1998, the figure was 26 per cent. Even at this level, the cost of living is outstripping any increase in household income for the poor.
- ¹⁵ See *SCR (1999)*, Selected Issues and Statistical Appendix, table 11.
- ¹⁶ At 1994 constant prices.
- ¹⁷ Calculated from Ministry of Community Development and Social Services (1998), *National Poverty Reduction Strategy Framework* [draft report], Table 3.6.1, p.31.
- ¹⁸ *PSHDZ*, p.95.
- ¹⁹ *PFP (1995 - 1998)*, para. 89.
- ²⁰ *Ibid.*, para. 90.
- ²¹ *Ibid.*, para. 91.
- ²² See, respectively, *ibid.*, paras. 48, 43, 46 and 89.
- ²³ See *intra*, Section 2(II).
- ²⁴ *PFP (1995 - 1998)*, para. 133.
- ²⁵ *Ibid.*, para. 135.
- ²⁶ *Ibid.*, para. 137.
- ²⁷ *Ibid.*, para. 134.
- ²⁸ In addition to the principal conditionality discussed here, agreements under PIRC I and II for the development of a social safety net for retrenched and redundancy packages for parastatal employees and civil servants are given due consideration in Section 3(III) and Section 2(II) respectively. Although it is implied that PIRC II sought the development of a social safety net for all those suffering from the adverse impact of economic reform, in fact the required action focused solely upon retrenched. See, *PIRC & ESAC PAR*, para. 2.7.
- ²⁹ *PIRC & ESAC PAR*, para.2.20.
- ³⁰ Two further elements listed under the rubric of social service restructuring are more obviously related to rationalisation of the public sector under the PSRP. They are (a) the revision of the package of severance benefits to permit efficient restructuring of employment within the public sector and (b) the introduction of performance related pay to retain skilled professionals. (*PIRC & ESAC PAR*, para. 2.25).
- ³¹ *ERIP ICR*, para. 9; also Part II, Statistical tables, tables 5 and 6.
- ³² *ESAC II R&R*, para. 51; also para. 57 (i).
- ³³ See *ESAC II R&R*, Annex J, Letter of Development Policy, para. 73; also *ESAC II R&R*, para. 52.
- ³⁴ *PSREPC R&R*, para. 49.
- ³⁵ See *ESAC II R&R*, Annex J, Sub-sectoral budget allocation, p. 75.
- ³⁶ See *ESAC II R&R*, Annex J, Social sector spending in 1996, p. 73.
- ³⁷ See *PSREPC R&R*, Letter of Development Policy, para. 42 and Annex A, Social spending in 1999, p.56.
- ³⁸ *PSREPC R&R*, para. 51.
- ³⁹ *GC 3*, para. 9, arising from the Committee's interpretation of article 2(1).
- ⁴⁰ *Ibid.*, para. 10, arising from the Committee's interpretation of article 2(1).
- ⁴¹ *Ibid.*, para. 9.
- ⁴² *Ibid.*, para. 9.
- ⁴³ *Ibid.*, para. 10.
- ⁴⁴ *Ibid.*, para. 10.
- ⁴⁵ *Ibid.*, para. 10.
- ⁴⁶ ICESCR, article 2(1).
- ⁴⁷ *GC 3*, para. 2, arising from the Committee's interpretation of article 2(1).
- ⁴⁸ States may exercise judgement in deciding what is an 'appropriate means,' but they will be required to justify their decision and the Committee will ultimately decide the question of what it deems is appropriate. Where detailed steps are specified in the Covenant itself, the State cannot exercise

discretion. For example, the right to education is, in part, to be realised through the means of compulsory and free primary education and all State parties are therefore obliged to see this is carried through. See *GC 3*, para. 4; ICESCR, article 14; also the interpretation of the obligations arising from article 14 in *GC 11*.

⁴⁹ ICESCR, article 2(2); also *GC 3*, para. 1. In addition, see Craven (1995), pp. 161 ff.

II. Education

A. Reform of the education sector

The MMD Government did inherit an educational system which was already in decline because of lack of investment during the 1985-90 economic slump. A reduction in the construction of new schools and classrooms meant double and even treble shifts in existing facilities in order to accommodate additional pupils. This led to overcrowding, low teacher morale and fatigue. The Government ceased to pay for normal teaching resources such as chalk, desks, blackboards and textbooks. No maintenance was carried out on school buildings. All of these factors resulted in a further decrease in the morale of teachers and the overall quality of education, undermining its value in the eyes of parents at the time when the poorest were faced with hard economic decisions over whether to leave their children in school.

1. The National Policy on Education

In 1992, the Government published its *Focus on Learning: Strategies for the Development of School Education in Zambia*. The initial stress was upon the identification of priorities, the development of realistic policies and the mobilisation of available resources. In 1996, building upon this original strategy document, the Government published a comprehensive new national policy on education, *Educating Our Future*.

The goal of educational reform is to deliver quality education with equity of access for all.¹ In common with health sector reform, the overarching plan is to maximise the use of available resources and to decentralise decision-making and the management of education to the local level. Several key strategies are to be pursued.² The status of lower primary schools (Grades 1 - 4) will be upgraded to provide full primary education (Grades 1 - 7).³ The existing infrastructure is to be rehabilitated and added to where necessary. The management of local education and the running of schools will be decentralised to education boards. Local communities and voluntary organisations are to be supported in the creation, financing and running of schools. The principle of cost-sharing is therefore given prominence while the Government aims to provide technical assistance, some material support, and a number of state-funded teachers. The education sector as a whole is to undergo liberalisation. By the removal of controls over the entry of education providers, the aim is to increase private investment and to encourage the participation of non-government actors, including missionaries and church groups who have provided education in the past. Finally, ways will be explored by which education can be delivered to those unable to attend conventional schools, for example, children in remote rural areas, the disabled and those who have been orphaned.

2. The integrated use of resources under the Education Sector Investment Programme and the Basic Education Sub-Sector Programme

An Education Sector Investment Programme (ESIP), akin to its counterpart in health, has been developed to implement policy by improving the coordinated use of resources across the sector.⁴ It provides a common framework for the actions of the four relevant government ministries involved in education and training, as well as donors, NGOs and the private sector.⁵ The Government has identified three main priorities: to deliver universal basic education (Grades 1 -9) in the shortest realistic time-frame; to urgently address the needs of those outside of formal education who have either never been to school or else have been forced, by economic or other circumstances, to drop out; and to provide youth skills training for employment in the formal or informal sectors. An overarching concern of ESIP is to promote greater equity in education by promoting the interests of the poor, girls and women, those with special needs and other vulnerable groups.⁶ The achievement of gender balance in education is sought with the equal participation of girls by the elimination of factors that hinder their access, progression and accomplishment.⁷

Within the overall ESIP framework, it is the Basic Education Subsector Investment Programme (BESSIP) which is the focus of current action.⁸ The programme, developed jointly between Government, donors and other stakeholders, aims to increase enrolment at the primary and lower secondary levels and improve the quality of education as measured by learning achievements.⁹ Planned action focuses upon raising the number of teachers; improving classroom learning by providing books, targeting disadvantaged groups and addressing the problem of pupil malnutrition and ill-health; providing better pre- and in-service teacher training; the continued refurbishment and building of classrooms, and revision of the curriculum; and advancing decentralisation and education management.¹⁰

BESSIP is split into two stages. Over the period 1999 - 2001, the program will cost about \$340 million.¹¹ Of this amount, \$167 million is to be financed by the Government of Zambia. The balance of \$173 million is to be met by donors, of which the World Bank is to provide \$40 million.¹² In a second phase running from 2001 - 2006, the plan is to consolidate the achievements of the first phase and then extend the program, in particular by expanding provision for disadvantaged groups and by paying special attention to remote rural areas.¹³ Projected costs for the second phase total \$500 million.¹⁴ Once more, the Zambian Government is expected to meet half of the financing or \$250 million while donors will provide the rest. The Bank's share in phase two is costed at \$60 million; however, it must be noted that both the Bank and other donors will only proceed if a number of key benchmarks have been met by the end of phase one.¹⁵

There are many positive aspects to BESSIP which, if realised, will further realise the right to education. At the same time, its full implementation is by no means assured. The World Bank, while providing instrumental support for the program, is candid in conceding that there is a 'substantial risk' that BESSIP will not deliver upon its first phase objectives.¹⁶ The Government has outlined how it plans to implement the first phase of BESSIP.¹⁷ The need to switch further resources to the education sector and to maintain expenditure at the primary level is recognised.¹⁸ However, the failure of the Government to increase budget allocations for education in general and the primary subsector in particular is rated a moderate risk and the Bank has noted 'the lack of a financially sustainable policy framework for the sector.'¹⁹ The further deterioration of the macroeconomic situation in Zambia is deemed a substantial risk, despite the approval by the Bank of the new PSREPC adjustment credit in January 1999. In such a circumstance, it is therefore difficult to see how domestic expenditure on education could keep being maintained in line with BESSIP commitments. Commentators have already noted that the domestic education budget is not being adjusted in accordance with the plan of action required under BESSIP: it is neither increasing in any substantial way nor is there an increase in the necessary capital allocation.²⁰ Instead, donors are being looked to for the necessary support.

Furthermore, despite continued restructuring of the Ministry of Education under both the Public Sector Reform Programme and through internal measures, its institutional performance is deemed to be weak and to pose a significant risk to implementation of BESSIP.²¹

Finally, the danger that enrolment will continue to be adversely affected by wider problems of out-of-school household factors, such as poverty and the debilitating effects of HIV/AIDS has been deemed a moderate risk. This rating appears complacent in the face of evidence which suggests that, by the end of 1997, a fifth of the adult population in Zambia was infected with HIV/AIDS and that 360,000 children under fifteen had lost one or both parents to the disease;²² and in the face of evidence from many agencies which confirms that many parents believe that the benefits of primary education are outweighed not only by its direct cost, but also by the loss of income to an impoverished household when a child is sent to school rather than set to work around the home. Parents in Zambia meet half the national cost of primary education in direct fees. Beyond limited targeting measures, BESSIP does little to change this situation. Indeed, the provision of primary education in Zambia is predicated on the principle of cost-sharing which runs contrary to the progressive implementation of the right to compulsory primary education free to all.

3. Restructuring and decentralisation

In order to achieve the decentralisation of responsibility, resources and authority, the education sector is being restructured.²³ District Education Boards are to administer and manage the provision of education in primary and integrated schools. Secondary schools and teacher colleges are each to have their own Education Boards. At both the district and institutional levels, Education Boards are expected to relieve the Ministry of Education of the day-to-day running of educational establishments; to improve the autonomy and democratic decision-making in management; and to allow for greater responsiveness to local needs²⁴. The central Ministry of Education itself will be streamlined and restructured. Its main tasks, in parallel with those of its counterpart in the health sector, are to formulate policy, to establish a core curriculum, to develop training, to set appropriate benchmarks and goals, to monitor standards and to undertake supervision of the system.²⁵ An intermediate tier of Provincial Education Officers act as a link between the Ministry and the Educational Boards.

Decentralisation in the education sector started in 1994, in advance of formal restructuring, when funds were released directly to Provincial Education Officers. A pilot project in the Copperbelt to establish District Education Boards to run primary schools commenced in 1995 with a view to its countrywide extension by the end of 1996. This commitment, alongside others to introduce boards in training and secondary schools, was specified in the Government's *Letter of Development Policy* under ESAC II, although its fulfilment was not a specific loan condition.²⁶ However, by the end of 1996, the planned expansion had not been realised and the program remained confined to the Copperbelt in 1997.²⁷ Education Boards to run secondary schools were to have been operational by the end of 1997, but this aim has not been achieved. More realistic targets have now been set; in the period 1999 - 2001, Education Boards will be established in at least 60 per cent of Zambia's districts and training will be provided for staff in all districts.²⁸

B. Evidence of the increased denial of the right to education

The analysis of the denial of the right to education in Zambia is structured around five subsections. First, evidence is presented of prima facie non-compliance with article 13 on the right to education. This necessitates an immediate focus upon the right to primary education. The analysis is framed in respect of some of the key elements of the right to primary education as codified in the Covenant: universal access and compulsion; adequacy and quality. Second, given that resource constraints must be taken into consideration in assessing compliance, the extent to which this is a credible basis for a defence of the Zambian Government's poor record on meeting its minimum core obligations is tested. The advisability of international assistance measures *vis-à-vis* realisation of the right to education is reviewed in this context.

Consideration of the requirement that primary education is to be free to all is therefore postponed until the issue of resource availability has been broached. However, a third subsection deals explicitly with the controversial subject of fees and the Zambian Government's policy of cost-sharing in the context of liberalisation of the education sector. A fourth subsection examines the extent to which the Zambian government meets its obligation under the Covenant to target educational resources at vulnerable and disadvantaged groups. Finally, attention is paid to the gender dimension within the principle of non-discrimination and the extent to which girls and women in Zambia fully realise their right to education.

1. *Prima facie non-compliance with the right to primary education*

Zambia has a core obligation to ensure, at the very least, minimum essential levels of the right to education. If any significant number of individuals is deprived of the most basic forms of education, then the Government is prima facie failing to discharge its obligations under the Covenant.²⁹ What constitutes 'the most basic forms of education' is not elaborated upon within the general comment. Determination of prima facie violation in respect of this benchmark is made by the Committee in its review of State reports. However, it also follows, given the universality of a minimum essential level, that the Committee has a benchmark in mind. The basis for this must be the right to education as codified in the Covenant and the Committee's interpretation of the nature of this right and a State party's obligations. Minimally, the argument is advanced here that the widespread denial of elements of the right to primary education in Zambia constitutes a deprivation of the most basic forms of education.

Within the Covenant, specific attention is given to the right to primary education. Article 13, in recognising the right of *everyone* to education, requires that, for its full realisation, 'primary education shall be *compulsory* and available free *to all*.'³⁰ The first and last italicised clauses reinforce the right of universal access to education. Furthermore, the element of compulsion in the right to primary education has been determined by the Committee to mean that 'neither parents, nor guardians, nor the State are entitled to treat as optional as to whether the child should have access to primary education.'³¹ Article 14 requires the adoption of a time-tabled plan for progressive implementation of the right. In other words, this action constitutes one of the steps which a State party is required to take for the progressive achievement of the right to education.

One issue is in need of clarification. If article 14 obliges a State party to fix a target date - for example, five years hence - for the implementation of universal primary education, then the implication is that article 13 need not be realised in the interim. It would therefore be difficult to record prima facie non-compliance with the Covenant. However, such an interpretation fails to take into consideration that while universal primary education may not be achievable immediately, that is not to say that the denial of basic education to significant numbers of children is acceptable; nor does it free a State party from the obligation of progressive achievement; nor from its obligation to use maximum available resources. The fact that Zambia has adopted an action plan for universal primary education does not preclude scrutiny of the current realisation or denial of the right nor consideration of the appropriateness of the plan itself.

Enrolment, attendance and completion rates all indicate the degree to which universal access to primary education is realised. Given the element of compulsion, it is also necessary to consider the reasons for any failure to deliver universal primary education. If there is a sheer lack of capacity to teach pupils, then it is *de facto* impossible to deliver compulsory primary education. Furthermore, when parents or guardians feel compelled to withhold or withdraw their children from attending school, then access to primary education is being treated as optional. However, the reasons for keeping a child from school in Zambia often reflect the perceived or actual value of low-quality education when set against its cost. Full realisation of the right to primary education depends not only upon universal access, but also on whether the education received is of adequate quality and is free to all. The Zambian Government has an obligation to formulate effective policy in both areas.

a. Enrolment, attendance, drop-out

Significant numbers of children in Zambia are deprived of primary schooling as the most basic form of education. Economic uncertainty and increasing poverty, coupled with a decline in access to good schools, is reflected in falling enrolments and attendance. The net enrolment ratio (NER) for children of primary school age in Zambia is falling.³² In 1985, 96 per cent of Zambians of primary school age were enrolled. By 1994, this figure had dropped to 83 per cent.³³ Figures for 1996 record a further decline in the NER to 72 per cent.³⁴ Put another way, three out of ten children of primary school age in Zambia who ought to be in school are not even enrolled. Net attendance ratios for 1996 reflect this situation: 69 per cent of primary age pupils were being taught in schools at Grades 1 - 7.³⁵ Almost a third of those who should have been in school were not present. Attendance is higher in urban areas than in rural areas. In the countryside, only six out of ten children of the appropriate age were attending primary school in comparison to eight of ten of their urban counterparts.³⁶

As a State party to the Convention on the Rights of the Child, the Zambian Government is required to 'take measures to encourage regular attendance at schools and the reduction of drop-out rates.'³⁷ Yet not only are fewer children attending primary school in the first place, but estimates also suggest that a lower proportion are then completing their primary education. Primary school completion rates have fallen from 83 per cent in 1990 to 78 per cent in 1996.³⁸ Recent survey data suggests an even worse scenario:³⁹ as many as 35 per cent of those who enrolled in Grade 1 will no longer be enrolled in primary school at Grade 7.⁴⁰ The average figures mask geographic and gender inequalities. In rural areas, one girl in every two who starts school fails to complete her primary education.

The enrolment, attendance and completion figures confirm that a significant number of Zambian children do not enjoy access to primary education. In the light of this situation, it must be recalled that the right to primary education is compulsory. Furthermore, the statistics constitute strong evidence of regression, contrary to the principle of progressive realisation. There are two underlying reasons for the decline in primary school enrolment and attendance rates. The first is the lack of capacity. This is a long-standing problem. The second reason is a fall in demand for primary education and an unwillingness to send children to school. This explanation has come to the fore only in recent years and is a cause for concern.

b. The growing deficit in appropriate capacity

There is a chronic shortage of school places. This situation is a legacy of the sharp decline in investment in the education sector which began during the economic slump of 1985 - 1990. In this period, class sizes increased considerably, double and treble shifts were introduced, and teaching hours per student declined.⁴¹ Under the national education policy, the aim is to ensure that 'every child will have access to a minimum of seven years good quality education in a school of parental choice.'⁴² Hence the plan is to upgrade all schools that end at Grade 4 to full primary status to teach all Grades 1 - 7; to rehabilitate the existing infrastructure; and to provide new facilities where necessary, for example in peri-urban areas.

Between 1993 - 1996, the stock of existing schools was targeted for refurbishment.⁴³ This work continues under the BESSIP. Both initiatives have attracted considerable donor support. In addition, a few new schools have been built, mainly in urban areas. Overall, however, the total number of primary schools has increased only marginally since 1990 and the distribution of capacity fails to address the needs of the multitude of children living in urban squatter settlements.⁴⁴

One measure of capacity is class size. In 1996, there were approximately 1.84 million children of primary school age in Zambia.⁴⁵ In addition, a significant number of over-age children, in the region of 180,000, were enrolled in primary schools. Fulfilment of the requirement of compulsory primary education for all is therefore predicated on a capacity of at least 2.02 million places. In 1996, there were about 43,000 primary classes, giving an average class size of 35 children based on actual enrolments of 1.51 million. It is therefore apparent that, if all potential pupils were to be catered for, average class size would increase to 47. In other words, in order to maintain class size at current levels, current capacity would have to expand by a third. However, it is pertinent to note that, first, current capacity is not evenly distributed and there is a severe deficit in poor urban areas; and, second, that declining demand also contributes to low enrolment figures.

Notwithstanding the decline in demand for primary education, many parents would send a child to school if the capacity existed locally. The problem differs somewhat between urban and rural areas. In urban areas, especially in high density and shanty settlements, there is a severe shortage of places in primary schools. In Lusaka, in 1996, there were 37,835 seven-year-old applicants for 17,082 Grade 1 places. The remaining 20,753 children were rejected.⁴⁶ A mean class size of 44 pupils in Lusaka in 1996 was already much higher than the national average.⁴⁷

Children in squatter settlements must either walk to over-crowded schools in approved areas or else do without. If they are fortunate, they will have access to a community school. However, there are very few of these in comparison to the number of poor children in urban compounds who require an education.⁴⁸ In rural areas, there is over-capacity in that many schools are far from full. The reason for low enrolment reflects the fact that many rural children live a considerable distance from a school: around 16 per cent must travel over six kilometres each way if they are to attend classes.⁴⁹ The journey to school is not only time-consuming, but may be hazardous and will certainly leave children exhausted and unable to concentrate fully on their lessons which itself contributes to a high drop-out rate.⁵⁰ The aggregate survey figures mask the fact that the nearest primary school is likely to teach only Grades 1 - 4 and is therefore unsuitable for pupils ready to progress to higher grades. As 300 of Zambia's rural primary schools cover only the lower grades, then many children must either board in the locale of an upper primary school or else walk exceptionally long distances, in excess of ten kilometres each way, if they are to complete their primary education.⁵¹ This is seldom feasible.

As has been noted, the Committee recognises the importance of national benchmarks and specific targets in the pursuit of progressive realisation of the rights in the Covenant.⁵² In respect of the progressive implementation of primary education, as framed in article 14, the requirement is for compulsory primary education free of charge for all. National goals must accord with this requirement. Any leeway that exists, does so in relation to the time-frame within which the right to primary education must be delivered. However, this is itself strictly defined:

'...article 14 specifies that the target date must be "within a reasonable number of years" and moreover, that the time-frame must "be fixed in the plan". In other words, the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan. This underscores both the importance and the relative inflexibility of the obligation in question.'⁵³

Postponing the question of its compatibility with all elements of the right to primary education - especially on the issue of charges - the Zambian Governments national policy on education does specify targets for the achievement of universal primary education:⁵⁴ 100 per cent of 7 year-olds are to be in Grade 1 by 2000 and 100 per cent of 7 - 13 year-olds are to be in Grades 1 - 7 by 2005. In addition, the Government has set a target for the achievement of universal basic education (Grades 1 - 9) for all 7 - 15 year-olds by 2015. Increasing school enrolment is one of the two main objectives of BESSIP, although the second goal of improving learning achievement, if realised, will encourage attendance at school.

Over the period 1994-6, the Ministry of Education projected an increase in primary school enrolment of 110,000. In actual fact, it decreased by 33,000 over the period. Based on population projections of the number of children of primary school age, to reach the target of universal primary education by 2005 would require a growth in enrolment of, on average, 96,000 pupils each year. A corresponding increase in school capacity would be needed to cope with these numbers. In the post-independence period, school capacity surged and the resources devoted to education were relatively high. Even so, the number of enrolments was some 45,000 per year, under half the numbers required if Zambia is to meet its target of universal primary education by 2005. There is therefore little likelihood that the target will be met.

The Government's other target of universal basic education requires that 100 per cent of pupils should make the transition to secondary education and thereby receive at least nine years schooling. While the immediate focus is upon the right to primary education, it is pertinent to note that low completion rates in higher primary grades are undoubtedly linked to incapacity in secondary schools. By 1990, only one in every four primary students could go on to secondary education.⁵⁵ This bottle-neck remains a barrier. For example, a 1996 study of urban poverty on the Copperbelt reported that only one student in five was progressing to secondary school in Kitwe.⁵⁶ The Government's practical policy response - largely as a result of community demand and participation in how schools are run - has been to upgrade schools from primary to basic status which teach Grades 1 - 9. As a result, the progression rate at the national level had improved to just over 37 per cent by the end of 1997, although the total number of pupils sitting the exam at Grade 7 had itself fallen.⁵⁷ Considered opinion suggests that the capacity exists to cope with little more than one third of the eligible school population at Grade 8.⁵⁸ Furthermore, the upgrading programme has had an adverse impact upon primary education. Some schools have found the extra capacity by cutting their intake at Grade 1. The best teachers have been switched to teaching the higher grades.

c. The quality of education and decline in demand

The second reason for declining enrolment and attendance is a decline in demand. It manifests itself in half-empty lower primary schools in rural areas; and, while the problem is partly concealed by the deficit in capacity in urban areas, it manifests itself in high drop-out rates and the increasing numbers of children on the streets.⁵⁹ An expert on education in Zambia has highlighted the growing seriousness of this problem: 'In the past people saw education as their great hope and promise for the future. Many no longer do so. Disillusion and disappointment characterize their attitudes towards schools.'⁶⁰ At the root of this disaffection is not only the concern that education is unaffordable, but also grievances relating to its quality and relevancy. The standard of education is low and deteriorating, children learn little, and schooling, especially at the primary level, does little to increase the prospect of waged employment.

The element of compulsion in the right to primary education cannot be interpreted solely in terms of reinforcing the requirement of universal access to primary education. The right is not fully realised if the education on offer is of an inferior standard, irrespective of whether it is free and accessible to all. The Committee has determined that the education offered 'must be adequate in quality, relevant to the child and must promote the realization of the child's other rights' if the right to education is to be fully realised.⁶¹ Quality in education is therefore associated with real learning achievement. The Covenant is also explicit in recognising that full realisation of the right to education requires that 'the material conditions of teaching staff shall be continuously improved.'⁶² This is taken to encompass both the teaching environment and conditions of service *per se*.

i. Real learning achievement

An overriding consequence of poor quality education is low learning achievement. Learning outcomes in Zambia have not been measured in a systematic way to date. While the Ministry of Education is in the process of developing a national assessment scheme, certain facts can be established.⁶³ On leaving primary education, too many Zambian pupils have very low levels of numeracy and literacy. In 1995, almost 98 per cent of Grade 6 pupils - the penultimate grade in primary school - did not reach the desired level of reading ability set by the Ministry of Education's own experts. Three-quarters of pupils at this grade could only be judged to be illiterate. Low learning achievement is associated with the use of English as the teaching language.⁶⁴ The Government's revision of this policy to allow initial literacy to be taught in local languages is therefore a welcome development. However, implementation of this is at present limited to a pilot project of 25 rural schools in Northern Province because teachers often do not speak the appropriate local language, in urban schools children may speak a diversity of local languages, and because of the cost implications of translating textbooks.⁶⁵ Overall, illiteracy rates in 1996 were a little over 35 per cent for both young men and women aged 14-20. Furthermore, the illiteracy rate among young men have risen above that experienced by their fathers.⁶⁶

It must be recalled that, for the right to primary education to be realised, what is taught must be relevant to the child and must promote the realization of their other rights.⁶⁷ The style of teaching in Zambian schools has been characterised as 'authoritarian and didactic.' It fails to engage pupils: 'The classroom is all too often a place of mechanical, rote learning and much of this is of little relevance or use to the children's lives.'⁶⁸ Girl pupils fare particularly badly as little attention is paid to their particular needs. These failings reflect the curriculum; they also reflect problems with the supply of trained teachers - please refer to subsection (iii) below. The existing curriculum is to be reviewed under BESSIP and redrafted to focus on acquiring literacy and numeracy skills in the first four years of schools, and life skills in later years.⁶⁹

In principle, children in the lower primary Grades 1 - 4 receive three and a half hours teaching each day. This represents only two-thirds of the time allotted in comparable developing countries. The global norm for the first four grades of school is 900 contact hours each year whereas in Zambia it is 500 hours.⁷⁰ In practice, the situation is considerably worse. It has been estimated that, once time for assembly, physical education, and school cleaning and gardening chores is subtracted, actual teaching time is reduced to between two and two and half hours. Upper primary Grades receive, in theory, about five and half hours of teaching each day. This is broadly equivalent to that recorded in other developing countries. In rural areas, contact time is lost as teachers must travel to collect their salaries.⁷¹ Pupils are used by teachers as labour around their own homes and gardens. Recent reports suggest that this long-standing practice has extended to the hiring out of child labour to local farms to raise school revenue. The conclusion reached in the report on education in Zambia commissioned by Oxfam is that 'involvement in such labour could fritter away the already short instructional day to an inadmissably low level.'⁷² The Ministry of Education target to extend the instructional time for lower Grades 1 - 4 to five hours is unrealistic in present circumstances. Already, many teachers take two three and half hour sessions each day. In many urban schools, three shifts are taught. Extending working hours to such an extent when many teachers are utterly demoralised is untenable: indeed, there are hardly sufficient hours of daylight. At the same time, sufficient resources to train and employ additional staff do not exist.

ii. Continuous improvement in the teaching environment

The Government is required to actively pursue the development of a system of schools within which the material conditions of teaching are to improve. The implication is that the Government must seek the improvement of school facilities - from the fabric of classrooms to a safe water supply and adequate sanitation. The adequacy of material conditions is determined, in part, by aspects of other rights within the Covenant: the supply of safe water and the improvement of sanitary conditions is encompassed by the right to health;⁷³ and the right to an adequate standard of living, including the right to housing and the requirement for a continuous improvement in living conditions, must extend to the conditions in, and the fabric of, the classroom.⁷⁴ In parallel to the concept of adequacy defined in relation to housing, schools must have access to essential services and be habitable over the course of the day.⁷⁵ The final element of material conditions relates to essential teaching supplies, in particular writing materials and textbooks.

1) School infrastructure

The deficit in the quality of school infrastructure remains high. At the same time, there have been significant achievements in the improvement of facilities, furnishings, water and sanitation as a result of donor support under the Zambia Education Rehabilitation Programme and the wider Social Sector Rehabilitation and Development Programme. While 1,100 schools have been rehabilitated, 1,400 more warrant the same attention and a further 1,000 require rebuilding.⁷⁶ Under BESSIP, the aim is to rehabilitate 1,600 classrooms and build 3,000 new ones by 2001.⁷⁷ A significant proportion of this work is expected to be carried out by local communities with support from the Micro-Projects Unit which operates with donor funding under the Ministry of Finance and Economic Development.⁷⁸ In 1996, 46,000 desks were supplied to 4,000 schools but shortfall is still in the range 40-70 per cent depending on the province in question.⁷⁹ One third of schools are without any proper source of safe water. A third more are connected to piped water, but the service is erratic due to the inadequacy of the dilapidated infrastructure or even because councils cut-off supplies when bills are not paid. In Lusaka in 1995, for every 114 pupils there was one toilet; in the urbanised Copperbelt, the ratio was 89 to 1. Sanitation in rural schools consists mainly of unimproved pit latrines or the bush. Averaged across Luapula, Central and Southern Provinces, the mean number of pupils to each latrine was eighty.⁸⁰

2) Essential teaching supplies

The supply of educational materials to schools has been described as 'completely inadequate' despite the use of donor resources to supply 1.4 million books in 1996.⁸¹ In rural areas, it is typical for five pupils to share one textbook at the core of the curriculum. In order to improve learning readiness, one aim of BESSIP in its first phase is to supply 5 million textbooks by 2001.⁸² At present, it has been calculated that provincial education authorities received K15 or less than two US cents per pupils for spending on teaching requisites. With such an abysmally low level of Government funding, schools have little choice but to look to parents to provide essential materials. It is clear that many either cannot afford these items or do not judge the expenditure as warranted. In late 1995, over a quarter of primary school classrooms were without chalk or a useable blackboard; 87 per cent of pupils were without a reader/textbook; almost 60 per cent of the teacher's were without a desk; and a third of pupils were without either a ballpoint pen or a pencil.⁸³ One positive development has been the construction, with donor backing, of sixty-three provincial and district resource centres throughout the country by the end of 1997.⁸⁴ These function as in-service training centres. They allow teachers to seek advice, and to consult or produce their own teaching materials. In addition, 611 more modestly resourced zonal centres are being designated. Under BESSIP, the intention is to turn these centres into model schools to disseminate ideas and training to other local schools. These zonal centre are to receive priority in the rehabilitation of infrastructure, the supply of materials, the provision of water and sanitation, targeted health interventions and teacher development.⁸⁵ This must present the inherent danger that such schools will improve at the expense of others.

iii. Continuous improvement in the conditions of teachers' employment

The requirement of continuous improvement in the material conditions of teaching staff must warrant consideration of conditions of employment to include sufficient training, reasonable hours and fair wages. This is in accordance with both the provision of training and vocational guidance under the right to work within the Covenant⁸⁶ and with the relevant requirements under the right to just and favourable conditions of work.⁸⁷ However, according to a recent World Bank appraisal, '[t]eachers are underpaid, poorly prepared and deployed, trained in insufficient numbers and provided with little support in schools.'⁸⁸

1) *Teacher training*

Almost one in four primary school teachers in 1996 were untrained.⁸⁹ A little over three quarters had received two years of teacher training. Rural schools, especially those in remote areas, have the highest concentration of untrained staff. In North West Province, 42 per cent of teachers had received no training whereas in Lusaka all but 6 per cent of staff were untrained.

Specific policy initiatives have been aimed at managing the deployment of trained teachers and controlling the numbers of untrained staff.⁹⁰ The teachers' payroll register has been examined in order to remove in the region of 1000 'ghost' teachers from the system. At the same time, during 1996, the Government sought to develop a system for allocating teaching posts at primary schools based upon enrolment figures and agreed teacher to pupil ratios. Ceilings for the hiring of untrained teachers were to be calculated accordingly. One concern must be that low enrolment figures and poor attendance in rural areas produce ostensibly better teacher to pupil ratios. Hence the allocation of trained teachers to these areas is unlikely to be judged a priority. In 1998, the Government announced its intention to increase the number of trained teachers with a view to eliminating the need for untrained staff in the medium-term.⁹¹

A project, supported by the Danish development agency, is currently underway to improve the infrastructure of teacher training colleges. A trial is underway to assess the feasibility of doubling their output by adopting a two year course which will combine teacher training with actual work in schools.⁹² The follow-on BESSIP aims to continue support for this approach. The caveat is that implementation of this goal will require the availability of the necessary finance: it has already been noted that the scheme 'requires a huge investment of resources, particularly scarce expertise, to make it work.'⁹³ Furthermore, funds are required not only to sustain the training program, but also to improve the working condition of teachers so that they do not leave the profession. Indeed, success relies most heavily on reducing attrition, especially given the high toll which AIDS is having on the teaching profession.⁹⁴ In terms of in-service training, this will be limited under BESSIP to teachers in earmarked zonal schools who will then be expected to disseminate their knowledge to other teachers in the locale.⁹⁵ However, while the emphasis in these schools will be upon developing the careers of teachers, those in other schools may feel less well motivated.

The emphasis of the World Bank has been upon backing training appropriate to the decentralisation of managerial responsibility, not upon educational training *per se*. All primary school heads and over a third of education officers, primary school inspectors and those in management positions received managerial training over the period 1993 - 1997. These programmes ceased when the Education Rehabilitation Project ended in 1998, although the Bank is now providing finance for training through BESSIP.

2) *Wages, working conditions and teacher welfare*

Teacher morale is at a low ebb. In qualitative terms, many believe that their status in the community is declining. The pressures of the job are reflected in an apparent increased incidence of drunkenness and absenteeism, as evidenced by beneficiary assessments.⁹⁶ Teachers are a high risk group to contract the AIDS virus. The statistics are shocking. The HIV/AIDS infection rate is around 19 per cent among Zambian adults. A similar rate of infection might be expected among the teaching profession, although an urban sample survey for 1991 found that 42 per cent of teachers were HIV positive. Partial data suggests that two teachers die as a result of AIDS each day. This is equivalent to annual output of four out of Zambia's ten pre-service teacher training colleges.⁹⁷ Even if the planned doubling of the output of teachers from training colleges is achieved, this will not keep pace with attrition when, in all likelihood, a fifth of teachers will die as the result of AIDS over the next ten years.⁹⁸

In quantitative terms, the starting salary for teachers has fallen in real terms from the equivalent of \$310 per month in 1980, to \$100 in 1990, to less than \$65 in 1998. ⁹⁹ Put another way, '[a]t a starting salary of \$660 annually teachers are paid less than university students get for their meals and almost 25% below the CSO [Central Statistical Office] estimate of the poverty line for a household with two adults and two children.'¹⁰⁰ This is despite the fact that a massive nine-tenths of the primary sector education budget is spent on salaries and allowances. The result has been an exodus of trained teachers to countries such as Botswana and South Africa.¹⁰¹ The motivation among those who remain in Zambia is often reduced. Under the rubric of improving primary teaching/learning readiness, BESSIP aims to increase teacher salaries.

To add to the problems teachers face - as evidenced in Section 2(III) on land and housing in this submission - a significant number have suffered inequitable treatment in the allocation of government and parastatal houses, including threatened and actual evictions. Although the profession shows great collective resilience, there is an inevitable effect on the quality of teaching in Zambian schools.

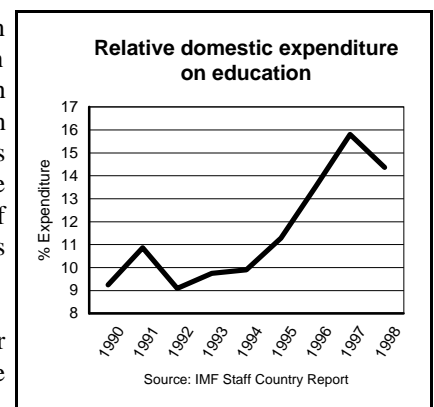
2. Expenditure on education and the use of maximum available resources

A State party to the Covenant is obliged to use maximum available resources in taking steps towards progressive realisation of the right to education.¹⁰² Due consideration must therefore be given to the Zambian Government's record on relative and real expenditure on education. However, two other aspects of resource use are important. Firstly, and arising from the obligation to satisfy an essential minimum level of each right, every effort must be made to use resources, as a matter of priority, to satisfy the right to primary education.¹⁰³ Secondly, measures adopted by the international community impinge upon both the availability and allocation of resources. Their advisability, as this effects realisation of the right to education in Zambia, is therefore a legitimate area of concern. Loan agreements have been used to foster the protection of essential spending on education while adjustment conditionality has simultaneously required the decimation of public expenditure. While bilateral and multilateral donor funds are injected into the rehabilitation of the education infrastructure, the servicing of Zambia's debts, in the absence of sufficient balance of payments support, forces a transfer of resources from the domestic budget.

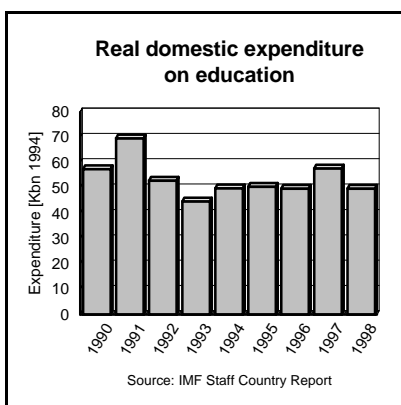
a. Relative and real expenditure

The MMD has a mixed record over the protection of relative expenditure on education. Over the period 1992 - 1994, spending on education failed to exceed ten per cent of domestic expenditure.¹⁰⁴ In 1995 and 1996, and corresponding with Bank conditionality under ERIP and ESAC II, relative allocations increased. In 1996, education accounted for over 13 per cent of domestic expenditure. This percentage increased significantly in 1997, although there is some doubt over the official figure.¹⁰⁵ More representative of recent years is the 14.3 per cent of domestic expenditure spent on the education sector in 1998. However, the figures on relative expenditure are misleading unless placed in perspective.

First, education fares less well relative to total public spending (including donor funds) because other sectors have been favoured by donors of late.¹⁰⁶ This balance should tip towards education with the commencement of BESSIP.



Second, because public expenditure has itself been decimated, it is instructive to relate public spending on education directly to total resources measured in terms of GDP. From 1992-1996, on average, about 2.5 per cent of GDP per year was spent on education compared with double this level or 5-6 per cent a decade earlier.¹⁰⁷ Third, Zambia does not fare well in comparison with neighbouring countries where, over the same reference period, the amount spent on education accounted for 6-9 per cent of GDP.¹⁰⁸ Finally, and notwithstanding improved efficiency, the reform program cannot be implemented unless it is adequately resourced in real terms.



Domestic spending on education has fallen significantly in real terms since the early 1980s. Adjusting for the value of the Kwacha, spending in 1993 was less than half the level of ten years earlier.¹⁰⁹ It has since stabilised at a level somewhat above this low-point, although less is spent in real terms than at the start of the decade. The same was spent in real terms in 1998 as it had been in 1996. The figure for 1997 is anomalous and has been questioned. The expert view is that the Zambian Government is spending only half of what it should on education in relation to national production and the size of its population.¹¹⁰ In 1996, average real spending per student was \$50 compared to \$118 in 1983.¹¹¹ During 1996, this was the equivalent of 16 per cent of per capita GDP. In comparison, the equivalent of 27 per cent per capita GDP was spent on education in 1983.

b. Spending on primary education

Significant numbers are denied the right to primary education in Zambia. This must represent a *prima facie* failure by the Zambian Government to discharge its core obligations under the Covenant. To reverse this conclusion, the Zambian Government must demonstrate that 'every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.'¹¹² At the very least, the funding requirements of the primary sector must be considered first and foremost when educational resources are allocated.

Averaged out over the period 1980 - 1984, primary education accounted for 39 per cent of education expenditure compared with 33 per cent a decade later over the period 1990 -1994.¹¹³ During corresponding periods, university education attracted, respectively, 16 per cent and 19 per cent of education spending. As commentators have noted, 'primary schools received a smaller share of a shrinking budget, the universities a larger share.'¹¹⁴ The situation in the early 1990s therefore continued to reflect a longstanding bias in the Zambian education system towards expensive and elitist university education.

The low point in terms of equity over the decade was 1992, the MMD's first year in power, when the share of the education budget spent on the primary subsector stood at just 20 per cent or half the level of the 40 per cent plus relative expenditure of the first half of the 1980s.¹¹⁵ Considerable progress has since been made in protecting and, more recently in increasing, relative expenditure on primary education. During 1996, it received 43 per cent of actual expenditures.¹¹⁶ This brings Zambia's relative expenditure on the subsector in line with other countries in sub-Saharan Africa.¹¹⁷

Despite this relative improvement, two major problems are apparent. First, education spending remains skewed away from the poor. The top two socio-economic quintiles benefit from 60 per cent of education spending at the secondary level compared with the lowest two quintiles who receive 25 per cent.¹¹⁸ The tertiary sector consistently receives over a fifth of total funds when less than 1.5 per cent of the population go on to higher education, including the 0.2 per cent who take a degree or higher degree.¹¹⁹ While seven out of every ten Zambians in 1991 were living below the poverty line, only one out of every ten university students came from a poor background.¹²⁰ The latest figures do not indicate any change in these proportions. Survey data for 1996 shows that zero per cent of subsistence farmers, the majority socio-economic group in the country, had received any post-secondary education compared with 15 per cent of Government employees, even though there was a fifth the number of people in the latter group.¹²¹

A major imbalance persists between per capita domestic expenditure at primary, secondary and tertiary levels. In 1996, the amount spent per secondary school pupil was 2.3 times that spent on each primary school pupil.¹²² Domestic spending per university student was 138 times higher in 1994 than per capita domestic spending at the primary level. The gap narrowed marginally during 1995 and 1996 to a factor of 120, but grew again in 1997 to a factor of 135. Put another way, the Zambian government was spending the equivalent of \$3688 on each university student in 1997 compared with \$27 on each primary pupil. It is the degree of disparity which is a cause for concern, even accounting for the fact that university education is more costly.

However, the picture of allocations by level of education does become more complicated when donor support for education is factored in. The gap between spending per pupil at the primary and per student at the university levels narrows to a factor of 94 in 1996. Furthermore, whereas total public spending (domestic and donor) per primary pupil went up each year on average by 5 per cent from 1991 - 1998, public spending per university student increased by only 0.4 per cent over the same period. The reason for this favourable relative shift is because the vast majority of donor funds are earmarked to be spent at the primary level.

The second major problem is that the amount spent on primary education is patently not enough in real terms. Real domestic expenditure on primary education has declined by 4 per cent a year over the period 1986 - 1996.¹²³ Adjusting to constant prices, real domestic spending on primary education over the period 1992 - 1997 was, on average, only 54 per cent of the level of 1986.¹²⁴ In the latter three years of this period, real domestic expenditures on a per capita basis have at least stabilised.¹²⁵ This is to be welcomed, although a number of caveats apply: the number of primary school enrolments has declined since 1994;¹²⁶ and a massive 90 -95 per cent of domestic spending on the primary subsector is absorbed by teacher salaries. It is only when donor resources are included, that the situation can be seen to improve significantly. Real public spending on primary education (domestic and donor funds) has increased by 14 per cent per year on average over the period 1990 - 1998. However, one final factor is of crucial importance in any discussion of real allocations to the education sector: the parameters agreed with the international community, in particular the multilateral agencies, concerning austerity measures and social conditionality. This must be clarified to determine whether a dependency relationship exists wherein donor funds are simply replacing domestic expenditure which has itself been curtailed in order to pay multilateral and bilateral debts.

c. External resources and multilateral conditionality

Some have expressed the view that donor and NGO support for the education sector, while crucial, nevertheless allows the Zambian Government to reduce its own allocations from the domestic budget. State parties to the Covenant have an obligation to seek international assistance which the international community has a degree of responsibility to provide. When considered in relation to the right to education, it is apparent that donor support is warranted. This provision in no way diminishes the obligation of the Zambian Government to use its maximum available resources to achieve full realisation of the right to education. External resources ought to supplement maximum domestic expenditure on education, and not be used as a substitute by allowing Government commitments to be reduced. However, while the Zambian Government bears responsibility for its own record on the relative protection of the education budget, it is not exclusively responsible for the catastrophic decline in real domestic expenditure since the mid-1980s. The international community requires, firstly, that Zambia accord priority to debt servicing in order to benefit from continued assistance. In Zambia's case, net transfers have been insufficient and the Government has found it necessary to draw upon domestic resources to meet its obligations. Secondly, multilateral adjustment lending has been conditional on the strict implementation of stabilisation measures. Swingeing cuts in public expenditure, including spending on education, have been required from the Government to bring its domestic account into balance. It is of paramount importance to view the limited conditionality on the protection of relative education expenditure in the context of this austerity which brings into the question the advisability of international assistance measures under article 22 of the Covenant. Thirdly, because of the high level of dependency on external assistance, funding of primary education is placed in considerable jeopardy when donor support wanes. This circumstance threatens implementation of BESSIP. Finally, consideration must be given to article 14 and the obligations on the international community which arise from its unique formulation.

i. Debt servicing, balance of payments support, and external assistance for education

Taken as a whole, donor support for education in Zambia is vital. The Government's *Economic Report 1997* suggests that external assistance for education during the year was worth \$40 million, the equivalent of just over 40 per cent of the Zambian Government's own domestic resources of \$95 million which it budgeted for the sector in 1997.¹²⁷ Approximately half of these donor funds were officially included in the Government's total budget for expenditure on education of \$115 million.¹²⁸ The other half was spent directly on projects without passing through the domestic accounts. Donor finance is provided mainly for investment in school buildings, materials, and training rather than being spent on recurrent costs, such as meeting teacher's salaries. Over recent years, donor funds have been used to rehabilitate primary schools, to build new schools in a few major towns, to pay for extensions and teacher housing, to provide many schools with safer water and better sanitation, to equip schools with desks and books, and to finance teacher and managerial training.¹²⁹ Donor support for the integrated BESSIP is considerable, although by early 1999 actual donor commitments fell short of the amount required for implementation of the first phase of the program by some \$60 million.¹³⁰ However, the claim that new funds will be forthcoming is increasingly open to challenge - see subsection (iii) below.

The argument has been made in this submission that such a positive transfer of resources to Zambia must be set against the outflow of resources to donor countries and the multilaterals to cover debt servicing in the absence of sufficient balance of payments support. Overall, the Government spent four times as much servicing overseas debt than it did on the education sector over the period 1993 - 1996.¹³¹ The amount given by donors in balance of payment support fell short of the amount needed to service debt repayments by some \$176 million in 1996 and by \$96 million in 1997. The equivalent of \$166 million was transferred from the domestic budget to help pay the interest on foreign debt in 1996.¹³² After offsetting this amount against assistance grants worth the equivalent of \$106 million paid into the domestic budget, then it is apparent that \$60 million was transferred to multilateral banks and donor Governments.¹³³ In comparison, officially recorded donor resources for education - that is, those channelled through the domestic budget - were worth \$16.2 million in 1996, although probably about the same amount again was spent directly on projects. Overall, this \$60 million transfer represents just under 70 per cent of the total amount of \$88.4 million which the Government spent on education in 1996 and one and a half times the \$38 million which it spent on the primary education subsector during the same year.¹³⁴ Put another way, if half of these resources had been channelled to the education budget, then this would eliminate all direct costs presently met by parents or guardians for primary education.¹³⁵

ii. The influence of adjustment conditionality on education expenditure

It is impossible in the context of this submission to further breakdown and review bilateral and regional multilateral assistance. The focus will be upon the advisability of the measures pursued by the World Bank in the education sector. On the one hand, the Bank has provided welcome project assistance. A \$32 million Education Rehabilitation Project ran from late 1992 until its closure in mid 1998. This has financed the repair and expansion of primary schools, the provision of basic learning materials, and the strengthening of administrative and managerial support, including training.

In addition, the Bank's Social Recovery Projects have part-financed micro-projects chosen by local communities, the majority of which have focused on refurbishing 221 primary schools. To follow-on, the Bank has approved a \$40 million loan for BESSIP. As has been noted, successful completion of the first phase will trigger a second Bank loan of \$60 million for the period 2001 - 2006.

On the other hand, the question remains as to whether this level of assistance is enough given that it is Bank/IMF stabilisation and adjustment measures which have required the decimation of public expenditure. The case against the Bank/IMF has already been made within this submission - please see Section 1. It will not be repeated here in detail. It is sufficient to note that agreements on fiscal and monetary performance have figured in all six of the Bank's adjustment credits between 1991 and 1997. These have required the reduction of the domestic budget deficit, the control of unplanned spending, the introduction of strict cash budgeting and the prohibition of public sector borrowing. Government public expenditure fell in real terms by 35 per cent between 1991 and 1997. To recap, real spending on education during the MMD's time in office, adjusted to constant prices, has ranged between 46 per cent - 55 per cent of the levels recorded in 1986.¹³⁶

It must also be reiterated in the strongest possible terms that, while the Committee recognises that adjustment is often unavoidable and encompasses austerity measures, under such circumstances action to protect the most basic rights become more, rather than less, urgent.¹³⁷ Both State parties to the Covenant and the World Bank and IMF have an obligation 'to make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to such programmes and policies designed to promote adjustment.' In the context of the advisability of international assistance, the Committee has recommended that, *inter alia*, 'every effort should be made, at each phase of a development project to ensure that the rights contained in the Covenants are duly taken into account.'¹³⁸ The right to education and other rights within the Covenant were not given this consideration in the design and implementation of adjustment operations in Zambia. The view of Oxfam International is unequivocal:¹³⁹

'The experience of Zambia between 1991 and 1996 powerfully demonstrates the need for education and social-policy planning to be integrated into the design of structural adjustment policies from the outset. Bluntly stated, the government's declared objectives for education...were inconsistent with the fiscal targets negotiated....'

Bank adjustment conditionality on the protection of expenditure on education

Specific agreements within the Bank's last four adjustment credits have afforded, to varying degrees of success, relative budget protection. This includes stipulations on allocations to the education sector. ESAC I required the Government to improve budget allocations to and within the social sectors during 1994. The education sector was to receive 15 per cent of the domestic budget.¹⁴⁰ Ostensibly, this target was met although the Bank concedes a decline in real terms and admits that it was the difficult to differentiate between spending on the delivery of services as opposed to paying civil service salaries.¹⁴¹ Furthermore, the Bank's own poverty monitoring at the time recorded 'poor access to and quality of education'.¹⁴² Legal covenants in the ERIP and ESAC II required the Government to maintain levels of social sector spending in 1995 and 1996 respectively.¹⁴³ The latter sought protection of relative spending on education at just under 17 per cent of the discretionary domestic budget.¹⁴⁴ The Government also stated in its *Letter of Development Policy* that allocations to the primary subsector as a whole would be maintained at 1995 levels, that is 36 per cent - 40 per cent of expenditure on education.¹⁴⁵ Furthermore, subsectoral expenditure totalling K7.08 billion on primary school recurrent costs, student requisites, grants to the newly established Copperbelt Education Boards, and the supply of school desks were made the subject of protection in absolute terms.¹⁴⁶ The Bank's latest adjustment loan, the Public Sector Reform and Export Promotion Credit, specifies slightly increased relative social expenditure during 1999.¹⁴⁷ Relative expenditure on education and training is set at just under 19 per cent of the discretionary domestic budget. However, the further protection of key subsectoral components, such as allocations to primary schools, is no longer specified.¹⁴⁸

The significance of protecting social spending in relative terms is diminished when placed in this context of the decimation of domestic expenditure. Adjustment conditionality has achieved some success in protecting relative allocations to the education sector and in altering the balance towards primary education. However, this modest gain is overshadowed the sheer and overriding lack of real resources bought about by unrelenting, mistimed structural adjustment and stabilisation. The link between economic adjustment conditionality and the ultimate denial of the right to education is clear and unequivocal: it must, at the very least, bring into question the advisability of international assistance measures under article 22 of the Covenant.

iii. *Dependency as a threat to the realisation of the right to primary education: the undermining of BESSIP*

It has been established that donors provide considerable financial support to the education sector in Zambia. It has also been established that domestic resources flow out of Zambia to service debt and that this constitutes a considerable net transfer from the Zambian Government to its creditors when balance of payments support is withheld. This circumstance is of considerable concern; however the harm done to realisation of the right to primary education is compounded when not only balance of payments support, but even programme assistance is jeopardised by loan conditionality. This appears to be the case with BESSIP which encompasses the whole primary education subsector.

The funding of BESSIP has been carefully costed, but is subject to two major provisos.¹⁴⁹ First, domestic finance will be sufficient, but only if assumptions about projected real economic growth of 4 per cent in 1999 are realised. Second, it is essential that donor funds are made available. Unfortunately, there have been considerable blows to the Zambian economy.¹⁵⁰ As of mid-1999, the sale of Konkola Deep and Nkana/Nchanga, the core assets of ZCCM, had not been finalised, leading to shortfalls of more than 15 per cent in the collection of revenue. A previous public sector pay freeze has been deemed illegal by the Industrial Relations Court, requiring the Government to pay a salary increase of 40 per cent unless the ruling is overturned. On top of this, domestic debt continues to climb. The mid-term financial framework drawn up by the Ministry of Finance, which determines the domestic allocation to education and BESSIP, is formulated on the assumption that balance of payments support will cover debt servicing without the need for domestic transfers.¹⁵¹ A suspension in BOP support - for example, because of the failure to conclude the sale of ZCCM - would almost certainly result in the restriction of actual spending on BESSIP as there is no in-built contingency. Furthermore, as less than half the donor finance for BESSIP had been committed by March 1999, and as commitments are themselves predicated on biannual joint appraisals, it is altogether possible that a decline in Government counterpart spending would prompt donors to withhold funds.¹⁵² A vicious circle is thereby threatened wherein a failure to meet economic conditionality precipitates a crisis in social support. Ultimately, it is Zambian children who will suffer as a consequence.

iv. *Article 14 and the obligations of the international community to provide technical assistance*

The unique requirement contained in article 14 for the adoption of a plan of action to implement compulsory primary education free to all 'applies, almost by definition, to situations characterized by inadequate financial resources'.¹⁵³ In determining the obligations which arise from article 14, the General Comment continues:

'By the same token, and for the same reason, the reference to "international assistance and cooperation" in articles 2.1 and 23 of the Covenant are of particular relevance in this situation. Where a State party is clearly lacking in the financial resources and/or expertise required to "work out and adopt" a detailed plan, the international community has a clear obligation to assist.'¹⁵⁴

State parties are encouraged 'to seek the assistance of relevant international agencies...in relation both to the preparation of plans of action under article 14 and their subsequent implementation'.¹⁵⁵ The World Bank and IMF, *inter alia*, are named by the Committee in this capacity. It is apparent that the Zambian Government has sought the assistance of the World Bank in developing its national education policy. The World Bank is therefore under a clear obligation to assist Zambia to meet its own obligations on an urgent basis; it must do so 'to the greatest extent possible';¹⁵⁶ and the assistance it offers must be in accordance with all other elements of article 14.

The Bank's Education Rehabilitation Project financed the Education Policy Studies Program 'aimed at providing inputs for the Zambian leadership to develop the proposed Integrated Education Sector Program'.¹⁵⁷ At the same time, the Bank supported restructuring of the education sector by instigating an assessment and audit of the Ministry of Education and other sector ministries.¹⁵⁸ The resulting action plan fed directly into the Government's formulation of crucial policy and investment decisions on education, to be implemented through what was to become its Education Sector Integrated Programme.¹⁵⁹ In early 1995, the Bank 'intensified discussions' with the Government over the nature of this programme with a view to providing the assistance necessary to carry it through.¹⁶⁰

The Bank has played a key role in the development of education policy and implementation strategies under the resulting BESSIP.¹⁶¹ Furthermore, aspects of education policy have been the subject of certain of the Bank's adjustment loans. One objective of ESAC I was to improve the delivery of social services. It sought reform based upon the decentralisation of budgetary powers and decision-making; the shifting of some activities to community groups; and the restructuring of, *inter alia*, the education budget.¹⁶² Conditionality on education centred not only on the maintenance of budget allocations but also on the revision of sector policies.¹⁶³ Implementation of ESAC saw the beginning of the devolution of responsibilities to the District Education Boards.¹⁶⁴ ESAC II fostered continued decentralisation.¹⁶⁵ It is pertinent to note that the implementation of education policy was not the subject of a specific loan agreement setting

conditions for the release of funds. Nevertheless, in its accompanying *Letter of Development Policy*, the Zambian Government set out its programme of action on education under the credit. Its commitment to the national education policy and the Education Sector Investment Programme - to include the plan for universal basic and primary education - was reiterated.¹⁶⁶

The Bank's project and adjustment measures appear, ostensibly at least, to accord with the Bank's obligation to assist in the development of a plan of action for the implementation of primary education. However, this perception does not stand up to close scrutiny. The Bank fails to meet its obligations by omission. When the plan adopted by the Zambian Government is manifestly inconsistent with elements of the action plan required under article 14 - in particular, the element 'free of charge to all' - then the Bank has failed to use the measures at its disposal to promote compliance with the Covenant. On the contrary, the Bank has actively promoted the adoption of educational policies which are incompatible with the realisation of the right.

In its *Letter of Development Policy* appended to ESAC II, the Government is clear in its intention to encourage the creation of community schools, which are designed to be part-funded by parents and others, as part of its strategy to realise universal basic education.¹⁶⁷ Elsewhere, it is unequivocally stated that '[m]easures will be taken to step up cost-sharing to augment the total quantity and quality of services' although the intention is 'not to preclude access of those with few resources.'¹⁶⁸ The aim is to expand the private share of expenditure by instituting cost-sharing schemes for higher income groups, not to reduce or eliminate cost-sharing by low income groups.

The Bank's BESSIP loan supports a program of action which, though praiseworthy in certain respects, is predicated on the majority of poor Zambians meeting half the direct cost of primary education. The piloting of a limited bursary scheme does not mitigate against this conclusion. Furthermore, primary education in some of the most impoverished communities is to be provided through community schools. The Bank actively endorses this arrangement under the rubric of equity: 'A particular focus will be the development of frameworks to promote and support the provision of education by non-government suppliers. MoE [Ministry of Education] will provide instructional materials and on-the-job training and upgrading for teachers and assist [in] the provision of water and sanitation services to community schools.'¹⁶⁹ The extent of State support is strictly demarcated and such schools must rely upon community funding. This creates a sometimes fragile dependency relationship with donor agencies and NGOs and represents an abnegation of both the State's core obligation to realise the right to compulsory primary education free to all and the Bank's obligation to provide technical assistance on an appropriate action plan.

The Bank's own position on the issue of cost in primary education is characterised by contradiction and inherent ambiguity.¹⁷⁰ This is epitomised by the statement in its 1995 policy document *Priorities and Strategies for Education* that 'A policy package of fees and efficient expenditure in the public sector might consist of: Free basic education, including cost-sharing with communities and targeted stipends for children from poor households...'¹⁷¹ The Bank's 1999 *Education Sector Strategy* makes one fleeting reference to education as a human right.¹⁷² However, those international instruments which codify the right - *inter alia*, the Universal Declaration of Human Rights, the Covenant on Economic and Social Rights and the Convention on the Rights of the Child - are not cited.¹⁷³ The Strategy does not articulate the Bank's own or a State's obligations in respect of the right to education. Neither is it stated that, according to international human rights law, primary education should be compulsory and free of charge to all. The Bank recognises that issues of public/private finance 'remain crucial as a foundation for practically every other improvement needed in education.'¹⁷⁴ It is of the view that 'competing claims on the public purse, make it difficult for most governments - even those whose philosophies might push them in this direction - to be the sole provider of "free" education to all who seek it at every level.'¹⁷⁵ Yet it offers no clear policy line on the critical issue of fees for primary education. For guidance, it merely cites *Priorities and Strategies for Education*.

To add to the confusion, one recommendation of the 1994 *Poverty Assessment* on education in Zambia was to 'eliminate the regressive cost-sharing currently in place.' Yet none of the Bank's last four adjustment loans since publication of the *Poverty Assessment* include detailed agreements with the Zambian Government to implement this or any other of the key policy recommendations.¹⁷⁶ In its 1999 appraisal of the BESSIP, the Bank recognises that 'There is growing evidence that widespread poverty is reducing parental ability to pay school-related costs, is inducing parents to withdraw children from school to participate in income-generating activities, and is reducing community ability to participate in self-help development activities.'¹⁷⁷ However, it proceeds to endorse all aspects of BESSIP, including cost-sharing and community funding. An expert on education in Zambia is of the view that:

'The World Bank and the IMF would give telling expression to their development alliance as the international champions of poverty reduction if they came out into the open and intimated to the government that it should withdraw user fees and cost recovery schemes for primary education and essential health care, at least for those who are classified as extremely poor.'¹⁷⁸

Not only would a human rights-based approach to the provision of primary education clarify these issues for the Bank, the adoption of such an approach follows on as a requirement under the Covenant. In its interpretation of article 22 on the advisability of international measures, the Committee recognises that agencies should act as advocates of approaches which contribute to the enhanced enjoyment of all human rights.¹⁷⁹ Furthermore, to reiterate, the rights contained in the Covenants should be taken into consideration at each phase of a development project.¹⁸⁰ The UN specialised agencies, to include the World Bank, must ensure that the protection of the most basic economic and social rights is built-in to programmes and policies designed to promote adjustment.¹⁸¹ Furthermore, the Bank's obligation to assist a State party to work out and adopt a plan for primary education arising from article 14 would be meaningless if the policy it fosters is itself inconsistent with elements of the right to compulsory primary education free to all. In contravention of these principles, both ESAC II and the BESSIP loan foster aspects of an educational policy which are incompatible with the right to primary education while the latest adjustment credit contains no agreements on education policy and offers less explicit budget protection for priority allocations.¹⁸²

3. Pricing primary education beyond the reach of the poor: the element 'free of charge'

The requirement in the Covenant that primary education must be free of charge is unequivocal: 'The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians.'¹⁸³ The fact that primary education in Zambia is not free is easily demonstrated. Furthermore, the cost borne by parents and guardians is high and rising. However, it should be noted that, on ratification of the Covenant in 1984, the then Zambian Government filed a reservation postponing 'the application of article 13 (2) (a) of the Covenant, in so far as it relates to primary education; since, while the Government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.'¹⁸⁴ Before the Zambian Government can be said to contravene the Covenant on this issue of cost, it is necessary to explore the degree to which the principles of progressive realisation and resource constraints are grounds for mitigation given that the same clauses simultaneously define specific obligations. One step which the Zambian Government must take, in accordance with article 14, is the adoption of a plan of action to achieve the progressive implementation of the right to compulsory primary education free to all. Instead, the Zambian Government is deliberate in its strategies of cost-sharing and community funding at the same time as goals for universal primary education are defined within its national policy on education

a. The increasing cost of education borne by parents and guardians

Since the mid-1980s in Zambia, there has been an ever increasing reliance on contributions from parents or guardians as State funding for education has fallen in both relative and real terms. During 1993/94, average annual household expenditure on education was \$30 per child compared with domestic Government spending of \$38 per child.¹⁸⁵ Parents and guardians were therefore contributing 45 per cent of the total national cost of education.¹⁸⁶ Country-wide Government survey data gathered for 1996 confirms this pattern. Average household expenditure on education during the year was K38,796 or \$37.¹⁸⁷ Scaling this figure up for the number of households in Zambia results in estimated private spending on education of \$70.5 million compared with domestic government expenditure of \$88.4 million.¹⁸⁸ In relative terms, the State was meeting 56 per cent of domestic educational costs and households the remaining 44 per cent. The World Bank has estimated that private - that is parental or family - spending on education accounts for 50 - 70 per cent of the total cost rising to as high as 78 per cent for primary education.

The Committee determines that 'fees imposed by the Government, local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization.' PTAs and the newly established Education Boards set levies in many schools to supplement dwindling government funding. Families are now called upon to contribute to the cost of almost all aspects of education. In the past, parents took care of indirect costs such as uniforms and transport, but, in the 1990s, they have taken over the direct costs of many consumables.¹⁸⁹ The Government has estimated that the public direct cost for primary school attendance per pupil was \$22 in 1996 whereas the private direct cost to parents or guardians was \$17.¹⁹⁰ Other figures suggest a significantly higher contribution from parents.¹⁹¹ On balance, households spend at least the equivalent of the State in meeting direct costs for primary education. However, there is significant regional variation. At primary level, direct school-related payments per child range from \$5 a year in remote rural areas to over \$50 a year in urban areas.¹⁹²

The cost of uniforms, stationary and final exams completes the burden. Yet, the Committee has recognised that certain indirect costs - *de facto* compulsory levies on parents, the stipulation of expensive school uniforms - may be similarly

categorised as disincentives to enjoyment of the right to primary education.¹⁹³ Buying school uniforms remains a significant cost for poor families. Prices charged by official outlets are at a premium. In 1994 it cost K31,200 or \$47 to kit out six children.¹⁹⁴ This represented more than a month's income for more than three quarters of all households in Zambia.

In mid-1995, the Government removed the requirement that primary school pupils wear uniforms. However, at the local level, school dress codes - down to the wearing of black leather shoes - are often strictly enforced.¹⁹⁵ The cost of sitting the terminal exam for secondary level selection is the equivalent of \$3. This sum appears to be relatively insignificant, but the fact that 17 per cent of eligible girls and 7 per cent of eligible boys who have made it through to Grade 7 do not sit the exam in rural areas is cited as evidence that cost is a factor.¹⁹⁶ In the case of one Lusaka school during 1998, the causal link between this fee and exam entry is clear. Eighty-three out of three-hundred Grade 7 pupils were unable to pay and negotiations were undertaken to allow them to sit the selection exam in the hope that the required fees could be collected by the end of the year.¹⁹⁷

b. Progressive achievement and the plan of action: mitigation or obligation?

In mitigation of the fact that significant numbers of children in Zambia are denied access to free primary education, the Zambian Government might cite the principle of progressive achievement which lies behind its reservation. However, while recognising that certain rights cannot be fully realised in a short space of time, this nevertheless obliges a State Party to move expeditiously and effectively towards the goal of full realisation of the right to free primary education. Stasis in respect of its realisation is untenable; yet the Zambian Government has failed to reduce the burden of cost for primary education falling upon parents and guardians, non-poor and poor alike. This failure stems, in part, from the dereliction of its undertaking to take deliberate, concrete, and targeted steps in the policy sphere.

It must be reiterated that to move away from the goal of compulsory primary education free to all by the adoption of deliberately retrogressive measures can only be justified when there is a severe shortage of resources or when the totality of protection across all other rights in the Covenant improves as a result. As has been noted, the burden of debt servicing and stringent adjustment conditionality has deprived Zambia of essential resources. At the same time, it is apparent that the Government, despite recent improvements, is still not spending as much as it ought: to reiterate, spending on education in Zambia was the equivalent of 2.5 per cent of GDP over the period 1992 - 1996, compared to 5 - 6 per cent a decade earlier, and to 3.9 per cent in Sub-Saharan Africa as a whole.¹⁹⁸ Given that the right to education is multifaceted - simultaneously, an economic, social, cultural, civil and political right - and epitomises the indivisibility and interdependence of all human rights, it is difficult to envisage a circumstance in which its neglect would increase the totality of protection across all other rights. Indeed, the Committee recognises that a lack of education reinforces the susceptibility of children to various other human rights violations, while primary schooling for girls correlates with major reductions in child marriages, informed choice about family planning in later life, and better child health care among educated mothers.¹⁹⁹

While the steps to be taken are not further specified in respect of a number of rights within the Covenant, this is not the case for implementation of the right to primary education.²⁰⁰ Article 14 requires each State party which has not been able to secure the right to undertake 'within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.'²⁰¹ The obligation of every State party to draw up and present a plan of action, as specified, is clear and must be 'scrupulously observed' in view of the widespread denial of access to primary education in developing countries.²⁰²

'A State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available. If the obligation could be avoided in this way, there would be no justification for the unique requirement contained in article 14 which applies, almost by definition, to situations characterized by inadequate financial resources.'²⁰³

The highly regressive effect of fees is recognised by the Committee and the action plan on the progressive implementation of primary education must address their elimination.²⁰⁴ The Zambian Government's national policy on education does not seek to fulfil this requirement. On the contrary,

'[t]he cost of providing UPE [universal primary education] will not fall exclusively on government and donors. There will also be additional costs and other burdens for communities. These are expected to participate in the development or rehabilitation of their schools and subsequently to take responsibility for maintenance.'²⁰⁵

In order to pinpoint any areas of non-compliance, it is not only necessary to differentiate between liberalisation and cost sharing within Zambian educational policy, but also to relate each tenet to two distinct elements within the right to education: the obligation upon State parties to respect parental choice in selecting a school for their children and the aforementioned right of children to compulsory primary education free to all.

i. The strategies of liberalisation and cost-sharing within the education sector

Liberalisation refers to the removal of barriers preventing other education providers outside of the State - be they voluntary organisations, missionaries, or the private sector - from operating in the sector on an equitable basis. Under the Covenant, State parties must respect the liberty of parents or guardians to choose for their children schools other than those established by the public authorities. The Zambian strategy of encouraging other education providers furthers fulfilment of this requirement. Furthermore, drawing a parallel with the Committee's interpretation of the right to housing, measures designed to satisfy a State party's obligations may reflect whatever mix of public and private sector measures is considered appropriate.²⁰⁶ At the same time, in respect of primary education, specific elements of the right require that it is compulsory and free of charge to all. It therefore must follow that while there is a place for fee-paying schools in the provision of education, in accordance with the principle of parental choice, this in no way diminishes the obligation of a State party to take steps to achieve the realisation of free primary education available to all.

While liberalisation remains a strategy to widen choice by encouraging schools as a supplement to existing State provision, then it furthers the right to education. However, it can be used to implement measures which are deliberately retrogressive in respect of the right to education. This is the case when liberalisation is coupled to a policy of cost-sharing - the principle that people should make a payment towards the services they use - and community financed schools are viewed as a substitute or replacement for State primary provision. A Government adopting such a policy purposefully moves away from its obligation to provide compulsory primary education free to all. It is also the case when private provision in State schools, at whatever level, impinges upon the teaching of those unable to pay for extra tuition. Both situations occur in Zambia. The former is a matter for particular concern.

ii. Private schools, Academic Production Units and Community Schools

There are three principal types of arrangements outside of the regular State system in Zambia: private schools; Academic Production Units within State secondary schools; and community schools. Most private schools cater for the demand for secondary education. Encouraged by the official policy of partnership in education, the number of private schools tripled over the period 1990 - 1996.²⁰⁷ Since 1992, secondary school teachers, in a move to boost their meagre salaries, have organised themselves to offer fee-paying after school classes - known as Academic Production Units - for those not in regular education.²⁰⁸ Community schools are established, owned, financed and operated by local people, typically with donor support. There are over 120 such schools teaching 14,000 children.²⁰⁹ They serve mainly urban areas - for example, shanty compounds without government schools - and are often responsive to the educational needs of the poor.

The expert view that APUs and private school offer no real solution to the education deficit in Zambia because they rely on payment which poor parents cannot afford is strongly endorsed. Private schools account for only 7 per cent of enrolment at the secondary level and 2 per cent at the primary level and neither enhance, nor do they actively diminish, the realisation of the right to education for the vast majority of Zambians. They do, however, further respect for parental choice in the selection of a school for the small minority who can afford the fees. While the APU venture is legitimate, and accords with the Government's principle of rewarding enterprise, there is concern within the Ministry of Education that the units may be detrimental to a teacher's regular school work in classes attended by poorer children. The national policy on education is silent on the role of APUs; yet the right of everyone to education, including secondary education, coupled with the obligation to refrain from action which is detrimental to the enjoyment of a right, are grounds for challenging the Government's absence of a policy on APUs.

A degree of ambiguity is associated with the role of community schools in realising the right to primary education. On the one hand, the concept of community schools accords with the development principles of participation, self-help and ownership. The Committee itself, in respect of other rights within the Covenant, encourages State parties to promote enabling strategies and recognises the need for Government commitment to facilitate self-help by communities.²¹⁰ The national policy on education confirms the Zambian Government's role in providing technical assistance, advice on mobilising funds, certain educational materials and an agreed number of state-funded teachers.²¹¹ In August 1998, a memorandum of understanding was drawn-up between the Ministry of Education and the Zambia Community Schools Secretariat to formalise these arrangements and commit the Government to paying the salaries of a designated number of teachers.²¹²

On the other hand, there is considerable concern that community schools are underpinned by the cost-sharing principle, thereby shifting responsibility for financing the provision of education from the State to community organisations and, ultimately, to impoverished parents and guardians. Community-based education initiatives do not negate the responsibility of the Zambian Government to provide compulsory primary education free to all. There is a contradiction in that while community schools are often located in some of the poorest communities - that is, squatter settlements in urban and peri-urban areas - at the same time they lack full state support and are reliant on non-government funding for their continued existence. Formalisation of the Government element of support for such schools simultaneously fixes the cost to be borne by the community. Minimally, as with State schools, cost-sharing must be wedded to a system of assistance for those unable to pay school fees if it is to constitute a temporary and interim step towards the realisation of primary education free to all. However, Zambia's current national policy on education is actively predicated on cost-sharing. The elimination of primary school fees is not an objective.

4. Inequality in education and the obligation to target the vulnerable and disadvantaged

Information is sought from State parties by the Committee on the extent to which equal access to different levels of education is enjoyed by vulnerable and disadvantaged groups, *inter alia*, young girls, children of low-income groups, children in rural areas, children who are physically or mentally disabled.²¹³ The questions asked of State parties are shown to be highly pertinent:

‘In Zambia, as in so many other countries, the most underprivileged are frequently unable to exercise their right to education. Those in the greatest need of education receive the fewest of its benefits....Moreover, their vulnerability is frequently multifaceted, many being in jeopardy on several counts - they are rural, poor, orphaned, a girl, have special educational needs.’²¹⁴

Everyone has the right to education. This most certainly includes the poor and other vulnerable groups. A State party is obliged under article 14 to act to progressively implement compulsory, primary education free to all for the very reason that children should not be denied enjoyment of this right because their parents or guardians are unable to afford to send them to school. The Committee underlines the fact that, even in times of severe resource constraints, such as those caused by structural adjustment, ‘the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.’²¹⁵ This obligation is reiterated in respect of certain other rights within the Covenant which accords disadvantaged groups a degree of priority.²¹⁶

a. Poverty and denial of the right to education

Attention is drawn in the Oxfam-commissioned report on education in Zambia to the perfect correlation between school attendance and the degree of poverty. The rate of attendance among children of primary school age from poor households in 1996 was 69 per cent compared with a rate of 84 per cent among their non-poor counterparts.²¹⁷ Reports from seven out of ten provinces in 1996 single out economic factors as the cause of drop-out from primary schools in half of reported cases.²¹⁸

Children from very poor backgrounds in 1997 were half as likely to achieve minimum reading levels at Grade 6 than those from privileged households.²¹⁹ They were over five times less likely to reach the desired level.²²⁰ This is because they tend not to receive the same degree of parental and material support in their education and do not have sufficient time for homework when helping with household tasks. In addition, many children from poor homes suffer from malnourishment which has been shown to effect school performance:²²¹

Current estimates put malnutrition rates at 50% among school-aged children and a recent survey found that 46% of respondents came to school at least once a week without eating. Health profiles of school-aged children in Zambia show that parasitic worm infections occur in approximately 60%, and that approximately 75% suffer from anemia. Iodine deficiency runs nationally at 32%, and symptoms of vitamin A deficiency are also common. As a result many Zambian children are learning-disadvantaged.

The problems of poor nutrition and deteriorating child health are a reflection of the hardship caused by structural adjustment. Under BESSIP, the Ministry of Education in conjunction with the Ministry of Health is to conduct a national baseline study of children's health and nutrition with a view to piloting test interventions in two district schools

in Lusaka and Eastern Province.²²² This will feed into discussions on the preparation of a national strategy for school health and nutrition.²²³

The Bank is succinct in its analysis of the factors influencing the attendance of children from impoverished households at school: 'the poor face the necessity to balance the cost of education and its perceived long-term benefits against the immediate needs for labour and income generating capacity to produce food and other essentials for life.'²²⁴ In an in-depth study of the global deficit in education, Oxfam is unequivocal in condemning the way in which poor sequencing of structural adjustment in Zambia has caused impoverishment which has resulted in the withdrawal of children from school because of escalating fees and the use of their labour to generate household income.²²⁵ Labour is the principal asset of the poor. In a deteriorating economic climate, child labour, always important, is now seen as vital.

While willingness to pay may also be a factor in the decision of parents and guardians over whether or not to send a child to school, especially when the education on offer is of a low quality, there is no doubting the impact of cost-sharing and fees on access to education²²⁶. Against the backdrop of increasing poverty, the United Nations has highlighted the link between fees and falling school attendance and drop-out.²²⁷ The World Bank itself reached the conclusion in its 1994 *Poverty Assessment* that fees constrained poor children's access to education.²²⁸ The effect of shifting costs to parents due to falling public expenditure on primary education was a fall in attendance in rural areas.²²⁹ Participatory poverty assessments conducted in urban area confirmed cost as a barrier to access: a quarter of parents in one shanty compound failed to pay PTA fees; in another, enrolment was limited as school fees were characterised as 'unaffordable.'²³⁰ The Bank questioned the very rationale for school fees on the grounds that 'the costs of collection may be so high that the net returns to the system are dwarfed by the impact of fees on poor households.'²³¹ Its recommendation at the time was to 'eliminate the regressive cost-sharing currently in place by enforcing exemptions, reviewing fee structures and liberalising uniform requirements'.²³²

In the face of this barrage of criticism, the Zambian Government has not only failed to reduce the burden of direct and indirect fees for education placed on parents and guardians, but has incorporated the strategies of cost-sharing and community finding at the core of its national education policy. As has been noted, the cost of providing universal primary education is not to be met exclusively by Government and donors. The United Nations advocates assisted self-help in community schooling in Zambia - participation in leading, planning and managing school activities, and the provision of local labour and materials - but warns against adding to the financial burden: 'Since most people in most communities are already living below the poverty line, it will be unrealistic to expect communities to generate the finance needed for investment in educational rehabilitation and development.'²³³ Others emphasise that 'the potential for community involvement must be evaluated against the widespread poverty of the people and their reduced ability to provide labour because they have been weakened by hunger and sickness.'²³⁴

b. Targeted assistance

A State party to the Covenant is required to target resources at vulnerable and disadvantaged groups. In Zambia, help with school fees for children from impoverished families has been lacking: 'While the Public Welfare Assistance Scheme (PWAS) implemented by the Ministry of Community Development and Social Services, is providing support for school costs, the total available is inadequate and support is not being provided speedily.'²³⁵ This is an understatement. At this juncture it is sufficient to note that spending on the PWAS in 1998 equated to just 13 US cents for each of the five million Zambians living in extreme poverty - please refer to Section 3(III) for more details.²³⁶ This overall picture of utter deficiency places in perspective those subcomponents of the PWAS earmarked for help with education and health fees.

Somewhat belatedly, donor assistance is to be used in Zambia to provide bursaries to poor children to lower the private costs of education in order to help increase enrolment.²³⁷ While action in this area is part of BESSIP, the bursaries are to be administered through the same and much maligned Public Welfare Assistance Scheme which is being revamped in order to better target its extremely limited resources by using a new 'vulnerability profile.' As a direct result of BESSIP, it is maintained that 'an additional half-a-million young people will have direct access to basic education.'²³⁸ This assumes not only that the program runs to a second phase and that enrolment targets are met, but that the private cost of education ceases to be a barrier. Indeed, a stated aim is that by 2005 'No child [shall be] blocked from school because of costs, uniforms, distance, unfavourable school environment and parental perceptions.'²³⁹ The claims do not stand up to scrutiny.

Direct private household costs for education in 1996 averaged \$17 per primary pupil over the year in 1996. Furthermore, estimates quantify the annual 'opportunity cost' - that is, income lost to the household on account of school attendance - as equivalent to \$49 per primary school pupil in 1996.²⁴⁰ The total cost to be borne by the household is therefore \$66 for each child. Survey data for 1996 suggests that 14 per cent of children of primary school age were

not enrolled in school because it was too expensive.²⁴¹ This is likely to represent a significant underestimation.²⁴² However, based on this conservative estimate, cost prevented at least 77,000 children from attending school in 1996.²⁴³ To cover the private costs of this number of children through bursaries would require annual funding of over \$5 million. Under the first phase of BESSIP, a total of \$1.6 million over the period 1999 - 2001 is to be allocated for the purpose of establishing and administering the bursary scheme.²⁴⁴

c. Vulnerable and disadvantaged groups

Many aspects of a child's status reinforce denial of their right to education in Zambia. In addition to the overriding factor of poverty, a child is put at considerable disadvantage if they live in rural area, if they are a girl, if they are an orphan, if they are on the streets, or if they have special needs.²⁴⁵ Under BESSIP, the plan is to nominate a teacher in each of the 611 zonal schools with responsibility for identifying vulnerable children in the area and then working with communities to ensure their participation.²⁴⁶ Given the sheer number of disadvantaged children and the range of different problems they face, it is difficult to see what a single overworked teacher in one zonal centre school serving ten others can do to address the situation.

i. Children in rural areas

The difference in access to education between rural and urban areas is marked. Every indicator - with the exception of capacity - is significantly worse for rural areas: half of those aged 12 and over are illiterate compared with a fifth of those in urban areas;²⁴⁷ net primary school attendance rates are only three-quarters of those in urban areas;²⁴⁸ of those who starting primary school in rural areas, a little more than half make it through to Grade 7.²⁴⁹ In urban areas, the corresponding figure is over three-quarters. Untrained teachers are concentrated in rural areas, especially in remote schools. Up to four out of every ten teachers in very rural provinces are untrained compared with only one in ten in the most urbanised provinces.²⁵⁰

ii. Orphans and street children

In the region of a half a million children in Zambia in 1996, representing 11 per cent of the population of those aged 14 and below, were orphans who had lost one or both parents.²⁵¹ It is reckoned that 68 per cent of orphans in rural areas do not go to school. Almost all support for orphan children in Zambia comes from the extended family. Official data suggests that a quarter of all households have foster children.²⁵² The Government has closed almost all State orphanages. However, fostering arrangements are informal and, while orphans gain family-based support, they enjoy fewer legal rights. In 1996, there were only eighteen formal adoptions in the whole of the country.²⁵³

Given these circumstances, orphans do not enjoy their right to education. Caring for orphans places an additional burden on the budget of extended families. It is difficult to find the money for school fees and many orphaned children work in order to make a contribution to household income. It is therefore difficult for them to attend school during normal hours, if at all. Those who do manage to attend school are at an apparent disadvantage: 'Teachers report that orphans - even those absorbed into their extended families - may be identifiable in class because they look then or because they do not have pencils and exercise books.'²⁵⁴

Orphaned children are themselves frequently called upon to act as carers. They tend to sick relatives. Hard statistics are lacking, but, by 1995, it was estimated that 7 per cent of households were headed by a child aged fourteen or below.²⁵⁵ The number of such households is undoubtedly increasing. When parents die of AIDS, and when no extended family group exists or the capacity is lacking, children look after themselves and their siblings, although living conditions in such households are often poor.²⁵⁶

It is estimated that there were 75,000 street children (0-18) in Zambia 1996.²⁵⁷ Recent estimates put the current figure at 90,000. Over one third of street children were double orphans with both parents dead.²⁵⁸ It may be that as many as 70 per cent of children on the streets in Lusaka and the Copperbelt towns have lost both parents. The number of street children doubled over the period 1991-1996. An estimated seventy per cent of street children are boys. They are highly visible on the streets. Girls account for the remainder. Most of these children have never been to school at all or else have dropped out in order to make what living they can for themselves. A large proportion drink, take drugs and engage in solvent abuse: 'Too poor to afford glue to dull the evening chill, they sniff fermented sewage.'²⁵⁹ Many are sexually active.

In the Oxfam-commissioned report on primary education in Zambia, deep concern is expressed over the prospects of unsupported children:

'For those who cannot get institutional support, the situation is grim: half a million children at risk, and the number increasing steadily; not able to pay school or training fees; carrying responsibilities well beyond their capabilities as children; so traumatized by what they have experienced when parents died of AIDS they cannot learn; totally and utterly excluded from the joy and gaiety of a normal childhood; a significant number at risk of contracting HIV/AIDS through virtually inescapable income-generating prostitution...'²⁶⁰

It is apparent that the Government's response to the problems encountered by orphans, including street children, must encompass action beyond the sphere of education. The *National Poverty Reduction Strategy Framework* categorises orphans and street children alongside other disadvantaged groups - the old, the sick, the disabled - in the group of incapacitated households.²⁶¹ There is no attempt at further differentiation. This feeds into the failure to explicitly address the problems faced by orphans and street children in the accompanying short-term plan of action on human resource development.²⁶² The stated aims are to develop specialised education facilities for those with 'hearing, physical, mental and visual handicap and/or impairment' and to improve targeted interventions on behalf of girls, the disabled and handicapped. This has heightened concern that the *National Poverty Reduction Action Plan 1999 - 2000* will make no special provision on behalf of orphans and street children.²⁶³ The current Public Welfare Assistance Scheme includes unsupported children in its target group, yet the programme as a whole has been characterised as ineffective: it has recently been calculated that less than 2 per cent of all Zambians receive State welfare payments.²⁶⁴ Please refer to Section 3(III) for further details.

Government policy on education fails to address the special circumstances of orphans and street children. Not only are the fees associated with State schools prohibitive, but they lack the necessary flexibility of teaching. The only dedicated provision at present is through community schools, most of which are funded by NGOs.²⁶⁵ Zambia Open Community Schools are geared toward the teaching of pupils who must work to earn a living. Orphans are given a high priority in admissions. By the end of April 1998, the organisation catered for 3,900 children, thirty per cent of whom had lost one or both parents.²⁶⁶ Even when the capacity of other accessible community school is added, the number of places available is a fraction of the total needed. The vast majority of orphans must either attend State schools as and when they can or else do without education altogether.

iii. The education of children with disabilities

The Committee has determined that 'since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant.'²⁶⁷ The denial of educational opportunities to persons with disabilities is recognised as 'invidious discrimination' and the Committee emphasises that the effects of disability-based discrimination are particularly severe in, *inter alia*, the field of education.²⁶⁸ To reiterate, there is an obligation upon State parties to take appropriate measures, to the maximum extent of their available resources, to target disadvantaged groups.²⁶⁹ Furthermore, the immediate obligation upon State parties to ensure that all the rights in the Covenant are exercised without discrimination of any kind based on grounds of, *inter alia*, other status 'clearly applies to discrimination on the grounds of disability.'²⁷⁰

Disabled children in Zambia are largely anonymous and invisible. Parents are reluctant to openly acknowledge the existence of a child with a disability because of the stigma attached. This attitude means that few hard facts are available even on the prevalence of disability. Best estimates suggest that the number of children with disabilities aged 7 - 13 in Zambia in 1996 was likely to exceed 175,000.²⁷¹

A State party does not meet all of its obligations by refraining from negative action or even by outlawing *de jure* discrimination on the grounds of disability: 'The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.'²⁷² At the primary level, a limited number of 28 special schools and 51 special units within mainstream schools cater for 20,600 pupils with a specific range of disabilities: blindness, deafness, and physical impairment.²⁷³ Hence at least eight out of ten children with a disability were not attending school and were therefore denied their right to primary education.

The Government has an overall policy of integrating children with disabilities, to the maximum extent possible, into the ordinary school system. This approach accords with internationally recognised standards of best practice, as endorsed by the Committee.²⁷⁴ However, the requirement is for *de facto* measures: 'In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers.'²⁷⁵ In Zambia, in juxtaposition to this requirement: 'Ordinary classroom teachers have received no

guidance on how to teach children with disabilities; appropriate teaching materials, such as large print books for children who are visually impaired, are not available; furnishings and facilities are not adapted to the needs of the physically disabled....²⁷⁶ Indeed, no information is recorded on the extent to which disabled children are integrated into the mainstream in Zambia whereas the Covenant requires State parties to monitor the actual situation in respect of each of the rights it contains and to pay special attention in this regard to vulnerable or disadvantaged groups.²⁷⁷

The need for additional resources is recognised and ‘international cooperation in accordance with articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.’²⁷⁸

5. *The education of girls: the extent of gender-based discrimination*

Zambia attended the Fourth World Conference on Women in September 1995 at which it reiterated its commitment to the education of the girl-child. In 1996, the Government finalised its National Gender Policy and Statement on the Girl Child and adopted the Strategic Action Plan for the Advancement of Women to implement both the Beijing Platform for Action and related short-term policy goals.²⁷⁹ In 1997, Zambia signed the Gender in Development Declaration and began preparation of a report under the Convention on the Elimination of All Forms of Discrimination Against Women which Zambia ratified in 1985.²⁸⁰ The latter contains an explicit article on the right of the girl-child to education, while the non-discrimination clause in both the Convention on the Rights of the Child and the Covenant *per se* is of immediate effect and applies to all rights, including the right to education.²⁸¹

Considerable disparity in education between the education of women and men is all too apparent in Zambia. This must be set against the obligation of State parties under the Covenant to guarantee non-discrimination in the exercise of the rights it contains and their undertaking ‘to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights’.²⁸² Although the MMD Government has itself been in power since late 1991, and although the Ministry of Education began to pay special attention to the gender dimension in education in 1994, the concrete steps it has taken in respect of promoting the equal right to education by men and women date, in the main, from 1996.

The main policy vehicle for improving the position of girls is the 1996 Programme for the Advancement of Girls’ Education (PAGE). Initiatives centre upon the pursuit of an equal ratio of enrolment at first admission into the school system, the retention of girl pupils, and their progression through the system based on improved performance.²⁸³ Specific interventions to achieve these objectives include affirmative action *vis-à-vis* enrolment and progression;²⁸⁴ pre-service training for teachers on gender across the curriculum, gender-sensitive teaching and the provision of suitable basic teaching and learning materials; establishing single sex classes where appropriate; and encouraging family and community participation in the education of children.²⁸⁵

Currently PAGE operates nationally to raise awareness of gender issues in education, but its other elements to improve classroom teaching and learning processes are confined to a pilot scheme in Eastern Province.²⁸⁶ Under BESSIP, PAGE is to be extended first to two more provinces and then to the whole country.²⁸⁷ Total finance for PAGE under BESSIP and ongoing projects between 1999 - 2001 is costed at \$2.6 million.²⁸⁸ On an annual basis, this is equivalent to just under \$1 for every girl of primary school age (7 -13).²⁸⁹ Through the aforementioned support for designated zonal teachers and targeted bursaries, BESSIP will identify and support disadvantaged girls. The resource problems associated with both these initiatives have already been noted.

a. **Primary attendance and learning**

Overall, girls accounted for 47.6 per cent of primary school enrolments in 1996. Hence, even in the aggregate, there is a small though significant disparity between the number of boys and the number of girls enrolled in school. However, it is only when the figures are broken down by location and Grade that other inequalities are revealed. In the urbanised Copperbelt and Lusaka, there is parity between the sexes in terms of lower primary school enrolments and close to parity throughout all primary grades.²⁹⁰ In the line-of-rail Provinces of Central and Southern, the percentage of girls in lower primary grades exceeds 49 per cent, although enrolments fall off slightly when averaged across the higher Grades.²⁹¹ The contrast is with remote rural Provinces. The enrolment of girls in primary school across Luapula, Northern, North Western and Eastern Provinces averages less than 46 per cent.²⁹² At higher Grade 7, the percentage of girls falls to 40 per cent or less in these Provinces.²⁹³ Even the provincial level figures conceal further inequality: ‘In remote and poor rural districts, such as Luwingu, Kaputa and Lunadazi, only one-third of the Grade 7 enrolment are girls.’²⁹⁴

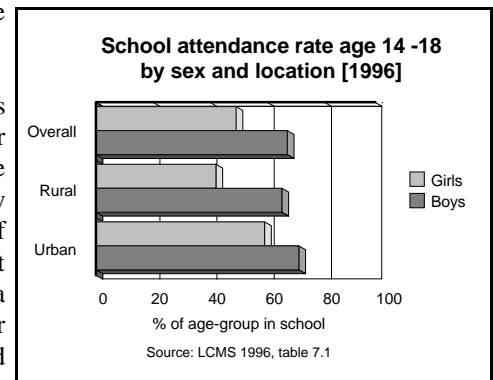
Higher drop-out rates and lower repetition rates for girls in each primary Grade culminated, overall, in completion rates of just below 68 per cent for girls compared with 81 per cent for boys for the cohort finishing their primary education in 1995.²⁹⁵ Once more, the situation is at its worst in rural areas where, for every two girls beginning at primary school in 1990, only one would make it through to Grade 7.²⁹⁶ However, while gender disparity in such areas is noticeable, it is not great: only a marginally higher percentage of boys, 54 per cent, make it through to the end of their primary education.

It is noted in the 1999 Oxfam-commissioned report on primary education in Zambia that '[t]he average raw scores obtained by girls in every subject in the end of primary school examination are lower than those obtained by boys in every province and for every year for which information is available.' Reading test results for Grade 6 primary pupils in 1995 were poor: only 28 per cent of boys reached the minimum level of mastery required; yet the corresponding performance of girls at 23.1 per cent was five percentage points lower.²⁹⁷

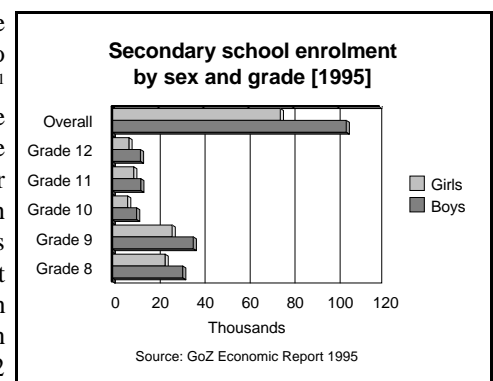
b. Secondary and higher

At the secondary level, the picture of gender balance is more complex and apparent contradictions need to be explained. On the one hand, figures for 1995 reveal that, overall, girls accounted for 42 per cent of secondary school enrolment. Whereas 67 per cent of boys aged 14 - 18 were in school in 1996, the attendance rate for girls of the same age was only 49 per cent.²⁹⁸ Once more, the disparity is more marked in rural areas where the 65 per cent of boys were in attendance compared to 42 per cent of girls.

On the other hand, net attendance rates at secondary school for girls and boys in the same year were broadly equivalent: 21 per cent for boys, 20 per cent for girls in Grades 8 - 12.²⁹⁹ Overall school attendance rates simply express the proportion of those of a given age in school regardless of what grade they were attending, whereas net attendance rates express the proportion of children in the appropriate age groups attending the appropriate grade for that age.³⁰⁰ The apparent anomaly is perhaps explained by the fact that a significant proportion of boys of secondary age were either attending a lower grade or even primary school, whereas girls were more likely to have dropped out rather than repeat years.



Presumably as a result of affirmative action, figures for 1997 on the relative number of girls and boys chosen for progression to Grade 8 do begin to record an improvement in the situation of girls at secondary school.³⁰¹ although approximately 22,500 or 30 per cent more boys than girls sat the examination, broadly equal numbers of male and female candidates were selected. Hence the selection rate for girls was much higher in 1997 than for boys: 42.2 per cent of all girls sitting the exam were chosen compared with 33.7 per cent of boys. Year on year figures confirm that affirmative action is improving progression rates for girls pupils.³⁰² Furthermore, although net secondary school attendance in rural areas was a third that of urban areas in 1996, there was no disparity between the sexes.³⁰³ Rather, for once, it was in urban areas that net secondary attendance by girls was somewhat lower: 32 per cent for girls in comparison to 36 per cent for boys.



The ostensible success of affirmative action in ensuring the progression of equal numbers of girls to Grade 8 must not be allowed to mask two underlying dangers. The first is a result of treating economic and social rights in aggregate terms. Hence, while equal numbers of girls are now selected for secondary school, this should blind us neither to the fact that some 22,000 fewer girls than boys - each of them an individual with certain aspirations - actually sit the exam in the first place; nor to the fact that many hundreds of thousands of children, irrespective of sex, fail to complete even their primary education. The second danger is to miss the underlying problem of incapacity. Given the finite, small number of secondary school places, the majority of those who wish to continue their education are denied the opportunity to do so. On an aggregate basis, increases in the selection rate of girls over boys results in numerical equality; yet, on an individual basis, a boy who sits the exam has a greater chance of failure.

At the tertiary level, far fewer females than males enrol and participate. Out of just over 5200 students enrolled in technical, vocational and entrepreneurship training in 1996, only 1355 or a fraction over one in four were young women. Results for the academic year 1995/96 at the University of Zambia are indicative of the low number of women in tertiary

education: out of 1117 graduates, only 270 or a quarter were women. However, it will be a while before improvements in the number of girls currently progressing to and attending secondary school feeds through to the tertiary level.

c. Reasons why girls do not enjoy equality in exercising their right to education

Any deficit in the education of girls and women is costly in economic and social terms, while the personal loss of opportunity and advantage is incalculable, but nevertheless deeply felt. Discrimination and inequality in education results in the violation or denial of aspects of, *inter alia*, the rights to work, to health, to protection of the family, and is detrimental to the realisation of many civil and political rights.³⁰⁴ There is strong evidence to suggest that the education of girls is not only vital in furthering equality of opportunity in employment, but also improves household management skills, helps young women make informed choice about family planning, and improves child health care and survival rates when women start their own families. For example, the child of a Zambian mother with primary education had a 20 per cent better chance of surviving the first year of life in 1996 compared with the child of mother with no education.³⁰⁵ The disparity increases as the education gap widens. In 1996, the infant mortality rate for mothers with no education was 133 deaths per thousand live births compared with a rate of 82 per thousand those born to mothers with secondary or higher education.³⁰⁶

Girls are withdrawn from school in Zambia because '[t]he ideal and almost only role that is envisaged for the girl child is to become a wife and mother.'³⁰⁷ Girls are withdrawn from school because their household labour is perceived to be of greater benefit than the gains that will result from their education, especially when school fees are high. This circumstance is common in poor household in times of hardship exacerbated by structural adjustment.

i. Marriage and pregnancy

The conclusion reached in the 1996 *Zambia Demographic and Health Survey* is that '[a]t age 16 and older, women are much less likely than men to be enrolled in school, presumably due to cultural norms which encourage girls to drop out of school, possibly to get married and start a family.'³⁰⁸ By the age of 18, 46.1 per cent of teenage girls are either pregnant or are already a mother.³⁰⁹ There is a self-perpetuating circle in that teenage girls with no education or with primary education are, respectively, over twice and one and a half times more likely to become pregnant than girls with secondary or higher education while pregnancy and marriage are reasons for their non-attendance at school in the first place.³¹⁰ Other survey data for 1996 reveals that 12 per cent of those questioned who left school at Grades 8 - 9 did so because of pregnancy and 4 per cent because they got married. Bearing in mind that the survey included males, the percentage figure for pregnancy is an under-representation and would increase in a female only survey. The reasons given by parents in urban areas as to why a daughter was not attending school were 'marriage' in 37 per cent of cases and child care or income generating activities in a further 23 per cent.³¹¹

In 1997, the Government made the important policy announcement that all girls who became pregnant would be allowed to continue their education after delivery.³¹² While the Government edict is welcome, its *de facto* enforcement is vital. The popular view that the education of girls is of lesser importance is entrenched. In a 1996 survey respondents were asked:³¹³ In case a household cannot afford to send all its children to school, who should be given priority between boys and girls? In urban areas 53 per cent said boys should be given priority and 25 per cent that girls and boys should be treated equally. Opinion in rural areas exhibits even greater discrimination: 70 per cent of respondents felt boys should be given priority as opposed to just 25 per cent who advocated equal treatment.

ii. Female household labour versus the cost of schooling

The World Bank has noted that rising school fees have a particularly detrimental impact on the education of girls, especially in rural areas:

'The first to be hurt by increasing direct costs are girls, because the perceived returns to girls' education are low, especially in patri-lineal societies where wives move to the husband's village. Also the opportunity cost is higher for keeping girls in school as they have important functions in the household, such as taking care of younger siblings, and fetching water and firewood.'³¹⁴

This suggests that, while the PAGE initiative is to be welcomed, there is a contradiction at the heart of Government policy in that, despite the World Bank's recommendation to eliminate regressive direct and indirect school fees, an emphasis has been placed upon cost-sharing. In a recent United Nations study on sustainable development in Zambia, it is noted that '[t]he introduction of cost sharing measures has stretched the ability of poor families to meet the cost of education.' The report continues '[w]here parents have to make a choice because of limited resources, the boy child is

more likely to be favoured and the girl child passed over.³¹⁵ Yet the Bank, for its part, while seeking the protection of relative expenditure on primary education, has also set an agenda of economic conditionality which has required the decimation of public expenditure in real terms. Furthermore, structural adjustment has had a severe impact upon women by increasing their workload in order to raise household income in times of hardship. In turn, the education of girls in poor household is curtailed: 'This often leads to girl children being withdrawn from school to help look after the home while their mothers are out trying to earn some money.'³¹⁶

Notes

- ¹ Ministry of Education (1996), *Educating Our Future*. See also *PPF* (1995 - 1998), Education, para. 141.
- ² Ministry of Education (1996), *Educating Our Future*. For a summary of the Government's educational strategies, see Kelly (1998), p. 40.
- ³ The official age ranges for different grades are as follows: Grades 1 - 4 correspond to 7 - 10 years; Grades 5 - 7 correspond to 11 - 13 years; Grades 8 - 9 correspond to 14 - 15 years; and Grades 10 - 12 correspond to 16 - 18 years.
- ⁴ Initially known as the Integrated Education Programme.
- ⁵ See *ESAC II R&R*, Annex J, Letter of Development Policy, paras. 78 - 79. The four ministries are Education; Science, Technology, and Vocational Training; Community Development and Social Services; and Sport, Youth and Child Development.
- ⁶ *ER 1996*, para. 262.
- ⁷ *Ibid.*, para. 260.
- ⁸ ESIP spans four ministries and covers both education and training. It is because of this complexity that the decision was taken to focus upon basic education in one package (i.e. BESSIP) and training in a second package. See *BESSIP PAD*, pp.14 - 15.
- ⁹ Education strategies and plans to be implemented under BESSIP have been developed jointly between the Zambian Government and multilateral and bilateral agencies. This culminated in a joint appraisal mission in September 1998 prior to the launch of the programme. See *BESSIP PAD*, p.1.
- ¹⁰ Ministry of Education (1999), *Statement on Education Policy Implementation During 1999 - 2002*, para. 23 ff. (reproduced in the *BESSIP PAD*, Annex 11). The BESSIP program is comprehensively reviewed within the *BESSIP PAD* itself. For a summary of the first phase components, see pp. 7 ff. More detail is given in Annex 2
- ¹¹ The budget breakdown by the main components is as follows: (1) Primary teaching/learning readiness \$156.8 m (46.1%) (of which instructional materials \$24.1 m (7.1%); school health and nutrition \$3.3 m (1.0%); equity and bursaries \$16.6 m (4.9%); teacher's compensation and other operating expenses \$112.9 m (33.2%)). (2) Primary school infrastructure \$109.4 m (32.1%). (3) Pre-service and in-service primary teacher training \$31.1 m (9.1%). (4) Curriculum development \$2.2m (0.7%). (5) Administration of the education system/capacity building \$40.8 m (12.0%).
- ¹² *BESSIP PAD*, p.11.
- ¹³ *Ibid.*, p.2.
- ¹⁴ *Ibid.*, Program Summary.
- ¹⁵ *Ibid.*, pp.2 - 3. In respect of the World Bank, the triggers for phase II funding are: share of trained teachers serving in rural schools increased; Ministry of Education's Buildings Section strengthened and 2,000 classrooms constructed; bursary scheme in place for vulnerable children; at least 20 per cent of the Government's supply budget devoted to education; quantitative framework for analysing enrolments, unit costs, total costs, and sector financing has been developed for policy analysis within the Ministry of Education; district Education Boards established and functioning in 60 per cent of districts; first national assessment of learning achievement carried out and results publicised; Joint Steering Committee meeting regularly to monitor and receive reports on expenditures, activities and achievement of overall BESSIP objectives; 75 per cent of IDA funds for APL I (Adaptable Program Loan) committed; preparations in place for implementation of activities to be supported by APL 2. See *BESSIP PAD*, 'Objectives, Phasing and Triggers for IDA Support,' Annex 1.
- ¹⁶ *BESSIP PAD*, pp. 24 - 25.
- ¹⁷ Specific objectives and measures are outlined in the *Statement on Education Policy Implementation 1999 - 2002*, op. cit.
- ¹⁸ Relative spending targets are set in relation to 'supply expenditure'. This refers to sectoral allocations approved under the budget and excludes 'non-supply expenditure', i.e., money which is not earmarked for a particular ministry or agency but which is spent upon debt service, pensions, severance benefits etc. Broadly speaking, 'supply expenditure' is comparable with discretionary expenditure as used by the Bank to set recent spending conditionality. In its *Statement on Education Policy Implementation 1999 - 2002*, the Government has set a target of allocating 20.5 per cent of supply expenditure to education by 2001. 60 per cent of this money is to be spent upon the primary subsector. (See *Statement on Education Policy Implementation 1999 - 2002*, reproduced in *BESSIP PAD*, Annex 11, paras. 40 ff.).
- ¹⁹ The Bank is using 'Adaptable Program Lending' to finance its contribution to BESSIP: 'While Government has been working on developing a four year program, the uncertainties in the macroeconomic situation, together with the delays in restructuring MoE [Ministry of Education], the phasing in of decentralization, and the lack of a financially sustainable policy framework for the sector, all point to the need for a flexible longer-term approach to IDA support.' This means the Bank will provide \$40 million for the period 1999 - 2001 but will not provide a further \$60 million for the period 2002 - 2005 unless the first phase is successful. The Development Credit Agreement for phase I is drawn up to allow the Bank to fund any components, depending upon where funds are needed. Political and economic risks are significant concerns. See *BESSIP PAD*, pp.14 - 15.
- ²⁰ Kelly (1998), p. 40.
- ²¹ The implementation of other sector programmes, such as the Agriculture Sector Investment Program, in advance of adequate restructuring, has caused considerable problems. Attention is therefore being paid to capacity building under BESSIP. The Bank (IDA), Irish Aid, the Netherlands and Norway are supporting a fund for BESSIP preparatory activities. The complexity of management of BESSIP and too rapid decentralisation of District Education Boards before the necessary support is in place are deemed modest risks. In respect of the former, technical assistance is being provided in the early years of BESSIP while the Government has agreed to adhere to staged decentralisation to minimise the latter risk. See *BESSIP PAD*, pp. 24 - 25.
- ²² UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.
- ²³ *PPF* (1995 - 1998), Education, para. 143.
- ²⁴ *SCR* (1997), Education reforms in 1993 - 1996, para. 58.
- ²⁵ *Idem*.
- ²⁶ See *ESAC II R&R*, Annex J, Letter of Development Policy, para. 82.

- ²⁷ *ER 1997*, para. 200.
- ²⁸ Ministry of Education (1999), *Statement on Education Policy Implementation During 1999 - 2002*, para. 24.
- ²⁹ *GC 3*, para. 10.
- ³⁰ ICESCR, article 13(2)(a).
- ³¹ *GC 11*, para. 6.
- ³² The net enrolment ratio (NER) compares the number of those enrolled of the correct age for primary education compared with the number of children in the population at large who should be enrolled at that level. See Kelly (1998), p.2.
- ³³ Figures for 1985 and 1994 cited in the *PFP* (1995 - 1998), para. 132.
- ³⁴ Kelly (1998), p.2.
- ³⁵ *LCMS* (1996), table 7.8. The net attendance ratio measures the proportion of children in the appropriate age groups attending the appropriate grade for that age. See *idem*, para. 7.2.
- ³⁶ *LCMS* (1996), table 7.8.
- ³⁷ Convention on the Rights of the Child, article 28(1)(e). Zambia ratified the Convention on 6 December 1991.
- ³⁸ Kelly (1998), p.3.
- ³⁹ *LCMS* (1996), Chapter 7, Education.
- ⁴⁰ The figures derive from analysis of the *LCMS* (1996) data on attendance by grade by the Study Fund, as cited in Kelly (1998), p.3.
- ⁴¹ *PA*, para. 8.27.
- ⁴² Ministry of Education (1996), *Educating Our Future*, p. 22.
- ⁴³ *PSHDZ*, p.72.
- ⁴⁴ Kelly (1998), p.4.
- ⁴⁵ Official primary school age is 7 - 13 years.
- ⁴⁶ Watkins (1999), *Education now: break the cycle of poverty*, p.170.
- ⁴⁷ Kelly (1998), p.3.
- ⁴⁸ *Ibid.*, p.5.
- ⁴⁹ *LCMS* (1996), table 14.14.
- ⁵⁰ Kelly (1998), p.5.
- ⁵¹ *Idem*.
- ⁵² *GC 1*, para. 7.
- ⁵³ *GC 11*, para. 10.
- ⁵⁴ Ministry of Education (1996), *Educating Our Future*, p.173. The targets were originally set in accordance with the situation prevailing in Zambia in 1994.
- ⁵⁵ *PA*, para. 2.37.
- ⁵⁶ Coulthard & Ngenda (1996), 'Urban Poverty on the Copperbelt,' p. 10.
- ⁵⁷ The progression rate from Grade 7 to Grade 8 rose from 34.7 per cent in 1996 to and 37.4 per cent in 1997. The numbers sitting the exam fell, respectively, from 179,513 to 175,784. See *ER 1997*, para. 194.
- ⁵⁸ Kelly (1998), p.4.
- ⁵⁹ *Ibid.*, p.5.
- ⁶⁰ *Idem*.
- ⁶¹ *GC 11*, para. 6.
- ⁶² ICESCR, article 13(2)(e).
- ⁶³ With support from UNESCO, a group of countries formed the Southern African Consortium for Monitoring Educational Quality. The results for Grade 6 learning achievement cited here come from its *Zambian* assessment. Subsequent SACMEQ tests of Grade 6 pupils are to be carried out in 2000 and 2005. In the meantime, a national committee has been formed in Zambia to establish a national system of assessment to be run by the Examinations Council of Zambia. An assessment of a sample of Grade 5 pupils covering mathematics and literacy in English and *Zambian* languages is planned for 1999. See *BESSIP PAD*, pp. 21 - 22.
- ⁶⁴ *Ibid.*, p.5.
- ⁶⁵ *Ibid.*, p.10; also p.15.
- ⁶⁶ The illiteracy rate is estimated from data presented in the *LCMS* (1996), table 7.13. The assumption would appear to be that those with no education or with only lower primary education are judged to be illiterate (see Kelly (1998), pp.26 - 27). On this basis, in 1996, the illiteracy rate for young men 14-20 was 36 per cent compared with 37 per cent for young women of the same age. Although the illiteracy rates for older women aged 31-45 were at comparable levels to younger women - that is, around the 37 - 38 per cent mark - men in this age range recorded much lower rates of 14 per cent. The figures reveal the unequal access of women to education when they were younger but also shows that illiteracy among men is increasing. This will have a knock-on effect in that the educational level of the head of household correlates with the importance attached to the education of children.
- ⁶⁷ *GC 11*, para. 6.
- ⁶⁸ *PSHDZ*, p.69.
- ⁶⁹ *BESSIP PAD*, p.10.
- ⁷⁰ *Ibid.*, p.5.
- ⁷¹ *Idem*.
- ⁷² Kelly (1998), pp. 12 - 13.
- ⁷³ ICESCR, article 12, especially subclause (b) on environmental hygiene.
- ⁷⁴ ICESCR, article 11.
- ⁷⁵ See *GC 4*, para. 8(b) and (d).
- ⁷⁶ Basic Education Subsector Investment Programme, Terms of Reference, October 1997, quoted in Kelly (1998), p.9.
- ⁷⁷ *BESSIP PAD*, p.9. \$109.4 million or 32.1 per cent of the *BESSIP* first phase budget is earmarked for this purpose.
- ⁷⁸ Of the planned total of 4600 classrooms to be built/rehabilitated between 1999 - 2001, construction of about 1760 is already in an advanced stage of planning. This leaves a remainder of 3,000, three quarters of which are expected to be rehabilitated through community projects. The final schools will be built/rehabilitated through specific contracts. See *BESSIP PAD*, p. 21.
- ⁷⁹ Kelly (1998), p.9.
- ⁸⁰ *Ibid.*, p.10.
- ⁸¹ *Idem*.
- ⁸² *BESSIP PAD*, pp.8 - 9. \$24 million or 7 per cent of the *BESSIP* first phase budget is earmarked for this purpose. This subcomponent is entirely supported through donor funds.
- ⁸³ Based on the experience of Grade 6 pupils in primary schools, as reported in the *SACMEQ Report 1997*, tables 3.4, 3.6 and 3.7. Cited in Kelly (1998), pp.10 - 11.
- ⁸⁴ *ER 1997*, para. 199(iv).

- ⁸⁵ *BESSIP PAD*, p. 8.
- ⁸⁶ ICESCR, article 6(2).
- ⁸⁷ ICESCR, article 7, in particular (a)(i) and (c).
- ⁸⁸ *BESSIP PAD*, p.4.
- ⁸⁹ Kelly (1998), p.8.
- ⁹⁰ See *ESAC II R&R*, Annex J, Letter of Development Policy, para. 83.
- ⁹¹ See *PSREPC R&R*, Annex I, Letter of Development Policy, para. 40. This objective is outlined in the Ministry of Education's *Statement on Education Policy Implementation* (op. cit, para. 30) by which the first phase of BESSIP is to be implemented.
- ⁹² DANIDA is supporting the Zambia Teacher Reform Programme. See *BESSIP PAD*, p.21.
- ⁹³ *Idem*.
- ⁹⁴ *BESSIP PAD*, p.6.
- ⁹⁵ *Ibid.*, p.9.
- ⁹⁶ See, for example, the citations of the beneficiary assessments carried out for the World Bank's Poverty assessment, as summarised in para. 3.97 and box 8.4; also Kelly (1998), p.13.
- ⁹⁷ *Idem*.
- ⁹⁸ *BESSIP PAD*, p.6.
- ⁹⁹ Kelly (1998), p.13.
- ¹⁰⁰ *BESSIP PID*, p.4.
- ¹⁰¹ *PSHDZ*, pp. 68 - 69.
- ¹⁰² ICESCR, article 2(1).
- ¹⁰³ *GC 3*, para. 10.
- ¹⁰⁴ Total domestic expenditure excludes interest payments on foreign debt and foreign-financed capital expenditures.
- ¹⁰⁵ See Kelly (1999), fn. 26.
- ¹⁰⁶ For example, in its *ER 1997*, table 2.10, the Government records 21 per cent of external assistance as spent on agriculture, 14.6 per cent on health, 14.9 per cent on infrastructure and 11.4 per cent on education.
- ¹⁰⁷ Kelly (1998), p.29.
- ¹⁰⁸ *Idem*. Average expenditure on education in Sub-Saharan Africa is cited as 3.9 per cent of GDP in recent years (1992 - 1996).
- ¹⁰⁹ *Idem*.
- ¹¹⁰ Kelly (1998), p. 31.
- ¹¹¹ *Idem*.
- ¹¹² *GC 3*, para. 10.
- ¹¹³ Kelly (1998), p.35.
- ¹¹⁴ *Idem*.
- ¹¹⁵ Figures cited in the *PA*, respectively, paras. 4.75 and 4.70. The approved budget share for primary education in 1992 was 19.6 per cent whereas expenditure on the subsector in the first half of the 1980s averaged out at just under 42 per cent.
- ¹¹⁶ Kelly (1998), p.35.
- ¹¹⁷ Expenditure on primary education in sub-Saharan Africa averaged 42.9 per cent. (World Bank (1995a), *Priorities and Strategies for Education*, cited *SCR* (1997), Box 2, p.37.
- ¹¹⁸ Kelly (1998), p.36.
- ¹¹⁹ Central Statistical Office (1994), *Priority Survey II 1993*, table 6.11.
- ¹²⁰ In 1991, 88 per cent of university students were from a non-poor background, 4.3 per cent were from a poor background and 7.8 per cent from a core background. See *PA*, table 4.4.
- ¹²¹ *LCMS* (1996), table 7.15.
- ¹²² *BESSIP PAD*, p.3.
- ¹²³ *SCR* (1997), table 11.
- ¹²⁴ *Idem*.
- ¹²⁵ In \$US at the prevailing exchange rate, expenditure per primary student was \$25 in 1995, \$28.8 in 1996 and \$27.3 in 1997. The first three figures refer to actual expenditure, the latter figure to the revised budget allocation. See Kelly (1998), table 13.
- ¹²⁶ Kelly (1998), pp. 1 -2 and Figure 1.
- ¹²⁷ *ER 1997*, table 2.10.
- ¹²⁸ Donor resources included in the domestic budget were worth \$19 million. See Kelly (1998), p.33.
- ¹²⁹ The UK (DfID) is supporting in-service teacher education and the provision of initial literacy in a familiar language. Denmark (DANIDA) is supporting teacher training colleges and will support the curriculum review under BESSIP. The Dutch and the Irish are supporting education in Western and Northern Provinces. The EU is providing assistance for planning in the Ministry of Education and will contribute finance for bursary support for poor pupils under BESSIP. Finland has been supporting a school maintenance program. Norway has initiated support for textbook supply and distance education. PAGE is supported by UNICEF and Norway aims at improving the access of girls to education, and their retention, completion and progression in schools. National and international NGOs are supporting education through a variety of initiatives. For a listing of existing and proposed donor support for education, see *BESSIP PAD*, pp.16 ff.
- ¹³⁰ As of March 1999, actual commitments from donors, excluding IDA, for the first phase of BESSIP amounted to \$67 million. A further \$60 million was required, leaving an initial financing gap of \$6 million is for implementation of BESSIP in 2001. See *BESSIP PAD*, p.11.
- ¹³¹ Over the period 1993-1996, expenditure on education each year was \$82 million. In comparison, average debt servicing each year over the same period was \$335 million. See Kelly (1998), table 12, p.30.
- ¹³² K200 billion were transferred. See *SCR* (1999), Statistical Appendix, table 13. To convert into \$US, the prevailing exchange rate of \$1 = K1203.7 has been used.
- ¹³³ Assistance grants contributed K128 billion to domestic revenue. See *SCR* (1999), Statistical Appendix, table 12. The net transfer to foreign creditors was therefore equivalent to K72 billion using the same exchange rate.
- ¹³⁴ Calculated on the basis that 43 per cent of funds were spent on the primary sector in 1996, as cited in Kelly (1998), p.35. The IMF records a similar (though unadjusted) figure of 44.8 per cent. (*SCR* (1997), table 11, p.36).
- ¹³⁵ The Government calculates that total direct costs to parents per primary pupil are \$17. Multiplied by 1.51 million pupils enrolled in primary school in 1996, gives a total parental spend of just under \$26 million.
- ¹³⁶ *SCR* (1997), table 11.
- ¹³⁷ *GC 2*, para. 9.
- ¹³⁸ *Ibid.*, para. 8(d).
- ¹³⁹ Watkins (1999), *Education Now*, p.171.
- ¹⁴⁰ *PIRC & ESAC PAR*, para. 3.21.
- ¹⁴¹ In line with the target set, a discretionary budget allocation of 14.72 per cent is recorded for 1995. See *ESAC II R&R*, Annex J, 'Social Sector

Spending in 1996,' pp. 74.

¹⁴²*PIRC & ESAC PAR*, para. 4.10.

¹⁴³ERIP specified levels of social spending at 33 per cent of total non-interest expenditure spending in 1995. ESAC II included similar conditionality whereby the Government was to maintain the social sector budget at a minimum of 35 per cent of discretionary domestic expenditure in 1996. See *intra*, Section 3(I), fn. 10 for further details.

¹⁴⁴*ESAC II R&R*, Annex J, 'Social Sector Spending in 1996,' pp. 74 ff.

¹⁴⁵*Ibid.*, Annex J, 'Letter of Development Policy,' para. 79.

¹⁴⁶*Ibid.*, Annex J, 'Sub-Sectoral Budget Allocation,' p. 75.

¹⁴⁷The social component of the discretionary domestic budget is set at 36 per cent. See *PSREPC R&R*, Annex I, Letter of Development Policy, Annex A, 'Social spending in 1999,' p.56.

¹⁴⁸Subsectoral budget allocation are no longer specified. Furthermore, of the seven social sector programmes earmarked for monitoring, none are specifically concerned with education. Monitoring of spending on the Public Sector Welfare Scheme is indirectly relevant given its planned role in meeting the educational costs of the poorest. See *PSREPC R&R*, para. 51; also *idem*, Annex I, Letter of Development Policy, Annex A, 'Social spending in 1999,' p.56.

¹⁴⁹Kelly (1999), pp. 14 - 15.

¹⁵⁰*Idem*.

¹⁵¹*Idem*.

¹⁵²A Joint Steering Committee on which the donors and other stakeholders are represented will meet twice a year to review progress and examine next steps.

¹⁵³*GC 11*, para. 9.

¹⁵⁴*Idem*.

¹⁵⁵*GC 11*, para. 11.

¹⁵⁶*Idem*.

¹⁵⁷World Bank (1995b), 'Assessing Sector Institutions: Lessons of Experience from Zambia's Education Sector,' p. 33.

¹⁵⁸In March 1994, the World Bank instigated and then supported a Sector Institutional Assessment (SIA) of the Ministry of Education which was combined with a management audit already planned under the Public Sector Reform Programme. A perceived benefit of the SIA was to coordinate the PSRP and internally inspired reform. In a second phase, the SIA was extended to other ministries operating in the education sector with the goal of feeding into the formulation of the Government's Integrated Education Programme (which evolved into the Education Sector Integrated Programme). See World Bank (1995b), p.7.

¹⁵⁹*Ibid.*, pp. 53 -54. The purpose of the SIA action plan was to identify wider fundamental legal and institutional reforms and to specify what action were necessary to build capacity and improve management within the education sector. See *idem*, Box 5, p.16.

¹⁶⁰Assistance was to be delivered through the Bank's proposed Education Sector Investment Program.

¹⁶¹The BESSIP loan typifies the importance the Bank attaches to fundamental, policy orientated interventions in education: '...the World Bank's main contribution must be advice, designed to help governments develop education policies suitable for the circumstances of their countries. Bank financing will generally be designed to leverage spending and policy change by national authorities. Future operations will therefore adopt an even more explicit sectorwide policy focus in order to support changes in educational financing and management.' (World Bank (1995a), *Priorities and Strategies for Education*, Internet Summary, subsection 'The World Bank and Education'). During BESSIP preparation, the Bank provided: '(a) technical advice in education, finance and management issues, and (b) support for the process of external financing agency mobilization and consensus building on key issues through financing the ESIP secretariat, supporting a range of studies and workshops, and through substantive participation in conferences and workshops. The Bank also assisted the government to produce background documentation (including an Education Expenditure Review and the Benefits of Learning study).' (Cited from *BESSIP PAR*, p.19).

¹⁶²*PIRC & ESAC PAR*, para. 2.25.

¹⁶³Summarised in World Bank (1995b), p.29.

¹⁶⁴*PIRC & ESAC PAR*, para. 3.21.

¹⁶⁵For primary schools and teacher training colleges, all decentralised Education Boards were to be established by the end of 1996, followed by autonomy for all secondary schools by the end of the following year. This timetable was not adhered to. See *ESAC II R&R*, Annex J, Letter of Development Policy, para. 82.

¹⁶⁶*Ibid.*, Annex J, Letter of Development Policy, paras. 77 ff. Specifically, the Government restated its targets of achieving universal basic education; of providing education and training for children who have dropped out of, or who have never attended, school; and of delivering youth and vocational skills training. Overall, it agreed to carry out a review to restructure those Ministries involved in the provision of education. In pursuit of the first objective of universal basic education, the Government agreed to maintain relative expenditure on the primary education subsector and to encourage the creation of community schools. Its stated policy in respect of the second objective, on the education of school drop-outs and those who have never enrolled in the formal system, was vague in the extreme and tautological: their needs were to be addressed 'through greater emphasis on non-formal education channels for the completion of their primary schooling and the provision of skills training for the informal sector.' Indeed, the education of such groups was elided into the overall question of vocational and technical training. Government policy in this area was at least better developed; however, for a critique of Government action and inaction on the issue of training, please see Section 2(II). The decentralisation of education management was to continue under the credit. Finally, measures were to be adopted to improve control over the deployment of trained and untrained teachers and to tighten monitoring of teacher emoluments by removing 'ghost' staff from the payroll.

¹⁶⁷See *ESAC II R&R*, Annex J, Letter of Development Policy, para. 79.

¹⁶⁸*Ibid.*, Annex J, Letter of Development Policy, para. 71.

¹⁶⁹*BESSIP PAD*, Annex 2, 'Program Description and Detail on Phase 1 of IDA Support,' p.3.

¹⁷⁰In a World Bank discussion paper on cost sharing in sub-Saharan Africa, community-based financing, non-government provision of services with public financing, and decentralisation of government services are all advocated as the balanced approach to cost sharing. (World Bank (1996), 'Cost Sharing in the Social Sectors of Sub-Saharan Africa: Impact on the Poor,' Executive Summary, pp.1 -2). The paper reviews and reaches contradictory conclusions on the Bank's official policy towards cost sharing in primary education. This must reflect the ambiguity of the underlying texts. Hence, while noting that recent Bank policy documents 'discourage cost sharing at the primary level' it is acknowledged that '[s]ome fees and various forms of cost sharing are, however, recommended in cases where the provision of schooling of an acceptable quality is unattainable with public funds alone.' (*Ibid.*, p.8). A Bank study on education finance advocates that primary education should receive the highest priority in public investment; yet it also recommends the expansion of community-supported schools. It is pointedly silent on the issue of primary school fees and the potential impact of community cost sharing on the enrolment of poor children. (World Bank (1987), *Financing Education in Developing Countries: An Exploration of Policy Options*). To cite the Bank's 1988 review of adjustment and education policy in Sub-Saharan Africa: '... there may be situations in which the judicious use of modest fees might be used for the explicit purpose of increasing accountability in education. For example, a purchase fee or rental charge for textbooks and other materials that are crucial to high levels of pupil achievement would help to ensure that these inputs are not eliminated from the budget during times of fiscal austerity.' (World Bank (1988), *Education in Sub-Saharan Africa: Policies for Adjustment, Revitalization and Expansion*, p.53). A policy paper on primary education, while recognising that cost sharing is more appropriate at higher levels, does not rule it out at the primary level and indeed recognises that significant sums have been generated at the local level

by school-based organisations through school fees, voluntary contributions, and social fund-raising events. (World Bank (1990b), *Primary Education*, pp. 44-45).

¹⁷¹World Bank (1995a), *Priorities and Strategies for Education*, Internet Summary, subsection 'Emphasis on Basic Education in Public Investment'. The same policy document sets out contradictory advice on the financing of primary and basic education. It is recognised that 'basic education ought to be the priority for public spending on education in those countries that have yet to achieve near-universal enrolment' and that 'to achieve equity, the government needs to ensure that no qualified student is denied access to education because of inability to pay.' At the same time, private financing 'can be encouraged...to supplement the income of publicly funded institutions' and financial measures to encourage school autonomy and accountability can include cost-sharing with local communities which is '...normally the only exception to free basic education' (see p.105). The document continues by advocating that scholarships can be used to cover fees and other direct costs and even to compensate poor families for loss of labour services to the household. Yet scholarships and bursaries are predicated on the assumption that primary education is not free of charge.

¹⁷²World Bank (1999b), *Education Sector Strategy*, p.5.

¹⁷³While stating that the Bank is committed to working towards the Jomiten Education For All targets and the OECD's Development Assistance Committee call for universal primary education and gender parity in primary and lower secondary education (see OECD (1996), *Shaping the 21st Century*), the Strategy singularly omits to reference the requirement that universal access to primary education should be free.

¹⁷⁴World Bank (1999b), Annex 2, 'Further Remarks on the Checklist of Questions,' Question 5, p.50. The issue of public/private finance for education is discussed on several occasions in the main text of the *Education Sector Strategy*. See, for example, pp.8 - 9; pp.18 - 19; pp.34 -35.

¹⁷⁵*Ibid.*, p.18.

¹⁷⁶Besides the elimination of regressive cost-sharing, four other recommendations are made: to prioritize girls education; to change the school calendar to reflect rural seasonal labour demands and to avoid the call upon parents to pay fees when cash is in short supply; to rehabilitate and improve school infrastructure with community inputs; and to supply schools with essential learning materials. While the latter two recommendations are best tackled - as has been the case - through project assistance, the first two fall squarely within the policy sphere. See *PA*, paras. 10.18 ff.

¹⁷⁷*BESSIP PAD*, pp. 5 - 6.

¹⁷⁸Kelly (1999), p.6.

¹⁷⁹*GC 2*, para. 6.

¹⁸⁰*Ibid.*, para. 8(d).

¹⁸¹*Ibid.*, para. 9.

¹⁸²The Bank's preoccupation under the its latest Public Sector Reform and Investment Credit is with the privatisation of ZCCM and the implementation of the public sector reform. Beyond the noted conditionality on the protection of social spending, no agreements whatsoever relate directly to policy initiatives on education.

¹⁸³*GC 11*, para. 7.

¹⁸⁴The text of this reservation is reproduced in the Treaty Bodies Database, under the entry for Status of Ratification of the Covenant, located at <www.unhchr.ch/tbs/doc.nsf>.

¹⁸⁵Calculations by Kelly (1998), p.36, based on the *Household Budget Survey 1993/94*, table 2.4.

¹⁸⁶The relative spend is in respect of total domestic expenditure on education and excludes the external contribution from donors.

¹⁸⁷*LCMS* (1996), table 11.1. Average monthly expenditure on education is recorded as K3233.

¹⁸⁸Calculations by Kelly (1998), p.36.

¹⁸⁹*PA*, para. 8.42.

¹⁹⁰Ministry of Education (1999), *Statement on Education Policy Implementation During 1999 - 2001*, para. 10.

¹⁹¹A limited survey by the World Bank in 1995/6 suggests parents were spending between \$30 and \$60 per primary school child (cited in Kelly (1998), p.36). Furthermore, Kelly, citing figures from the BESSIP Preparatory Mission Documentation, records 1996 Government expenditure at \$28.8 per primary pupil.

¹⁹²Kelly (1998), p.24.

¹⁹³*GC 11*, para. 7. It is the Committee, not a State party, which decides whether an indirect cost is permissible.

¹⁹⁴The World Bank estimates the cost of a uniform in 1994 as K5200. The calculations are based on this figure and use an exchange rate of \$1=K670. See *PA*, para. 8.45.

¹⁹⁵*Idem.*

¹⁹⁶Kelly (1998), p.24.

¹⁹⁷*Ibid.*, fn. 66.

¹⁹⁸*Ibid.*, p. 29.

¹⁹⁹*GC 11*, para. 4. For evidence of the correlation between, for example, female education and contraceptive use or early childhood mortality in Zambia, see *ZDHS* (1996), respectively, pp. 54 and 97.

²⁰⁰Attention is drawn to this fact in *GC 1*, para. 4.

²⁰¹ICESCR, article 14.

²⁰²*GC 11*, para. 3.

²⁰³*Ibid.*, para. 9.

²⁰⁴*Ibid.*, para. 7.

²⁰⁵Kelly (1998), p. 41.

²⁰⁶*GC 4*, para. 14.

²⁰⁷Kelly (1998), p.7.

²⁰⁸*Idem.*

²⁰⁹*BESSIP PAD*, p.17.

²¹⁰*GC 4*, para. 14; also para. 10.

²¹¹Ministry of Education (1996), *Educating Our Future*.

²¹²Kelly (1998), fn. 16.

²¹³*Reporting Guidelines*, Article 13, para. 5(b).

²¹⁴Kelly (1998), p.14.

²¹⁵*GC 3*, para. 12.

²¹⁶The parallel is with the right to housing, *GC 4*, para. 8(e).

²¹⁷*LCMS* (1996), table 7.3. The school attendance rates are for children aged 7 - 13 and do not take into consideration whether a child is attending the appropriate grade for their age.

²¹⁸Cited in Kelly (1998), p.23: 'Preliminary quantitative analysis of the 1996 LCMS data shows that poverty levels have a large negative effect on school attendance rates, the adverse effect of extreme poverty being about three times larger than the effect of being moderately poor.'

²¹⁹15.3 per cent of pupils in the very low socio-economic band achieved the minimum mastery level in reading at Grade 6 compared with 28.3 per cent and 31.3 per cent of pupils from high and very high bands. See *SACMEQ Report 1997*, table 6.3 (cited in Kelly (1998), p.16).

²²⁰Overall, desirable achievement in reading across all socio-economic groups was low. However, only 0.7 per cent of the very poor as opposed to 3.7 per cent of those from high/very high socio-economic backgrounds achieved the standard.

- ²²¹ *BESSIP PAD*, p.5.
- ²²² *Ibid.*, p.9; also *idem*, Annex 2, Program Description and Detail on Phase 1 of IDA Support, Component 1.4, p.4.
- ²²³ *BESSIP PAD*, p.9.
- ²²⁴ *PA*, para. 3.95. In the same report it is stated that 'For parents, and in particular poor parents of the mid-1990s, the future benefits that might come from a greater period of schooling must be balanced against the lost opportunity costs of utilizing children in subsistence farming or informal sector activities.' (*Idem*, para. 8.34).
- ²²⁵ Watkins (1999), pp. 170 - 171.
- ²²⁶ There is evidence that some Zambian parents are unwilling rather than unable to pay school fees. They do not do so because the education on offer is of such low quality that they do not see a return on their investment, either in terms of the fees paid or in terms of the loss of income generation to the household when a child goes to school. See Kelly (1998), pp. 25 - 26.
- ²²⁷ *PSHDZ*, pp. 42 - 43.
- ²²⁸ *PA*, para. 10.19.
- ²²⁹ *Ibid.*, para. 3.61.
- ²³⁰ *Ibid.*, para. 3.99.
- ²³¹ *Ibid.*, para. 8.99(d).
- ²³² *Ibid.*, Chapter 10, 'Implementing a Poverty Reduction Action Plan,' p. 211, under (ii) Education.
- ²³³ *PSHDZ*, p.72.
- ²³⁴ Kelly (1998), p.41.
- ²³⁵ *BESSIP PAD*, pp. 5 - 6.
- ²³⁶ Kelly (1999), p.6. The number of Zambian living in extreme poverty in 1996 was calculated to be 5,068,000 (cited in Kelly (1999), using the Central Statistical Office (1997), *The Evolution of Poverty in Zambia*).
- ²³⁷ *BESSIP PAD*, p.9.
- ²³⁸ *Ibid.*, p.12.
- ²³⁹ *Ibid.*, Annex I, 'Objective, Phasing and Triggers for IDA Support,' point 7.
- ²⁴⁰ *BESSIP PAD*, p.20.
- ²⁴¹ *LCMS* (1996), table 7.17.
- ²⁴² The *LCMS* (1996) reveals that in another 11 per cent of cases 'lack of support' was cited as the reason for non-attendance which suggests a financial element. Furthermore, in 2 per cent of cases it was admitted that children were not attending school because they were working.
- ²⁴³ According to the Government, based on *LCMS* and Central Statistical Office data, 550,000 children of primary school age (7 - 13) were not enrolled in school in 1996. See Ministry of Education (1999), *Statement of Education Policy Implementation 1999 - 2001*, para. 7.
- ²⁴⁴ *BESSIP PAD*, Annex 3, 'Program Costs and Financing: Explanatory Note,' component 5.3, p.11.
- ²⁴⁵ *BESSIP PAD*, p.5.
- ²⁴⁶ *Ibid.*, p.9.
- ²⁴⁷ 49 per cent of those aged 12 and over in rural areas are judged to be illiterate compared with 17 per cent of the same cohort in urban areas. See *LCMS* (1996), table 17.14; see also *intra*, fn. 66 above.
- ²⁴⁸ Net primary school attendance rates in 1996 were 81 per cent in urban areas compared with 62 per cent in rural areas. *LCMS* (1996), table 7.8.
- ²⁴⁹ The figures compare those in Grade 1 in 1990 to those in Grade 7 in 1996. See *intra*, fn. 40 above.
- ²⁵⁰ 'Very rural provinces' refers to those off the line-of-rail. The highest concentration of 39 per cent of untrained teachers was in North West Province in 1996. The comparison is with the two most heavily urbanised line-of-rail provinces - Lusaka and the Copperbelt - in which most major Zambian towns and cities are located. The percentage of untrained teachers in the former was 7 per cent and 11 per cent in the latter. See Kelly (1998), Table 7.
- ²⁵¹ The official estimate is 492,000. See *LCMS* (1996), p.12. Taking the age range from 0-18, the number of estimated orphans rises to 670,000.
- ²⁵² *LCMS* (1996), table 2.3. Other estimates suggest a much higher figure: 72 per cent of Zambian households care for one or more orphans. See *The Economist*, 'Orphans of the Virus,' 14 August 1999, p.47.
- ²⁵³ *Idem*.
- ²⁵⁴ Kelly (1998) p.23.
- ²⁵⁵ Cited in *ibid.*, p. 23.
- ²⁵⁶ *ZHDR 1997*, Box 3.2.
- ²⁵⁷ Children of the street and children on the street both included: the latter have a home to go to, the former do not. Data on streetism is from Lungwanwa & Macwan'gi (1996), as cited in Kelly (1998), pp.22 ff..
- ²⁵⁸ Cf. 14 per cent double-orphans in the population at large.
- ²⁵⁹ *The Economist*, 'Orphans of the Virus,' 14 August 1999, p.47.
- ²⁶⁰ Kelly (1998), p.22.
- ²⁶¹ Ministry of Community Development and Social Services (1998), *National Poverty Reduction Strategy Framework* [draft report], p. 9.
- ²⁶² *Ibid.*, '5. Immediate short-term poverty reduction framework,' subsection on Human Resources Development.
- ²⁶³ Kelly (1998), p.23.
- ²⁶⁴ *The Economist*, 'Orphans of the Virus,' 14 August 1999, p.47.
- ²⁶⁵ NGOs supporting community schools include: The Reach Out Development Organisation, The Reformed Church of Zambia, World Vision International, Singlet International, Partners in Education, CARE International, the Zambia Red Cross, Fountain of Hope, Zambia Open Community Schools, Fatima Barefoot Organisation, Livingstone Street Kids Association, the Young Orphans Christian Association, Development Organisation for People's Empowerment and groups of Catholic Sisters. List as cited in Kelly (1998), fn. 17.
- ²⁶⁶ Kelly (1998), p.23.
- ²⁶⁷ *GC 5*, para. 5.
- ²⁶⁸ *Ibid.*, para. 15.
- ²⁶⁹ Specifically on persons with disabilities, see *GC 5*, para. 5; in terms of general disadvantage, see *GC 3*, para. 12.
- ²⁷⁰ ICESCR, article 2(2) as interpreted in *GC 5*, para. 5.
- ²⁷¹ This figure is based on the WHO formula that 10 per cent of a population will have special educational needs. Official statistics significantly underestimate the number of children with disabilities. The 1990 census recorded just 11,000 children with disabilities in the 7 - 13 age range. See Kelly (1998), p.20, for a discussion of other available information on education and disability.
- ²⁷² *GC 5*, para. 9.
- ²⁷³ Kelly (1998), pp.18 - 19.
- ²⁷⁴ 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities,' annexed to General Assembly resolution 48/96 of 20 December 1993. For the Committee's citation of rule 6 on integrated education for children with disabilities, see *GC 5*, para. 35.
- ²⁷⁵ *GC 5*, para. 35.
- ²⁷⁶ Kelly (1998), p.20.
- ²⁷⁷ *GC 1*, para. 3.

²⁷⁸GC 5, para. 13.

²⁷⁹ER 1996, para. 258.

²⁸⁰CEDAW was ratified by Zambia on 21 June 1985.

²⁸¹See, respectively, CEDAW, article 10; CRC, articles 2(1) and 28; ICESCR, articles 2(2) and 13.

²⁸²ICESCR, article 2(2) and article 3 respectively.

²⁸³ER 1997, para. 198.

²⁸⁴Kelly (1998), p.17.

²⁸⁵The encouragement of family support for children in education is known as Familypac.

²⁸⁶BESSIP PAD, Annex 2, Program Description and Detail on Phase 1 of IDA Support, Component 1.3, p.3.

²⁸⁷Idem; also BESSIP PAD, p.9.

²⁸⁸BESSIP PAD, Annex 3, Program Costs and Financing: Explanatory Note, Component 5, p.11.

²⁸⁹The total number of children between 7 - 13 is estimated to be 1.84 million in 1996. It is assumed here that half are girls.

²⁹⁰Girls account for 50 per cent of Grade 1-4 enrolments and 49.4 per cent Grades 1 - 7 enrolments in both the Copperbelt and Lusaka Provinces in 1996. See Kelly (1998), table 8.

²⁹¹Across Grades 1 - 7, girls account for 48.8 per cent and 48.5 per cent of enrolments in Central and Southern Provinces respectively (*idem*).

²⁹²The percentage of girls enrolled in Grades 1 - 7 are: Luapula 45.9 per cent; Northern 44.6 per cent; North Western 45.8 per cent; and Eastern 46.4 per cent (*idem*).

²⁹³The percentage of girls enrolled in Grade 7 are: Luapula 39.9 per cent; Northern 39.2 per cent; North Western 40.5 per cent; and Eastern 38.1 per cent (*idem*).

²⁹⁴Kelly (1998), pp.17 - 18.

²⁹⁵Idem.

²⁹⁶Kelly (1998), table 1. The actual survival rate for girls at Grade 7 is 50.8 per cent.

²⁹⁷SACMEQ Report 1997, tables 6.2 and 6.3, cited in Kelly (1998), p.12.

²⁹⁸LCMS (1996), table 7.1

²⁹⁹Ibid., table 7.8.

³⁰⁰Definitions given in *ibid.*, para. 7.2.

³⁰¹ER 1997, paras. 194 - 195.

³⁰²For example, in 1996, the progression rate for girls was 37.5 per cent.

³⁰³Net school attendance across both sexes at Grades 8 - 12 was 34 per cent in urban areas compared to just 11 per cent in rural areas. The net secondary school attendance rate for girls and boys in rural areas was identical, i.e., 11 per cent.

³⁰⁴In general, see GC 11, paras. 2 and 4 on the importance of the right to education as an economic, social, cultural, civil and political right and its interdependence with many other rights.

³⁰⁵The 1996 IMR for infants born to mothers with no education was 132.9 per thousand live births compared with an IMR of 110.2 per thousand for those born to mothers with at least primary education. See LCMS (1996), table 7.3.

³⁰⁶Idem. While the correlation between maternal education and infant and child mortality is high, other interrelated factors are, of course, involved. For example, higher socio-economic status is associated with lower infant and child mortality while, at the same time, the educational level attained by women is itself related to whether they come from a poor or non-poor background.

³⁰⁷PSHDZ, p.47, 'The low educational profile of the girl child.'

³⁰⁸ZDHS (1996), p.14. For the age group 16 - 20, 42.4 per cent of males are enrolled in school compared with 23.3 per cent females. See table 2.6.

³⁰⁹Ibid., table 3.10.

³¹⁰The percentage of teenage girls who have begun child-bearing in 1996 was 48.1 per cent for those with no education, 33.1 per cent for those with primary education and 21.1 per cent of those with secondary or higher education (*idem*). Furthermore, 17 per cent of Zambian women with no education surveyed in 1996 used a contraceptive compared with 23 per cent of women with primary education, 38 per cent of women with secondary education and 55 per cent of women with higher education. See ZDHS (1996), figure 4.3.

³¹¹PA, para. 6.35.

³¹²ER 1997, para. 249.

³¹³LCMS (1996), table 19.9.

³¹⁴PA, para. 3.61; also para. 10.18.

³¹⁵PSHDZ, p.47, 'The low educational profile of the girl child.'

³¹⁶Ibid., pp.47 - 48.

III. Social Welfare

Introduction

It is pertinent to reiterate the extent of poverty in Zambia before examining the issue of social security and welfare assistance. In 1996, it was estimated that 69 per cent or almost 6.6 million Zambians were poor. This includes 5.1 million or 53 per cent of the population living in extreme poverty. In comparison, 70 per cent of the population lived in poverty in 1991 and 74 per cent did so in 1993. In fact, due to population growth, more Zambians are poor today than at any time during the decade. While a decrease in the percentage of those living in extreme poverty was recorded between 1993 and 1996, the continued economic recession is likely to have seen a reversal in this trend.¹ Indeed, latest estimates suggest a rise in poverty to affect 72 per cent of the population.²

The 1998 budget address is recognised as constituting the first public admission by the MMD Government that sustainable development was impossible while poverty levels were so high.³ The target of reducing poverty levels to less than 50 per cent by the year 2004 was set.⁴ The Government drafted a National Poverty Reduction Strategy Framework in early 1998 and has since adopted the National Poverty Reduction Action Plan 1999 - 2000. A national Poverty Reduction Unit has been established within the Ministry of Community Development and Social Services to coordinate the implementation of this plan.

The provision of welfare assistance is one subcomponent of the support envisaged under the action plan which spans development in agriculture, infrastructure, human resources, micro-enterprises and the informal sector, together with improved monitoring and evaluation. However, the plan must be brought to fruition before it can be characterised as a progressive step towards the alleviation of poverty in Zambia and the realisation of economic and social rights. As it is, weaknesses in existing programmes continue to render them ineffective.⁵ This applies to the Public Welfare Assistance Scheme and the National Social Safety Net which are reviewed here in the context of the right to social security.

The analysis which follows is structured across four subsections. A preliminary concern is to map out the right to social security under the Covenant. In a second subsection, a brief overview is provided of the public social welfare system in Zambia. In the context of retrenchment as a result of economic reform, a third subsection details the social assistance available to retrenched. A final subsection considers the extent of action by the World Bank to promote a social safety net in mitigation of the hardship caused by the structural adjustment programme.

A. The right to social security

General provision for social security is made under article 9 of the Covenant:

‘The States parties to the present Covenant recognize the right of everyone to social security, including social insurance.’

The Committee has not issued a general comment on article 9. Nevertheless, it is possible to discern some of the central elements of a right to social security. The expectation arising from a State party’s obligations under the Covenant is for a formal, public social security scheme to be in operation.⁶ The range of social security envisaged under article 9 includes medical care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors’ benefits, employment injury benefits, unemployment benefits and family benefits.⁷ Moreover, it is apparent that the Committee recognises a broad right to social security under the Covenant beyond a system of social insurance available to those with a record of contributions. The universality of the rights in the Covenant is unequivocal. In respect of the right to social security, this is underlined by the Committee’s request for information on the extent to which any groups do not enjoy the right to social security at all or do so to a significantly lesser degree than the majority of the population.⁸ A Government is required to indicate the measures it has taken to realise the right for such groups, to include the adoption of timetables and benchmarks.⁹ The plight of the vulnerable and disadvantaged is singled out for special attention by the Committee.¹⁰

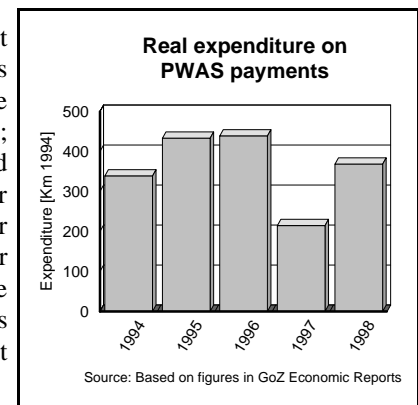
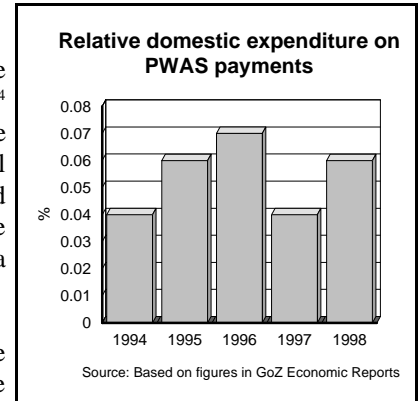
Furthermore, the Committee recognises the relevancy of a number of ILO conventions on social security to the realisation of article 9.¹¹ While Zambia has not ratified the conventions referred to - and this, in itself, must be a matter of concern and regret - this does not preclude their use in interpreting the right to social security under the Covenant.¹²

B. The Public Welfare Assistance Scheme

The Public Welfare Assistance Scheme, run by the Ministry of Community Development and Social Services, constitutes the State social safety net in Zambia. Its coverage is extremely limited and meagre resources are concentrated on the poorest and most vulnerable: orphans, the disabled, the elderly and unsupported children, women and dependants. Component programmes of the PWAS include the Health Care Cost Scheme, the school bursaries scheme and the Nutrition and Food National Social Safety Council. Most payments from the scheme are for food, shelter, medical costs and educational fees.¹³

The Covenant requires a State party to use maximum available resources to achieve progressively the full realisation of the rights recognised under the Covenant.¹⁴ Furthermore, if essential minimum levels of each right are to be realised by the vulnerable and disadvantaged in Zambia, as required by the Covenant, then social security for such groups is essential.¹⁵ The existence of user fees for health and education in Zambia reinforces the obligation on the Government to provide assistance to meet these costs to the maximum of its available resources if prima facie violations of the Covenant are to be avoided.

When juxtaposed to the Government's obligations, the level of funding for the PWAS is grossly inadequate in both relative and absolute terms. In every year since 1994, payments made from the PWAS have never amounted to even 0.1 per cent of domestic expenditure. Spending in 1997 under the PWAS on assistance - support services and the health and education schemes - amounted to K517 million.¹⁶ This represents a fall in actual expenditure on provision of forty per cent over the previous year. In 1998, the budget for the PWAS was doubled to K1.1 billion; however, in real terms this failed to raise spending even to the levels of 1995 and 1996. The amount spent in 1998 was the equivalent to just K217 or 13 US cents for each of the five million Zambians living in extreme poverty.¹⁷ The actual number assisted under the scheme during the year was 128,075 persons.¹⁸ Hence only 2.5 per cent of those classified as extremely poor were assisted. Payments on an average annual per capita basis were K8,800 or \$4.75.¹⁹ To add a final perspective to this level of funding, tax concessions to the mining sector announced in the 1998 budget were worth K18 billion or sixteen times the entire budget for the PWAS.



In the case of Zambia, resources targeted towards vulnerable groups to mitigate the effects of structural adjustment have been characterised by the UN ACC Task Force on Full Employment and Sustainable Livelihoods as 'far too meagre'.²⁰

Safety nets for vulnerable groups facing severe economic hardship can be improved and a comprehensive social security system should gradually be extended. Years of hardship and poverty have increased destitution. The worst affected are the disabled, unsupported old people, orphans and neglected children, single-headed households and the homeless. An increasing number of households are headed by children, following the early death of parents through HIV/AIDS. The effectiveness of the Public Welfare Assistance Scheme (PWAS) has been very limited.²¹

Administration of the PWAS was decentralised in 1996 in an attempt to improve targeting. Ward Welfare Assistance Committees at the local level are responsible for identifying the most disadvantaged and vulnerable persons in a community and making a recommendation for their support to the appropriate District Welfare Assistance Committee.²² Furthermore, the eligibility requirements for assistance have recently been made more stringent to further focus who receives payment. The new eligibility criteria and operational guidelines are to be first tested in a pilot scheme. It will take four years to launch the revamped PWAS.²³ Although the emphasis upon the delivery of assistance at the community level is further reinforced, a Public Welfare Assistance Management Unit has been established in the Ministry of Community Development and Social Services to co-ordinate implementation of the PWAS.

This notwithstanding, policy measures adopted by the Government in respect of the PWAS do not constitute active steps for the progressive achievement of the right to social security for the 53 per cent of the population living in extreme poverty.²⁴ Instead, the attempt to focus welfare on an ever smaller subset of recipients when 5,068,000 Zambians are already classed as extremely poor is symptomatic of the utterly inadequate level of spending. While the Committee has determined that the most vulnerable must be protected by the use of targeted programmes, the underlying requirement which must be fulfilled is the use of maximum available resources.²⁵

Arising out of the obligation to take steps, the Zambian Government is most certainly required to ensure the measures it adopts are deliberate, concrete and targeted towards the realisation of the right to social security.²⁶ Moreover, the requirement of progressive realisation ‘imposes an obligation to move as expeditiously and effectively as possible’ towards the full achievement of the right. In stark contrast, a number of organisations have been highly critical of the way in which the welfare and social safety net systems in Zambia are run. In its annual report on Zambia, Social Watch was of the view that ‘[a]bove all, the capacity of the Department of Community Development and Social Services, which is charged with the responsibility of assisting persons who have been negatively affected by structural adjustment, is almost non-existent, apart from being a drain on the same meagre financial resources that are set aside for the poor.’²⁷ The World Bank itself has described the PWAS as suffering from design weaknesses, limited administrative capacity and low budget allocations.²⁸

C. Social assistance aimed at retrenched

The Committee itself recognises unemployment benefits as one category of social security under article 9.²⁹ As has been noted, Zambia has not ratified those ILO Conventions referred to in the Committee’s reporting guideline on article 9. However, it has ratified the ILO Termination of Employment Convention 1982 (No.158). This entitles a redundant worker to either terminal benefits or social security or both in combination.³⁰ In the case of Zambia, where legal entitlements to terminal benefits are not honoured in practice, the obligation on the State to provide social security to retrenched is unequivocal. Furthermore, and this is most pertinent in a country such as Zambia where the informal economy predominates, all retrenched have a right alongside other members of society to social assistance when they are vulnerable or disadvantaged.

As was noted in Section 2(II), a National Social Safety Net has been established in Zambia ‘to co-ordinate safety net programmes for retrenched/displaced workers’. It is important to recognise that the focus is upon formal sector unemployment and the scheme does not constitute a program of social assistance for all in Zambian society.³¹ To recap, the National Social Safety Net was set up within the Ministry of Labour and Social Security in 1993. It is managed by a Co-ordinating Committee which allows all the relevant bodies to work together. Five schemes, concerned with providing information on the social impact of privatisation, retraining, business development, resettlement, and welfare are run by the relevant Ministry or agency, but co-ordinated under the National Social Safety Net.³²

The one component of the scheme concerned with social security *per se* is the Public Welfare Assistance Scheme. Hence there are no dedicated measures or additional resources under the safety net to meet the welfare needs of retrenched. On the contrary, the 80,000 redundancies in the formal sector since 1992 have increased the demands on the PWAS as former employees and their families become impoverished. However, while many retrenched will be living in extreme poverty, many of them will not be destitute and will not therefore qualify for assistance.

Overall, the National Social Safety Net Co-ordinating Committee has itself been sharply criticised for its complete lack of urgency, for spending most of its funds on its own facilities and staff, and for an almost total absence of concrete results.³³ Despite being set up in 1993, it took four years before it even produced a policy framework in 1997. Funding from the United Nations Development Programme agreed in 1995 was spent on capacity building, staff and operational costs. This source of funding was due to end in 1998. A direct grant of \$292,000 from the World Bank was made through the Institutional Development Fund in 1996, bringing the total level of committed funds to \$500,000.³⁴ This money too was spent largely on staff training and equipment. Hence negligible resources were used to deliver direct measures to assist impoverished retrenched. Given that the Government funds only the operational costs of the Safety Net to the tune of K200 million, that current donor commitments are uncertain against this background of mismanagement and inaction, it is difficult to see how the National Social Safety Net can have any impact on solving the social problems caused by retrenchment.

D. The failure by the World Bank to support social welfare measures in mitigation of the hardship caused by adjustment

Information is sought from State parties to the Covenant about the role of international assistance in the full realisation of the right to social security.³⁵ Article 22 provides a basis upon which the World Bank is required to account for the advisability or otherwise of international assistance measures.

The influence of Bank action upon redundancy compensation has already been documented. The focus in this subsection is squarely upon Bank action on social assistance in mitigation of retrenchment *per se* and the wider hardship caused by structural adjustment. The Bank has also used adjustment lending to underpin reform of basic pensions and social security institutions: this action is not reviewed.³⁶

The Economic Recovery Credit (FY 1991) did little to influence pro-poor social policies, despite the fact that protecting vulnerable groups was specifically mentioned as a loan objective. The Government was required to draw up a schedule for implementation of a Social Action Program which the Bank has subsequently acknowledged suffered from poor implementation capacity and could not, in any case, deal with all the support required as a result of the adjustment program.³⁷

The two Privatisation and Industrial Reform Credits were orientated towards parastatal restructuring, privatisation and public sector reform. They have therefore been intrinsically linked to retrenchment. The Bank concedes that '[o]ne of the critical aspects of privatization and other reforms envisaged under PIRC is the effect the program will have initially on vulnerable groups'³⁸ Yet the limited social actions specified under the credits have proved totally ineffective in alleviating poverty and hardship among those who have lost their jobs.

PIRC I sought the development of an improved social program.³⁹ The Government agreed under PIRC I to formulate and introduce a social action plan and strengthen the national social safety net to support those most adversely affected by reform, including those made redundant as a result of rationalisation of the civil service and privatisation.⁴⁰ This has proved entirely inadequate. First, the planned safety net was to target only retrenchees as a subset of those adversely affected by economic reform. Second, requiring a plan of action does not guarantee the actual delivery and implementation of social support. In the context of the austerity measures simultaneously required by the Bank, the financing of an adequate safety net was always an unlikely prospect. In the event, it is unsurprising that social support has not been successfully delivered, even to the limited extent envisaged.

The Bank did earmark a small share of privatisation technical assistance to fund consultants to assist in the formulation of the social action plan and retrenchment safety net.⁴¹ Out of a total budget of \$11m, less than 4 per cent of funds or \$0.4 million were earmarked for the social action component of the technical assistance on offer.⁴² The bulk of funds under PIRTA were focused upon the hiring of long-term advisers and short-term specialists to support privatisation. The long-term posts funded through PIRTA do not include a social adviser while the hiring of short-term expertise is limited to the sale and negotiation process.⁴³ The Bank spells out terms of reference for each post, but, beyond the inclusion of the monitoring and coordination of the social action plan within the remit of the privatisation adviser at the Ministry of Finance, an explicit consideration of social issues is rarely specified.⁴⁴ In relation to ensuring that privatisation accords with the protection of economic and social rights, this must represent a significant omission. It should also be noted that the formulation of a plan is of no use to those affected by redundancy unless it results in the actual delivery of a program of support. The sad reality is the total inadequacy of the National Social Safety Net which has resulted.

The remit of PIRC II in respect of social assistance was even more circumscribed. It required the completion of a study on the impact of privatisation by ZPA and the exploration of ways to design and fund redundancy compensation packages.⁴⁵ In respect of the latter, the inadequacy and inequity of the resulting system of funding and allocating benefits and entitlements has already been discussed in Section 2(II). Moreover, the failure to deliver satisfactory redundancy compensation has heightened the need for an effective social safety net. Of distinctly marginal significance is the agreement with the Government to conduct an assessment of the impact of privatisation upon parastatal managers, shareholders, employees, financial institutions and the general public.⁴⁶ In sum, both initiatives required under PIRC II, by either concealing the negative repercussions of privatisation or by engineering redundancy payments to deprive retrenchees of cash compensation, have proved to be counterproductive in terms of human rights.

One condition of second tranche release of ESAC II was the development of policy recommendations on NGO participation in the delivery of social services.⁴⁷ In addition to specifying overall levels of social spending, loan conditions required the protection of expenditure on certain subcomponents including the PWAS.⁴⁸ This was fixed in absolute rather than relative terms, although the sum involved was just K760 million.⁴⁹

In its *Letter of Development Policy* appended to ESAC II, the Government agreed to introduce targeting guidelines and implement a policy to deliver help through the Public Welfare Assistance Scheme to enable very poor families to pay school and medical fees.⁵⁰ The implementation of policies developed by the Ministries of Health and Education were reliant on guidelines being drawn up by the Ministry of Community Development and Social Services under the PWAS, yet the latter had not been delivered. ESAC II was meant to foster the completion of work on a vulnerability profile in 1996 as the basis for these guidelines and implementation mechanisms.⁵¹ However, this was not made the subject of a specific loan condition. The vulnerability profile itself was to be designed to 'simplify and improve the identification and targeting of households qualifying under the Public Welfare Assistance Scheme for health and education payment exemptions in particular.'⁵² In other terms, given that no extra resources were to be allocated to the PWAS, this equates as much to the exclusion of the extremely poor as it does to channelling resources to the ultra poor. As it was, already paltry expenditure on the PWAS during 1997 was decimated and the agreed reforms did not take place.

Under the PSREPC (FY) there is a renewed undertaking to initiate implementation of the revamped PWAS, although clearly this should already have occurred under ESAC II.⁵³ Once more, this is not made the subject of a specific loan agreement. The Government has agreed to maintain non-personnel spending in priority areas concerned with, *inter alia*, social safety nets and welfare assistance.⁵⁴ The Bank reverts to the use of relative protection 'to allow Government to adjust the absolute expenditures depending on fluctuations in revenues and domestic expenditures...' Fewer priority areas are monitored than before, although one of these is the PWAS.⁵⁵ If the specified domestic expenditure is realised, the amount spent on the PWAS in 1999 should be K2.8 billion.

Notes

¹ The percentage living in extreme poverty in 1991 was 58.2 per cent; in 1993, 60.6 per cent; and in 1996, 53.2 per cent.

² Cited in Social Watch (1999), *Report on Zambia*.

³ 'This budget announcement is highly significant because it is first time that the present government publicly admitted the existence of high poverty levels in the country and committed itself to addressing the problem.' (Ibid.).

⁴ R. Penza (then Finance Minister), *Budget Address*, 30 January 1998, para. 85. In general on the issue of poverty reduction, see paras. 82 ff and paras. 150 ff.

⁵ While welcoming the national programme against poverty, Social Watch is nevertheless of the view that it is a reflection of the past failures of discrete measures.

⁶ It is specified in the *Reporting Guidelines* that a State party provides information on, *inter alia*, the main features of the social security scheme on offer, its comprehensiveness, and the nature and level of benefits and the percentage of GDP/public expenditure on social security (respectively, *Reporting Guidelines*, Annex, Section B, Article 9 of the Covenant, paras. 3 and 4. See also para. 5 which asks for details of private schemes *in addition* to the provision made by the State).

⁷ Ibid., para. 2.

⁸ Ibid., para. 6.

⁹ Ibid., para. 6(a) - (b).

¹⁰ Ibid., para. 6(c).

¹¹ Respectively, ILO Social Security (Minimum Standards) Convention (No. 102), 1952 and other relevant subsequent ILO Conventions listed by the Committee: Employment Injury Benefits Convention (No. 121), 1964; Invalidity, Old-Age and Survivors' Benefits Convention (No. 128), 1967; Medical Care and Sickness Benefits Convention (No. 130), 1969; Employment Promotion and Protection Against Unemployment Convention (No. 168), 1988. See *Reporting Guidelines*, Annex, Section B, Article 9 of the Covenant, para. 1.

¹² The central ILO instrument cited by the Committee is ILO Social Security (Minimum Standards) Convention (No. 102), 1952. The argument is one of substitution: Zambia is a State party to the Covenant; the Committee recognises the relevancy of ILO Convention 102 to article 9; hence to fulfil its obligations in respect of the right to social security, Zambian law and policy must conform with the Committee's interpretation of article 9 and therefore the normative content of the Social Security Convention.

¹³ *ER 1997*, para. 228.

¹⁴ ICESCR, article 2(1).

¹⁵ See *GC 3*, para. 10.

¹⁶ The total expenditure on the PWAS in 1997 was K683 million to cover administration and the core programmes. See *ER 1997*, para. 228.

¹⁷ Kelly (1999), p.6. The number of Zambians living in extreme poverty in 1996 was calculated to be 5,068,000 (cited in Kelly (1999) using the Central Statistical Office (1997) *The Evolution of Poverty in Zambia*).

¹⁸ *ER 1998*, p.89.

¹⁹ Kelly (1999), p.6.

²⁰ UN ACC Task Force on Full Employment and Sustainable Livelihoods (1997), *Synthesis Report*, Chapter 3 Policies for full employment, Section 3.3.5 Targeted programmes for special groups and gender discrimination and child labour.

²¹ Ibid., Chapter 2 Country experience and policies, Section 2.2.1 Targeted programmes for vulnerable groups.

²² *ER 1996*, para. 249.

²³ *PSREPC R&R*, para. 30.

²⁴ The percentage is based on estimates of poverty made in 1996. See Central Statistical Office (1997) *Evolution of Poverty in Zambia*.

²⁵ See *GC 3*, especially paras. 10 and 12.

²⁶ *GC 3*, para. 2.

²⁷ Social Watch (1998), *Report on Zambia*.

²⁸ *PSREPC R&R*, para. 30.

²⁹ See *intra*, fn. 6 and fn. 7.

³⁰ ILO Termination of Employment Convention (No. 158), 1982, article 12 (1)(a) - (c).

³¹ NSSNCC Secretariat (undated), *The National Social Safety Net: Coordinating Retrenchment Programmes*.

³² The Social Impact component is run by the Social Impact Department at the Zambian Privatisation Agency; the Future Search graduate training programme is run by the Public Service Management Division; the Small Business Development Programme is managed by the Ministry of Commerce, Trade and Industry; and the Land Resettlement Programme is operated by the Department of Resettlement in the Office of the Vice President.

³³ 'The National Social Safety Net Committee is itself a disgrace, and if we had any shame, in the face of the tens of thousands who must unavoidably lose their jobs, it would be a national embarrassment.' (Bull (1994b), 'Where are the Government's policies?').

³⁴ Consideration of using an IDF grant to support the Department of Community Development was announced in the *CAS* (1996), para. 43.

³⁵ *Reporting Guidelines*, Annex, Section B, Article 9 of the Covenant, para. 8.

³⁶ Under the Bank's ERIP credit, one condition of second tranche release is the drafting and submission to Parliament of legislation for a new basic social security pension scheme and independent social security institutions. The table of key indicators for project implementation records completion of all relevant actions in this area, and the passing of a new Social Security Act by the Zambian Parliament. (See *ERIP ICR*, para. 9; also *idem* Part II, Statistical tables, tables 5 and 6).

³⁷ *ERP PCR*, paras. 43 and 48.

³⁸ *PIRTA M&R*, Annex I, para. 11.

³⁹ *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table H; also *PIRC & ESAC PAR*, para. 2.14.

⁴⁰ *Idem*.

⁴¹ *PIRTA M&R*, Annex I, para. 11.

⁴² *Ibid.*, Schedule A. Of the total cost, IDA funds amount to \$10m.

⁴³ *Ibid.*, Annex I, para. 7.

⁴⁴ See the terms of reference of the adviser to the Economic Analysis and Reports Unit at the Ministry of Finance, *PIRTA M&R*, Annex I C(iv). A paragraph within the memorandum recommending the proposed technical assistance credit to the Bank board refers to the hiring of consultant services to develop the social action plan and the design of materials for 'counselling guidance' and 'reorientation' associated with the redundancy program (*PIRTA M&R*, para. 11). Otherwise, any consideration of social issues is entirely contingent. Within the terms of reference for the Corporate Finance/Merchant Banker, the main requirement with direct social import is that recommendations for dealing with redundancy and pension liability are drawn-up. The Accounting and Valuation Specialist, in developing methodologies to evaluate bids, should examine the extent to which commitments by the buyer to maintain employment levels should be weighted relative to other factors.

⁴⁵ *PIRC & ESAC PAR*, paras .2.15 and 2.19.

⁴⁶ *Ibid.*, para. 2.15.

⁴⁷ *ESAC II R&R*, para. 51; also para. 57 (i).

⁴⁸ See *ibid.*, Annex J, 'Sub-sectoral budget allocation,' p. 75.

⁴⁹ See *ibid.*, Annex J, 'Social sector spending in 1996,' p. 73.

⁵⁰ See *ibid.*, Annex J, Letter of Development Policy, para. 73; also *ESAC II R&R*, para. 52.

⁵¹ *Idem*.

⁵² *ESAC II R&R*, Annex J, Letter of Development Policy, para. 73.

⁵³ *PSREPC R&R*, para. 49.

⁵⁴ *Ibid.*, Annex I, Letter of Development Policy, para. 42 and Annex A, 'Social spending in 1999,' p.56.

⁵⁵ *PSREPC R&R*, para. 51; also *idem*, Annex I, Letter of Development Policy, para. 42 and Annex A, 'Social spending in 1999,' p.56.

IV. Health

Introduction

The analysis which follows is structured over three main subsections. The first (A) provides an overview of health sector reform. A second subsection (B) considers evidence which suggests an increased denial of the right to health in Zambia. It encompasses an examination of expenditure and the use of maximum available resources; access of the poor to health care and the impact of user fees; prima facie denial of minimum standards of primary health care; and progress or regress in the control of communicable diseases. A final subsection (C) offers a limited review of the impact of AIDS in Zambia: the virus has particularly devastating consequences for the realisation of economic and social rights.

A. Reform of the health sector

Introduction: the National Policy on Health

Three system-wide biases characterised health service delivery in Zambia during the 1970s and 1980s.¹ First, there was a problem of over-sophistication. Too much money was spent on curative health - that is, doctors treating illnesses that had already occurred in high-cost clinics and hospitals - rather than on primary health care measures to help prevent many diseases and conditions from developing in the first place. Second, there was over-verticalisation and health interventions were organised in an inflexible way around donor-driven projects to fight specific diseases rather than to meet the health needs of the majority. Third, there was over-centralisation of decision-making and budgetary power in Lusaka, resulting in the isolation of the Ministry of Health from the network of health facilities around the country. Rural health provision was neglected in comparison to urban areas.² At the beginning of the 1990s, the resources which were being devoted to health care had declined significantly. At the same time, a collapse in institutional capacity and inefficiency was resulting in a lower standard of service than was to be expected for the given level of spending.³ The 1993 *World Development Report* showed Zambia to be in a group of countries whose life expectancy was five years lower than might have been expected for given levels of income and education.

The starting point for reform of the health sector was the completion in 1991 of the Government's National Health Policies and Strategies. The main objective of this policy document was 'to provide Zambians with equity of access to cost-effective, quality health care as close to the family as possible.'⁴ The intention was to raise the budget allocation to the health sector; to reassign resources internally to priority areas, to include primary health care; and to overcome institutional weaknesses and capacity constraints. In order to implement the National Health Policy, the Government produced a detailed National Strategic Health Plan (NSHP) in December 1993 to act as a blueprint for reform in the period 1995 - 1999.⁵ The most important reforms outlined were, first, the decentralisation of health care through District Health Boards with increasing devolution of responsibility for the planning, budgeting and management of local services. Second, the NSHP specified the improved coordination of donor and Government resources under a Health Sector Investment Program. Third, an essential packages of health care services was defined and costed. The fourth main area of reform concerned the opening up of the health sector to allow the participation of private providers. Finally, the intention to introduce user fees to share the costs of provision was given substance. The first three reforms are given further, immediate consideration. The issue of charges, which is highly pertinent to any discussion of the realisation of the right to health for those living in poverty, is discussed in due course.

a. Decentralisation

The way in which health care is organised in Zambia has been fundamentally altered and devolution of responsibility for the planning, budgeting and management of the delivery of health care has been achieved.⁶ District Health Boards were set up between 1994 and July 1996 and sixty-four were operational by the end of that year.⁷ A Central Board of Health (CBH) was established in November 1996.⁸

The CBH has taken over the operational functions of the Ministry of Health which now concentrates on policy formulation and the mobilisation of resources. The main task of the CBH is to contract districts and hospitals to deliver

health care. It reviews, approves, monitors and evaluates health plans which are developed at the local level by the District Health Boards and Hospital Management Boards.⁹

Unusually for Africa, Zambia has followed a model of reform which will eventually result in a split between the hospitals and clinics which provide health care and the purchasers of such services, that is the District Health Boards.¹⁰ Guided by the CBH, each DHB gradually takes over the management of all district resources; it makes decisions on the purchase of services from other health care providers in the district; and it purchases support services such as drugs, supplies and training from the centre. This autonomy to plan and use resources is contingent on the production of district plans and the required level of management and accounting capability.¹¹ District Health Management Teams implement programmes at the local level, under the ultimate control of the District Health Boards.¹²

The DHBs ought to have a better local knowledge when it comes to identifying needs and matching resource use accordingly.¹³ However, studies have shown considerable variation from region to region in the degree to which stakeholders are represented on the boards.¹⁴ On occasion, appointments from the centre have eroded local control and exposed the Boards to excessive political influence.¹⁵

A central tenet of reform has been to decentralise control of the budget.¹⁶ An increasing proportion of the health budget is allocated directly from the Ministry of Finance to each district or hospital board on the basis of each locally devised plan, as approved by the Ministry of Health.¹⁷ District allocations rose from 41.9 per cent in 1994 to 48.5 per cent in 1996.¹⁸ The increasing emphasis on the use of block grants allows the DHBs to maximise their autonomy in deciding how resources are spent. Decentralisation of budgeting to the district level ought to redistribute resources from urban areas to rural areas and simultaneously transfer funds from tertiary to primary care.¹⁹ This is because tertiary hospitals - including the major University Teaching Hospital in Lusaka - are located in a handful of Zambian cities whereas first referral hospitals, health clinics and health posts are more evenly distributed across the districts.²⁰

All districts have received direct funding to meet the recurrent costs of providing health services since late 1993, in advance of formal restructuring. It was not until September 1995 that the National Health Services Act was enacted to provide a legal framework for the establishment of the Central Board of Health, District Health Boards (DHBs) and Hospital Management Boards. The delay in passing the Act has created problems in this regard. In advance of legal recognition of the District Health Boards under the Act, the District Health Management Teams were not only formed first in 1993, but have also signed contracts for the receipt of decentralised funding in the interim. This has given them de facto control over district expenditure and leaves the relationship between the two bodies unclear.²¹

b. The integration of donor resources under the National Strategic Health Plan

The National Strategic Health Plan acts as the basis for coordinating donor action on health and ensuring that it integrates with Government policy. In the past, donors have tended to pump money into individual, piecemeal projects. The NSHP is updated annually by the Government in consultation with all partners, including the donors. The ultimate objective is to fully integrate donor and domestic resources into a single programme budget under the Ministry of Health out of which all recurrent and capital costs for the health sector are met.²² This would mark the end of individual donor health projects. Instead, all pooled funds would be used to deliver mutually agreed district health plans to provide the identified package of essential health services to all Zambians.

This vision remains to be achieved and current arrangements represent a halfway house. On the one hand, both bilateral and multilateral donors continue to fund specific projects and initiatives through distinct budget lines and thereby maintain control over their implementation. However, projects are now developed within the context of the NSHP.²³ On the other hand, certain donors are pooling resources in a common basket operated by the Ministry of Health out of which the District Health Boards and District Health Management Teams are funded.²⁴ Initial contributions have been low because of a lack of confidence in the degree of financial control and accountability within government.²⁵

The Bank approved its Health Sector Support Project in 1994 to dovetail with the NSHP. The total cost of the latter was estimated to total US\$537 million over the duration of the program.²⁶ The Bank's share of funding amounts to \$56 million, about ten per cent of the total, spread over six years from 1995 to 2000.²⁷ The Bank acts as a lender of last resort to finance elements of reform not covered by the Government or other donors.²⁸ Most Bank finance has been used for investment program support, that is to rehabilitate basic infrastructure and to provide drugs and other medical supplies.²⁹

Other multilateral donors - the European Community, UNICEF, WHO and UNFPA - have committed or earmarked a further \$34 million over a similar period while bilateral donors have either pledged or provided in the region of \$150 million between 1994 and 1999. According to the original estimates, the Government itself was to have provided

finance equivalent to US\$340 from its annual budget, representing around sixty per cent of the total program cost.³⁰ The MMD's record on health spending is examined in greater detail below. In 1997, total donor support for the health program was worth \$50 million which was matched by a similar level of Government expenditure.

c. The essential health care package

At the heart of health reform is the need to make the most effective use of limited resources by defining cost-effective, essential health care which is to be made available to all Zambians. Services falling outside of these parameters will not be publicly funded.³¹ Defining a package of health care not only requires detailing what inputs of trained staff, drugs, equipment and infrastructure are necessary for its delivery, but also demands that constraints imposed by resources and affordability are recognised.³² The Zambian Government has therefore assumed responsibility for financing the services that are public goods, such as chlorination of drinking water or health education, or those with positive externalities. The national package focuses on 'information, education and communication' on matters such as family planning, nutrition, AIDS, and hygiene; and upon support for some environmental health measures, for example, vector control, water supply, sanitation.³³ This national definition will provide a standard by which to develop and measure the proposed activities in the district health plans.

The package of essential health care services was finally identified and costed by Government in 1996.³⁴ The strengthening of primary health care is considered to be of key importance. A Basic Health Programme has been developed to be administered through the District Health Boards. A major component of this is the planning, implementation, management and monitoring of a Primary Health Care package. The aim is to tackle health problems at the household and community levels by focusing on the needs of vulnerable groups, such as those living in rural or peri-urban areas. An emphasis is placed upon preventive measures focusing on maternal and child care, family planning, nutrition, the control of communicable diseases, including the prevention of AIDS, the use of clean water, good hygiene, and sanitation.³⁵

The health centre is the key link for the delivery of primary health care services to the household.³⁶ It is to offer a package of services to include immunizations for young children, health education, and other outreach activities to support community health. Pre- and postnatal care for mothers and children, family planning, and nutritional rehabilitation are to be delivered through health centres which are also to play a role in the treatment of chronic illnesses, such as tuberculosis, respiratory infections, sexually transmitted diseases and AIDS.³⁷ There is an onus on the integration of services.³⁸

B. Evidence of the increased denial of the right to health

Introduction

'The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' [Article 12 (1)]

Reform of the health sector exhibits many elements that appear to be compatible with progressive realisation of the right to health: a recognition of the need for increased financing of the sector; an emphasis on primary care of benefit to the majority of poor people and vulnerable groups such as mothers and children; and an attempt to improve the level of coordination between international donors to advance their cooperation with the Government over health provision. While the caveat remains that the Committee does not favour one administrative or political system over another for the implementation of rights, decentralisation of budgetary control and decision-making, by allowing for improved local level participation, ought to result in better-targeted health care.

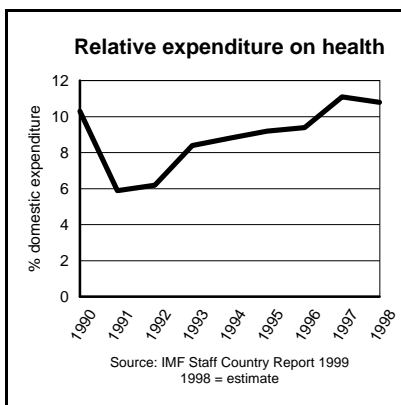
However, while many of the policies designed to bring about reform of the health sector have been broadly welcomed, the delivery of health care in Zambia has yet to improve significantly.³⁹ Now that the bulk of administrative reforms have been completed, the expectation is that there should be tangible improvements in health care. The World Bank warned at the outset that there was 'a risk that implementation of the Strategic Plan will be stalled on process issues, with little positive impact on the health care services nor for the targeted beneficiaries.'⁴⁰ Some donors are pressing for the use of indicators to monitor this impact, arguing that otherwise the reforms appear as an end in themselves.⁴¹

The reality of poor and declining health in Zambia is shocking. To cite one indicator, life expectancy in Zambia was 43 years in 1969, then 51 years in 1980, but has since fallen back to 45 years and 6 months in 1995.⁴² In comparison, average life expectancy in sub-Saharan Africa in 1995 was over 51 years.⁴³ It is estimated that the average life expectancy for a Zambian in 1998 had fallen to just 40 years and six months.⁴⁴

Juxtaposed to reform of the health sector are a number of other indicators which record a stark decline in the realisation of the right to health in Zambia. The focus here will be on the Zambian Government's obligation to use maximum available resources and on its core, minimum obligation to satisfy essential levels of the right to health through primary care. The issue of overall access to health care in Zambia will include a consideration of whether user fees have discouraged the poor from visiting clinics and hospitals. A final subsection reviews the increased incidence of disease, a situation exacerbated by the continuing failure to implement a national policy on drug supply.

1. Expenditure on health and the use of maximum available resources

The Covenant requires the use of maximum available resources in delivering progressive realisation of the rights it recognises. The MMD Government stated its intention to increase budgetary allocations to the health sector in its initial National Health Policies and Strategies document. It has only been partially successful in this.



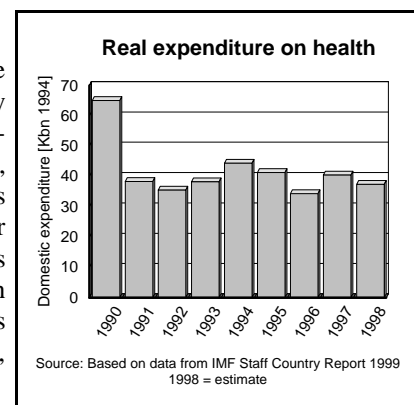
In 1996, Zambian households spent an estimated K65 to 70 billion (circa. \$56.25 million) on health care services. Public expenditure on health in 1996 was K67 billion (\$55.8 million). Hence a total of about K135 billion (\$112 million) was spent on health, shared equally between the Government and private households.

Two points of note arise from this level and distribution of expenditure. First, in a country where extreme poverty affects half of the population, private households are expected to meet half the total cost of health provision. Second, consultancy studies have concluded that 'the epidemiological profile or the performance on health indicators does not seem to correlate with such expenditures.'⁴⁵

To assess whether the Government is fulfilling its obligation to use maximum available resources in achieving the right to health requires a consideration of its funding of the health sector in both relative and real terms. During the last year of the prior UNIP administration, just over ten per cent of domestic expenditure was

allocated to the health sector. In contrast, the first three years of the MMD's term in office saw relative spending on health fall to between 5.9 per cent and 8.4 per cent. In 1995 and 1996, relative expenditure exceeded 9 per cent of domestic spending and peaked at 11 per cent in 1997 before falling again in 1998.

Once more, it is only when considering expenditure in real terms that the true magnitude of the decline in health sector funding is apparent. Real spending fell by forty per cent from 1990 to 1991. It has not recovered since. The period 1994 - 1996 was characterised by a year on year decrease in real expenditure. By 1996, and adjusting to constant prices, the MMD Government was spending K30bn less on health than the K64 bn that was spent in 1990. To place this decline in its proper context, by 1990, real per capita expenditure on health had already declined to less than half the levels of the early 1980s.⁴⁶ Falling real term expenditures on health places a question mark over the sustainability of reform.⁴⁷ Expenditure in real terms in 1997 recovered slightly to be on a par with the level spent in 1996. However, estimates for 1998 suggest a reversal.



Given increases in the size of the Zambian population over the last decade, real expenditure on a per capita basis has been decimated to an even greater extent. The World Health Organisation noted in its 1999 World Health Report that Zambia allocated over 3 per cent of GDP to health, yet total per capita spending, taking into consideration external assistance and domestic expenditure, was only about half the \$12 suggested by the World Bank as necessary to fund the cost of a basic package of preventive and curative interventions. The WHO went on to conclude '[t]he reality is that allocating an inadequate share of resources to health, from both public and private sources, perpetuates the cycle of poverty.'⁴⁸

While reform of the way in which funds are allocated and controlled within the health sector has circumvented certain problems associated with the previous centralised system, other difficulties have arisen, often as a result of contradictory imperatives which are part of the wider agenda of reform. The implementation of cash budgeting in 1992, as part of the package of stabilisation measures insisted upon by the Bank/IMF, has had a detrimental effect on the actual delivery of

funds. The Treasury must have the financial resources available to release to each line ministry. There is an inevitable competition between ministries over the allocation of existing cash. In 1994 and 1995, for example, the Ministry of Health received 88 per cent and 66 per cent of funds approved under the budget.⁴⁹

Citing the requirement of strict cash budgeting as justification for the failure to deliver funds to the health sector causes some disquiet.⁵⁰ Notwithstanding the fact that certain ministries have seen an even greater shortfall between budgeted and realised funds, other powerful ministries receive finance *in excess* of the amount budgeted.⁵¹ For example, under the 1998 budget the approved estimate for the Ministry of Defence was K61.4 bn yet its authorised expenditure over the year was K94.9 bn.⁵² Moreover, it is apparent why Bank conditionality on the protection of overall health sector allocations is presented in relative rather than absolute terms: there is an appearance of social protection while actual spending is allowed to decline in line with the dictates of stabilisation.

In an article which is stark in its condemnation of World Bank/IMF structural adjustment and austerity measures and their devastating consequences for people's health in Zambia, a reporter describes his visit to the University Teaching Hospital.⁵³ The human cost is shocking. This is the reality of the violation of the right to health.

I went to UTH. It is Lusaka's biggest hospital, where those who can't afford private healthcare end up. In a packed ward near the main entrance a man writhed in bed. "I'm dying," he moaned, while his wife stood helplessly by his side. Emaciated figures shivered under sparse bedclothes. Families crowded around beds, many of them on the floor, bringing food to the sick to supplement the meagre hospital rations of beans and maize meal. In another ward a preacher harangued a dying woman, whose family stood round with heads bowed. As he waved his bible, she struggled to move her lips to acknowledge him.

Enter the children's ward and the smell hits you like a wall. A musty, medicinal odour - the smell of sickness, and of death. Rows of children lie on small beds, slowly passing away from preventable diseases like TB, malaria and pneumonia. On the other side of the building is a cleaner, neater ward, where half the beds stand empty. This is the fee-paying section, where families who can pay a 100,000 Kwacha (\$40) deposit can buy a slightly better chance of life. In World Bank language, this is 'user-responsive healthcare'.

In its supervision of the Covenant, the Committee seeks information on the role of international assistance in the full realisation of the right to health enshrined in article 12.⁵⁴ The austerity measures and economic adjustment insisted upon by the World Bank and IMF must be considered ill-advised under article 22 of the Covenant in the absence of an equally compelling and adequately resourced programme of social protection in the health sector.

2. Access to health care and the impact of user fees

'The steps to be taken by the State parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.' [Article 12(2)(d)]

This question of access to health care is of paramount importance to the Committee in its supervision of the Covenant, as demonstrated by the information sought in its guidelines for State reports and by other official statements it has issued.⁵⁵ It is possible to differentiate at least three aspects to the issue of access which are relevant in determining realisation of the right to health: access to facilities;⁵⁶ access to a certain standard of care - trained staff, common treatments, essential drugs;⁵⁷ and affordability.⁵⁸ In line with the principles of progressive realisation and non-discrimination, the Zambian Government is required to justify regression and any failures to protect or promote the right to health of vulnerable and disadvantaged groups.

a. Access to facilities

One definition of lack of medical access is a situation in which a person has to travel 16 km or more to the nearest health facility.⁵⁹ Data for 1996 records that the vast majority of people in cities and towns live within 5 km of the nearest health centre or clinic and that 98 per cent of them live within 15 km of such a facility. In rural areas, while almost 20 per cent of people live further than 15 km away from a clinic or health centre, the majority have reasonable access.

Distance to the nearest health facility is the most significant variable in determining access to the health service in Zambia. Analysis of national data shows that 53 per cent of sick persons living within 1 km of a health centre made use of the formal health service in Zambia. The corresponding figures for those living 5 - 9 km away and beyond 10 km from such a facility are 36 per cent and 29 per cent respectively.⁶⁰ The greater the distance from a health facility, the higher the transport costs and hence the lower the relative importance of user fees or exemptions in the decision to use the service. However, those living further from a health facility are much less likely to use it in the first place. This applies particularly in rural areas where transport links are poor.

In terms of patient outreach, access is problematic. As a direct result of low levels of expenditure, physical resources such as vehicles, equipment, materials for maintenance, even stationary, are lacking. In 1994, Bank staff drew attention to logistical problems posed by an ageing transport fleet and the inability of the Ministry of Health to address fundamental issues of regular vehicle maintenance and accountability for use.⁶¹ The daily work of Community Health Workers and the distribution of drugs is severely hampered by transport problems.⁶² Ambulance services are collapsing. Recent reports confirm that Kitwe Central Hospital does not have a working ambulance. Vehicles are standing idle in a state of disrepair because of a shortage of funds to maintain them.⁶³ The Health Sector Support Program, supported by the Bank and others, was supposed to deliver measures to address these deficiencies.⁶⁴ The problem is fundamental: Kitwe hospital received only 50 per cent of its allotted funding in 1998/9.

While the Zambian population appears to be relatively well served in terms of the number of health facilities, such indicators only have meaning if the infrastructure delivers a good standard of care to all Zambians.⁶⁵ Sample surveys for 1993 reveal that 11 per cent of all Zambians, including 9 per cent of those living in urban areas, visited a Government health institution in 1993.⁶⁶ By 1996, only 8 per cent of the population visited a Government health institution, with little difference between the proportion attending facilities in rural or urban areas.⁶⁷ This fall in attendance, despite persistently high levels of morbidity, most likely reflects the reality of a significant decline in the standard of service, for example, measured by medical staffing levels; an inadequate supply of essential drugs; and a denial of real access to care because of the introduction of user fees.

b. Access to a common standard of care from trained staff

The Committee, in its supervision of the right to health, demonstrates a concern with the quality of care on offer. Two indicators used are access to qualified staff and the regular supply of essential drugs.⁶⁸

i. Trained staff

In the first half of the 1980s, there were approximately 7,300 people to every doctor and a ratio of about 760 people per nurse.⁶⁹ In 1992, the number of people per doctor had risen dramatically to 11,905.⁷⁰ By 1995, in the midst of the health reforms, the ratio had worsened yet again to 14,286:1. Recent figures record a staggering decline of 33 per cent in the number of nurses from 10,378 in 1994 to 6,394 by the end of 1995.⁷¹ Furthermore, the World Bank's 1994 Poverty Assessment suggests that 80 per cent of doctors are concentrated in four provinces along the line of rail while, in contrast, many rural health centres do not have a single health worker.⁷² There is discrimination in the level of expertise on offer according to ability to pay: only 15 per cent of the extremely poor saw a doctor during their visit to a health facility as opposed to 36 per cent of the non-poor population.⁷³

ii. Essential drugs

The continued absence of a workable policy on the supply of essential drugs is a failure of obligation by omission. In 1994, the Bank concluded that while donor support helped to assure a reasonable supply of drugs to rural health centres and central urban hospitals, the supply to peri-urban areas and district hospitals was inadequately funded.⁷⁴ Yet estimates published in the 1994 Poverty Assessment suggest that, even in the case of rural health centres, 40 - 45 per cent of them did not have regular access to drugs as a result of transport problems.⁷⁵ The Bank noted the anachronism of a centralized supply-driven drug distribution system in the context of decentralisation of health care to the districts.⁷⁶ Problems included the irregular delivery of drugs, especially in the rainy season due to poor transport links, and the chronic shortage of imported drugs and their inappropriate or inefficient use.⁷⁷ The Bank outlined its intention to support a new national drug policy which would be reformulated by the first quarter of 1995, in keeping with the decentralised health care system and in accordance with the Strategic Plan.⁷⁸

Regrettably, and despite the promised action, the problem of inadequate drug supply persists. The Bank noted in 1996 that 'the present inefficiencies in the procurement, distribution and use of drugs in Zambia must be addressed quickly if the broader health sector reforms are to succeed.'⁷⁹ Likewise, a study of health reform in Zambia on behalf of UNICEF

in 1996 stated '[t]he National Drug Policy should be implemented expeditiously, as drug availability is critical to the public credibility of the reforms.'⁸⁰

As a condition of second tranche release of ESAC II, the Bank required the adoption of a comprehensive national drug policy.⁸¹ This was drawn up in 1996. The Government recognised procurement as the policy's most critical component and pledged to address the issue as a matter of urgency.⁸² However, implementation of the National Drug Policy has been less than fully effective.

Official figures to the third quarter of 1997 record that, at the primary level, no Community Health Worker Kits, each of which contains essential drugs, were distributed in seven out of the eight months assessed, despite an average monthly requirement of almost 4000 kits.⁸³ The supply of drugs and their distribution to urban and rural health centres is described as satisfactory and on target. Likewise, the distribution of drugs to hospitals appears effective. However, the figures must be treated with some caution. Firstly, it is conceded that the positive indicators cited do not apply to antibiotics, antiseptics and surgical items.⁸⁴ Secondly, the supply of emergency drugs 'was being made on demand and according to budgetary allocation per month for each institution.'⁸⁵ Finally, improved efficiency in distribution is irrelevant if sufficient quantities of the right drugs are not procured in the first place.

c. User fees as a barrier to access

i. Poverty, exclusion and discrimination in the right to health

The exclusion of people from access to health care on the grounds of their poverty and inability to pay must constitute discrimination. Article 2(2) of the Covenant specifically precludes discrimination on the grounds of social origin, property or other status.

Information is sought by the Committee on access by the vulnerable and disadvantaged to medical care.⁸⁶ Such groups include those living in poverty, for whom access is linked to the affordability of health care on offer. It is assumed that the Committee's endeavour to discover the impact of rising costs on the right to health realised by the elderly applies equally to other vulnerable groups.⁸⁷ The position of the Committee is unequivocal:

'If not supplemented by necessary safeguards, the introduction of user fees, or cost recovery policies, when applied to basic health and educational services for the poor can easily result in significantly reduced access to services which are essential for the enjoyment of the rights recognized in the Covenant.'⁸⁸

Of the sick population in Zambia in 1996, 34 per cent treated themselves and 42 per cent went to a health facility.⁸⁹ The remaining 23 per cent went without any treatment. When sick people seek medical care rather than treat themselves, three quarters do choose to use a government clinic, health centre or hospital as opposed to private or mission institutions.⁹⁰

Among the extremely poor, six out of ten persons, despite being sick, did not go for a consultation at a health facility.⁹¹ Instead, three out of ten treated themselves with self-administered medicine while a similar number went without treatment of any kind. On average in 1996, a Zambian household spent K3,300 (\$3.00) per month on health-related goods and services.⁹² The amount spent on health varies widely according to income. The poorest households in the lowest two income quintiles spent between K1,500 and K1,600 (circa. \$1.40) per month on health. The average budget for households in the highest income quintile was four times higher at K6,400 (\$5.82). In a recent survey in Lusaka, almost half of those who considered themselves ill did not seek health care because of lack of money.⁹³

The adverse consequences of poverty on the realisation of the right to health are all too readily apparent. Indicators used by the World Health Organisation to show equity of access to health care reveal that, on average, a poor person in Zambia is three times more likely to die between the ages of fifteen and fifty-nine than a non-poor person and over three and half times more likely to die between birth and five years of age.⁹⁴ The prevalence of tuberculosis was almost four times higher among the poor.

ii. The imposition of user fees

This is the context in which user fees in Zambia are currently implemented. Although certain, somewhat unsystematic, charges for health care in Zambia had been made in the past, a 1993 directive from the Ministry of Health authorised the universal introduction of medical fees in all districts.⁹⁵ This was done under the rubric of ‘cost-sharing’ as part of the National Health Policy, ostensibly to encourage appropriate use of health services and to generate local resources to finance improvements in the quality of care.

The fees were described as ‘symbolic’. The stated intention was to encourage individual responsibility, to promote ‘community ownership’ of health care, and to discourage frivolous use rather than to recoup recurrent costs. Over time, user fees are set to become a more important part of the overall health sector financing strategy.⁹⁶

A breakdown of expenditure on health in the average Zambia household in 1996 reveals that K1,600 (\$1.45) was spent on drugs compared to K450 (\$0.40) per month in fees to modern providers. Payments to traditional healers amounted to K430 (\$0.39) per month. This pattern of expenditure shows that user fees account for 14 per cent of the average household health budget in comparison to the cost of drugs which accounts for almost 50 per cent. Such figures give ostensible support to the policy line that user fees are set at a symbolic level and the lowest fees for consultations are charged by Government facilities.⁹⁷ Yet the way in which the imposition of charges on those using health services has been implemented in Zambia has attracted strong criticism. The World Bank, in its 1994 Poverty Assessment, viewed the premature introduction of charges as in danger of derailing the entire process of health reform and thereby destroying any positive signs of emerging change.⁹⁸ To draw the conclusion that the introduction of low user fees therefore has a minimal impact on access to health care is totally erroneous. There are a number of reasons why such a conclusion is misplaced.

Firstly, and despite public statements to the contrary, there is strong evidence to suggest that cost recovery is a driving force behind the Government’s implementation of user fees. Although charges were not to be levied until exemption mechanisms were in place, field studies have confirmed that this instruction was disregarded in Zambia because of the pressure to collect revenue by minimising exemptions.⁹⁹ Local communities were neither consulted nor prepared for the introduction of user charges.¹⁰⁰ In an eight country review of health reform programmes by UNICEF, Zambia is singled out as failing to communicate the purpose of user fees, which resulted in a decline in utilisation.¹⁰¹ Oxfam believes that this policy was probably intentional since the welfare budget covered only a tiny fraction of legitimate claims in a country where 60 per cent of the population were living below the poverty line.¹⁰² Despite the drive to collect charges, all user fees generated K12 bn or less than 1.3 per cent of total Government revenue in 1996.¹⁰³ Put another way, the additional tax concessions worth K18 bn granted to the mining industry in 1998 would have more than allowed for the abandonment of all user fees, let alone those for the poorest.

Secondly, the proportion of money spent on user fees, though low in comparison to the amount spent on medicines, represents significant additional expenditure for a poor household. The fact that households spend a higher proportion of their resources on drugs serves only to highlight the burden of health care costs which falls on the poor. Inequity is increased by the fact that the exemptions which are in place apply only to user fees and not to the cost of expensive treatments and medicines.

People were recorded in the World Bank’s 1994 Poverty Assessment as having ‘expressed anguish’ at the fees they were expected to pay for the mediocre treatment they received.¹⁰⁴ In urban areas, the conclusion reached was that ‘user fees in the formal health care system appeared to be putting the mainstream health facilities out of reach of the poor.’¹⁰⁵ Medical fees were described as unaffordable.¹⁰⁶ In rural areas, escalating health care fees were singled out as the main concern. As a result, people were forced to use home treatments or turn to traditional healers who were increasingly seen as the only source of health care by the rural poor.¹⁰⁷ Contrary to the argument that user fees increases ownership, evidence from rural Zambia suggests that their introduction can be counterproductive as members of a community stop providing free labour and materials when they must also pay for a service.¹⁰⁸

Thirdly, and moreover, survey data confirms that the need for consultations is much greater than the actual number of visits which occur. The poorer a person is, the less likely he or she is to visit a health facility for a consultation.¹⁰⁹ Of the sick population in 1996, whereas almost half of those classified as moderately poor or non-poor went for a consultation, less than four out of every ten of those suffering an illness among the extremely poor did so. Furthermore, 27 per cent of sick persons living in extreme poverty went without any treatment at all, including self-administered medicine. In comparison, only 16 per cent of the non-poor were in the same position.

In other words people do not visit a health facility when they are sick because of the cost involved. It is therefore not surprising that the amount spent on user fees is lower than it otherwise might be if people were not so poor in the first place. While many Zambians have affirmed that they are willing to pay for health care, few have the ability to do so.

This explains the seeming paradox where only 4 per cent of Zambians in a survey conducted before the introduction of user fees stated that they were unable to afford the cost of health care.¹¹⁰ However, when fees were introduced, utilisation of health facilities plummeted. This is because people were too poor to translate their willingness to pay into an ability to pay due to competing demands on the household budget. This has prompted the conclusion in a recent UNICEF study on user fees that '[m]arkets by their nature express the level of purchasing power, rather than needs.'¹¹¹

Fourth, the Bank's participatory poverty assessment of 1994 identified access to quality health care as a critical issue. After the introduction of user fees, the picture that emerged was one of rising prices and a decline in the quality of service. Despite the official proviso that 'the quality of the [health] service will have to be improved before any of the cost sharing schemes are introduced', Government guidelines failed to detail how this improvement was to be measured or achieved.¹¹² The Government was berated in the Poverty Assessment for its 'uncoordinated implementation of user fees and prepayment schemes across the country' before the health service showed any sign of improvement with the result that people were being asked to pay for a service which was getting visibly worse.¹¹³

Finally, there is no stronger indication of the adverse impact of user fees on health care in Zambia than the dramatic declines in the attendance of people at Government health facilities. The United Nations has noted that the high level of charges excluded the poor, and especially children and women in most need of care.¹¹⁴ Studies are cited which confirm a decline in patient flows of between 60 to 80 per cent at urban health centres.¹¹⁵ Outpatient attendance at eleven clinics surveyed in Lusaka dropped, on average, by 64 per cent after the introduction of user fees.¹¹⁶ The poorest neighbourhoods showed the sharpest declines. A comprehensive review by UNICEF of the impact of user fees on basic service provision concluded, in the case of Zambia, that there is little evidence to suggest that the decline in the use of higher level services, such as hospitals, has been balanced by an increase in the use of primary services:¹¹⁷

Booth et al. [1995] reported that the utilization rates of both hospitals and clinics declined precipitously in Zambia. The number of outpatients dropped in all types of health facilities. In one of the children's hospitals, the monthly average number of outpatients declined by more than 50 per cent over the period 1989-1994. In another hospital, deliveries of babies fell by nearly half between 1991 and 1994, with a reported increase in maternal deaths in home deliveries. Outpatient consultations for malaria plummeted by two thirds between May 1993 and May 1994. In one hospital, total admissions fell by 49 per cent, with the largest declines in the children's ward (-65 per cent). Simultaneously, the authors observed a dramatic decline in attendance in clinics and rural health centres, suggesting that the decline in hospital use could not be interpreted as an increase in efficiency. On the contrary, if it is assumed that the poor had greater need of health services, efficiency actually declined. Booth et al. concluded that "the available evidence is not consistent with the idea that what we are witnessing is either a short-term response to the 'shock' caused by the new charge, or just an adjustment within the formal health care system to a more sensible set of relative prices. Rather, the evidence points to a fairly drastic, uncompensated and prolonged reduction in people's access to formal health care."

Subsequent surveys in Zambia confirm that the reduced use of facilities as a consequence of the introduction of user fees is a problem which persists in the longer term.¹¹⁸ The conclusion is that 'fee-induced dropouts are more permanent in nature and more severe than can be justified on the basis of efficiency gains.'¹¹⁹

iii. Help for the poorest

The right to health is universal and applies to everyone. The right to health of the poor and other vulnerable groups in society is unequivocal. Moreover, as has been noted several times within this report, the Committee has emphasised that programmes must be targeted to protect the rights of the vulnerable.¹²⁰ This obligation to accord disadvantaged groups a degree of priority consideration is reinforced by the Committee in its interpretation of the Covenant.¹²¹ Information is sought from State parties by the Committee on what measures are considered necessary by to improve the health situation of vulnerable and disadvantaged groups.¹²² The expectation is for a Government to take policy measures, to the maximum of available resources, to realise such improvements, as measured by time-related goals and benchmarks.¹²³ State parties are asked to provide information on the effects of policy measures on the health situation of vulnerable and disadvantaged groups and to report on problems and shortcomings, as well as successes, in this regard.¹²⁴ Hence the Zambian Government, in order to fulfil its obligation to achieve progressive realisation of the right to health, must not only justify the regressive nature of user fees, but must also satisfy the Committee that it has adopted measures to protect the poor and other vulnerable groups from their adverse consequences.

The health reforms were announced in 1992. Cost sharing, albeit at significantly below cost-recovery levels, was implemented in 1993. It was not, however, until 1994 that demographic and disease-based exemptions and prepayment schemes were introduced. The effectiveness and equity or otherwise of these measures must be examined.

1) Exemptions

Guidelines issued by the Government stipulate that the treatment of infectious diseases and immunisations should be free of charge. User fees are to be waived in the case of children under five, pregnant women seeking antenatal care, the disabled, those in chronic poverty, and persons aged 65 or older. The guidelines also require that acute and life-threatening conditions should be treated first and payment discussed later.

In practice, the exemption system has exhibited a number of failings. The poor targeting of vulnerable groups has resulted in inequity. There has been a significant degree of arbitrariness when deciding eligibility. Potential beneficiaries have been unaware of exemptions because of the failure to convey information. Overall, the system has been undermined by a lack of resources.¹²⁵

According to survey data for 1996, 43 per cent of Zambians did not pay a consultation fee when they last visited a health facility.¹²⁶ A majority are therefore charged user fees. During 1996, 55 per cent of the extremely poor paid for consultations, as did 61 per cent of the moderately poor and 60 per cent of the non-poor.¹²⁷ It is therefore apparent that the majority of those in extreme poverty are not exempt from charges and that the burden of user fees has not been shifted significantly from the poor to the non-poor.

Detailed studies by consultants in the Copperbelt and Lusaka show that those exempted from fees at government clinics and health centres were represented relatively evenly across all income groups.¹²⁸ The fact that the poorest do not benefit more from exemptions at these facilities is partly a reflection of the fact that the main criteria used relate to demography and disease. Moreover, the better-off and better educated are frequently better informed about their right to exemptions. At government hospitals, 56 per cent of the poorest patients do benefit from exemptions. This is above the exemption rate for relatively better off groups.¹²⁹ However, the corollary is that more than four out of every ten of the poorest patients are still required to pay a consultation fee at a government hospital. While acknowledging the 'relatively progressive' medical benefits of the demographic-based exemptions, the consultants conclude that '[t]hese exemptions neither address inequalities in the use of services related to income nor to distance to the nearest facility....'¹³⁰

The system has proved arbitrary in that, even in the same hospital or clinic, some patients are exempted while others are not. An example is cited when one researcher 'witnessed the arrival of a 14-year-old boy at a hospital suffering from acute malaria. His parents were unable to pay the registration fee of ZK300 (equivalent to US\$ 0.33), and the boy was turned away.'¹³¹ Within two hours the boy was brought back dead. Recent analysis suggests that 72 per cent of children under 5 years of age were correctly exempted from fees at government health facilities.¹³² In the category of patients over 65, the corresponding figure was 67 per cent. Overall, it has been calculated that about a quarter of patients are denied exemptions when they are entitled to them. At the same time, a significant number of those who are ineligible according to the official criteria are being granted waiver of payment.¹³³

At a prior stage many people may not use health facilities in the first place because they are unaware that they do not have to pay. A 1995 review of cost recovery mechanisms in Zambia concluded that both communication between policy makers and staff on the ground about the exemption scheme was poor and that an absence of advertising meant that most eligible patients did not know about the exemptions on offer and ceased to use health facilities.¹³⁴ A more recent study suggests that, while staff at clinics and health centres have now been instructed about exemptions, this information is still routinely denied to all potential beneficiaries.¹³⁵ This is corroborated by research on the care of the elderly, who have among the lowest probability of entering the modern health sector:¹³⁶

'many of the people who were over 65 years and were eligible for exemption based on age, expressed ignorance that they were supposed to benefit from this type of exemption. This means that the majority of such people, because they are unlikely to be in formal employment, are likely to simply give up on themselves and await death in their homes instead of rushing to the clinic or hospital with the full knowledge that the clinic will demand a charge which they do not possess.'¹³⁷

2) Prepayment schemes

To supplement the failing system of exemptions, a prepayment scheme, known as the Health Care Cost Scheme (HCCS), was introduced in nine pilot districts in August 1995 to assist the poor in meeting the cost of health care.¹³⁸ The scheme is run as a component of the Public Welfare Assistance Scheme. It is implemented by the Ministry of Community Development and Social Services in collaboration with the Ministry of Health. Those eligible receive support in the form of regular advanced contributions for the right of future use of Government run health institutions.

The aim of the HCCS is to ensure that no one is denied access to health services because of their inability to pay user fees, yet it has been criticised on three grounds, all of which relate to the issue of access. Firstly, the overall level of

finance for the scheme has been described as inadequate.¹³⁹ This is an understatement. As has been noted, expenditure in 1997 under the entire PWAS on assistance - support services and the health and education schemes - amounted to K517 million.¹⁴⁰ This equates to spending of 8 US cents for each of the five million Zambians living in extreme poverty. The HCCS is, of course, only one component of the budget and allocations are therefore further diminished. Secondly, and as a consequence, the scheme remains confined to nine districts in the Copperbelt and Lusaka, the two highest-income provinces, and is available to only 3 per cent of the rural population and 15 per cent of the urban population.¹⁴¹ There is a geographical concentration in line of rail provinces, leaving people living elsewhere with no access to the scheme. The intention was to extend the scheme to all districts in 1997, but this has not reached fruition.¹⁴² Nationally, only 13 per cent of patients in government hospitals benefit from voluntary prepayment schemes. At government health centres and clinics, only 6 per cent are similarly covered.

Finally, the prepayment schemes have benefited richer Zambians and not those living in the greatest poverty. The HCCS is meant to be targeted at the destitute:¹⁴³ given the widespread incidence of poverty, it is, perhaps, not surprising that the moderately poor have sought to benefit from the scheme. However, it is those living in the two highest income quintiles who have derived the most benefit.¹⁴⁴ The UNDP has criticised the HCCS as being seen 'to benefit more the non-poor and non-deserving sections of the community who have a larger command of the schemes' resources'.¹⁴⁵

Government data for 1996 confirms that, overall, only 8 per cent of consultations were prepaid, yet three times as many of the non-poor than the extremely poor took advantage of the low cost schemes available.¹⁴⁶ Analysis of those pilot prepayment schemes introduced in Lusaka and the Copperbelt reinforces this picture of inequity.¹⁴⁷ At Government clinics and health centres, almost half the patients in the highest income quintile participated in the prepayment scheme. In contrast, less than 12 per cent of the sick in the lowest income quintile participated. Hence the poor paid higher fees directly out of pocket much more frequently than the better off.

The picture for the take-up of prepayment schemes among those using Government hospitals was less polarised, with 60 per cent of the poorest participating. A possible explanation for the higher take-up among the poor is to hedge against the high cost of hospital treatment. In comparison, 57 per cent of those in the highest two income quintiles used the scheme.¹⁴⁸ Overall, therefore, there is no redistribution of resources from the better-off to the poor.

While exemptions and prepayment schemes apply to user fees, it is apparent that they do not provide relief to the poor for the purchase of drugs which represents over half their health spending.¹⁴⁹ The consultants who undertook the analysis of the household expenditure data have concluded: 'if fees or benefit packages under prepayment schemes do not cover drugs, the willingness of the population to pay for fees or to participate in prepayment schemes could stay relatively low.'¹⁵⁰

iv. The World Bank's position on user fees

While never advocating a deregulated market in health care, the Bank has been at the forefront in promoting market-orientated mechanisms in provision, to include cost recovery and the introduction of user fees.¹⁵¹ It is important to note that the World Bank has no objection, in principle, to the poor paying for health services as long as they get value for money and good quality care. However, critics of Bank policy maintain that the imperatives of cost recovery and equity are contradictory when, as is the case in Zambia, the majority of the population is so poor as to require exemption.¹⁵² A strategy to raise the maximum revenue will create inequity, while applying exemptions will increase administration costs and cut revenue.

The Bank's own position *vis-à-vis* user fees in Zambia appears ambiguous. Contrary to the stark condemnation of user fees presented in its Poverty Assessment, in other public documents the Bank justifies its support for the strategic health plan which has introduced 'nominal fees' on the grounds that such costs 'foster ownership at the community level' and discourage people from by-passing primary care facilities.¹⁵³ The authors of a Bank discussion paper on cost-sharing, citing the example of Zambia where user fees were implemented before exemption mechanisms and safety nets were in place, recommended that the Bank should pay more attention in its lending portfolio to the detail of such policies.¹⁵⁴

There is strong evidence in the Staff Appraisal Report for the Health Sector Support Project to suggest that the Bank was aware of the Government's actions and intentions on the issue of user fees when formulating its own assistance measures. A number of critical observations can be made. First, the report records 'the revenue-generating potential of cost-sharing through different mechanisms,' thereby confirming cost recovery as the Government's prime consideration behind the imposition of user fees.¹⁵⁵ The advantages of introducing such charges listed by the Bank - few of which relate to social justice - can only be interpreted as an affirmation of its support for their use in Zambia.¹⁵⁶ Second, the Bank's judgement over the Government's ability or intent to improve services in conjunction with the imposition of fees is at best confused and at worse contradictory. At one point, the Staff Appraisal Report confirms '[b]efore any nation-wide mechanism is implemented....they [the Government] are committed to improving the quality of services

provided through the basic package of care.¹⁵⁷ However, the Bank concedes that ad hoc monitoring of the impact of health financing policy implementation suggests a dramatic fall in outpatient attendance following the introduction of user fees in Lusaka and a denial of access to health care by vulnerable groups.¹⁵⁸ In a final section on perceived project risks it is stated that:

Within the Strategic Plan, the precipitated introduction of cost recovery could potentially derail health reforms. Sustainability of the reforms could be put at risk by ad-hoc implementation of cost recovery schemes, in isolation from quality improvements in health services, as perceived by Zambian clients. Resentment of new financial burdens without commensurate exchange of service value could undermine public support for the entire reform process.¹⁵⁹

A final criticism therefore centres on the failure of the Bank and other donors to act to counter this fundamental risk, despite being in a position to do so. The close involvement of the Bank and other donors in shaping and monitoring health reform through the Health Sector Support Program is apparent from the care taken in specifying supervision. Agreements secured by the Bank under the Health Support Project require the Government to implement the reform and investment program according to the Strategic Plan.¹⁶⁰ There is a requirement that this Plan will be updated annually by government and discussed with donors no later than 1 November of each calendar year.¹⁶¹ 'Cost recovery potential and affordability' is one area specified for such annual review. The Government is required to present annual progress reports on implementation and to adopt project reporting, auditing and monitoring procedures acceptable to the Bank.¹⁶² Two annexes to the Bank's Staff Appraisal Report are devoted to laying down a program for annual consultation and a supervision schedule.¹⁶³ Moreover, at the outset, an assurance is given in the Staff Appraisal Report that an acceptable health financing plan, as an integral part of the Strategic Plan, had indeed been agreed to minimise the risk posed by user charges.

In the light of the subsequent and highly adverse impact of user fees on access to care by the poor and the denial of their right to health, either the Bank badly misjudged the effectiveness of safeguards within the Strategic Plan, or else it implicitly supported the proposals on cost recovery as outlined.

The World Bank has responded by advocating that exemptions from costs in primary services and health care for the poor need to be enforced at the present time. Under ESAC II (FY96), the budget allocation for the Public Welfare Assistance Scheme was protected in absolute terms at K760 million, to include finance for the HCCS component.¹⁶⁴ Similarly, under the PSREPC (FY99), spending on the PWAS component is to be monitored to ensure the Government allocates K1.2 billion from public expenditure.¹⁶⁵ In its Letter of Development Policy accompanying ESAC II, the Government outlined its plans to develop targeting guidelines and implementation mechanisms to extend health prepayment schemes from nine to eighteen districts.¹⁶⁶ A Vulnerability Profile, developed under the Public Welfare Assistance Scheme, was to be used as the basis for targeting scarce resources.¹⁶⁷ However, it must be noted that this action was not the subject of a specific loan agreement and has not been delivered. The same undertaking to initiate implementation of the revamped PWAS is repeated in the Bank's follow-on PSREPC, approved over two years later in early 1999.¹⁶⁸ Furthermore, while it is necessary to ensure that assistance reaches the poorest, if vulnerability profiles are too narrowly defined, given the prevalence of mass poverty in Zambia, they will result in the exclusion of other deserving groups from much needed support and denial of their right to health.

Moreover, as documented in final part of this report, the Bank-backed privatisation programme has set the scene for certain hospitals and clinics to move into the private sector where they will be run for profit. This will reinforce the 'two-tier' system in Zambia where the better off purchase good quality care while the vast majority live and die increasingly excluded even from the failing Government run health service. A consultancy study on the scope for franchised health care services in Zambia contrasts the health care offered to staff by firms prior to privatisation with the current attitudes of private businesses: 'They have begun to modify the health care benefit to reduce its cost, by limiting the services covered, capping the amounts of money paid out per employee, negotiating lower charges with providers, paying the pre-payment fee for access to government services, or cutting out the benefit entirely.'¹⁶⁹

3. Primary health care and prima facie violation of the right to health

One specific element of the right to health which the Zambian Government has a core, minimum obligation to satisfy is the provision of essential primary care. As part of its health reforms, the Government has defined a Primary Health Care package which places an emphasis upon maternal and child care, family planning, nutrition, the control of communicable diseases, immunisation and sanitation.¹⁷⁰ The Zambian Government has set a number of goals and has adopted other commitments in this regard. This accords with the Committee's view that national benchmarks can

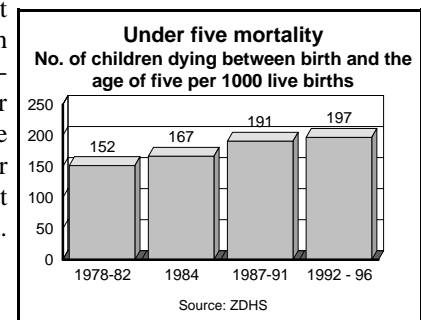
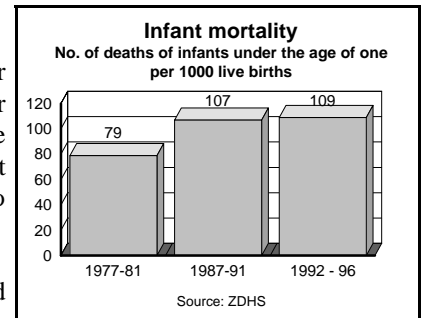
provide an extremely valuable basis upon which the obligation of progressive achievement can be assessed.¹⁷¹ These are reviewed alongside corresponding aspects to the right to health as codified in the Covenant.

a. Maternal and child care

i. Infant and child mortality

The Zambian Government is required under the Covenant to take steps necessary for 'the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.'¹⁷² As one measure of progressive achievement, Zambia has committed itself to attaining a reduction in the infant mortality rate to 65 deaths per 1000 live births and the under five mortality rate to 100 deaths per 1000 live births by the year 2000.¹⁷³

The number of children dying before their first birthday in Zambia has increased dramatically in recent years. Infant mortality of 109 deaths per 1000 live births was recorded over the period 1992 - 1996.¹⁷⁴ Fifteen years previously, the rate stood at 79 per 1000.¹⁷⁵ The number of children who die between birth and their fifth birthday has increased to an alarming extent. Across Zambia for the period 1992 - 1996, for every 1000 live births, 197 children or almost a fifth are dead by their fifth birthday.¹⁷⁶ Ten years ago, the under five mortality rate for Zambia as a whole was 167 per 1000.¹⁷⁷ In some provinces under five mortality has reached 250 per 1000 during the last decade.¹⁷⁸ UNICEF's 1997 *State of the World's Children* report records that Zambia has the twelfth highest under five mortality rate in the World. Most of those countries with a worse rate are riven by war and internal strife.



ii. Infant and child morbidity

Over a two-week sample period in 1992, 13 per cent of children under five had symptoms of acute respiratory infections, and 23 per cent had diarrhoea.¹⁷⁹ Fever is the primary symptom of malaria, although it is also a symptom of other diseases, and was reported in 44 per cent per cent of children under five. In the equivalent survey in 1996, the prevalence of all three diseases remained broadly the same, reflecting a situation of stasis in child morbidity.¹⁸⁰ There is evidence to suggest the reduction in the use of health facilities caused by the introduction of user fees has been disproportionately higher for infants and children than for their parents.¹⁸¹

iii. Immunisation

In conjunction with the obligation on State parties to take steps to reduce infant mortality, the Committee requires information on immunisation in order to assess compliance with the Covenant.¹⁸² Yet Government action to ensure universal immunisation coverage in Zambia has proved retrogressive. The introduction of user fees caused a significant reduction in the hospital deliveries. As a result, fewer babies were registered at birth and therefore did not receive a free vaccination.¹⁸³ This has contributed to a severe fall in immunisation rates. The UNDP concludes that low levels of immunisation in the first years of the MMD Government 'could not but have contributed to the rising mortality rates of children witnessed subsequently'.¹⁸⁴ In 1992, just 67 per cent of Zambian children had been vaccinated against tuberculosis, polio, measles, diphtheria, pertussis, and tetanus by their second birthday owing to the fact that vaccination coverage fell to 20 per cent over the year.¹⁸⁵ A period of improvement followed and, by 1996, 78 per cent of children under two were similarly covered.¹⁸⁶ However, during 1997, immunisation coverage for three out of the four main vaccinations fell to an average of just 54 per cent.¹⁸⁷ This situation must constitute a prima facie denial of the right to health.

iv. Maternal mortality

'The State Parties to the present Covenant recognize that: (2) Special protection should be accorded to mothers during a reasonable period before and after childbirth.' [Article 10(2)]

One stated goal of the Primary Health Care programme is 'to improve the quality of, access to and utilisation of maternal and child health services in order to reduce maternal deaths and complications.'¹⁸⁸ A specific commitment made in 1994 was to reduce the maternal mortality to 101 deaths per 100,000 live births by 2000.¹⁸⁹ In its human

development report for Zambia, the UNDP describes the maternal mortality ratio as presenting ‘one of the most disturbing pictures of Zambia’s health scene.’¹⁹⁰ Based on reports for the six years prior to 1996, the MMR was recently estimated at 649 deaths per 100,000 live births.¹⁹¹ One probable factor contributing to high maternal mortality is the number of home births taking place in the absence of trained health personnel.¹⁹² Data presented in 1996 records that the majority, or 53 per cent, of births take place at home.¹⁹³ Once more, the indicators reveal a deterioration in health care: data gathered for 1992 showed that less than half or 49 per cent of births were taking place at home.¹⁹⁴ The 1996 health survey confirms that less than half or 46.5 per cent of all births were attended by a nurse, trained midwife or doctor.¹⁹⁵ In rural areas, trained health professionals were in attendance at just one birth in four.¹⁹⁶ More than three quarters of deliveries to mothers in the poorest 40 per cent of households take place at home compared to less than one quarter of deliveries in the highest income quintile.¹⁹⁷

It is apparent that the Committee considers access to such professional care during both pregnancy and delivery as essential for full realisation of the right to health.¹⁹⁸ Such provision is encompassed within the definition of essential primary health care: the prevailing situation in Zambia constitutes a *prima facie* contravention of the Covenant.

v. Nutrition

Nutrition and health are interconnected and ensuring that people, and especially children, are adequately fed is a recognised component of primary health care. In terms of the Covenant, both the right to health and the right to food are violated if a person does not receive the necessary nutrition they require.¹⁹⁹ In respect of the latter right, ‘[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.’²⁰⁰

The obligations to protect, respect and fulfil apply. Attention is drawn here to the latter two undertakings. The obligation to respect existing access to adequate food requires the Zambian Government, as a State party to the Covenant, not to take any measures that result in preventing such access.²⁰¹ Violations of the right to food can occur through the direct action of a State when it adopts policies ‘which are manifestly incompatible with pre-existing legal obligations relating to the right to food’.²⁰² The Committee recognises two elements - to facilitate and to provide - under the obligation to fulfil. Facilitation ‘means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.’²⁰³ Provision requires direct intervention by the State to fulfil the right to food whenever an individual or group is unable, for reasons beyond their control, to enjoy the right by the means at their disposal.²⁰⁴

In its 1997 and 1998 annual human rights reports on Zambia, Afronet records widespread denial of the right to food. In urban areas, and in the wake of the abolition of food subsidies, continued double-figure inflation, capped, low wages and massive unemployment are blamed for poor nutrition and food insecurity.²⁰⁵ The Committee has determined that a Government, as part of its strategy to realise the right to food, should adopt measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families.²⁰⁶ In rural areas, the flooding caused by El Niño in early 1998 prompted the Government to declare 34 out of 72 districts, in seven of Zambia’s nine provinces, as disaster areas. However, beyond natural events, economic liberalisation to encourage cash crops is blamed for a fall in the production of maize as a staple and for creating dependency on expensive inputs.²⁰⁷ Seasonal household food insecurity among subsistence farmers is exacerbated by the lack of on-farm storage facilities, forcing the sale of crops at low prices during a time of abundance. In the months prior to the next harvest, households are forced to buy in commodities at high prices in order to feed themselves. Many cannot afford to do so.

The fact that the Committee views the incidence of malnutrition as fundamental to deciding whether the right to food is being denied is apparent by the attention paid to this issue in the reporting guidelines it issues to State parties.²⁰⁸ A State party has a clear obligation to protect the right to food of vulnerable groups.²⁰⁹ This obligation is of especial significance in times of severe resource constraints, whether caused by economic adjustment or climatic conditions.²¹⁰ In the Reporting Guidelines, attention focuses on the right to food of, *inter alia*, the landless and unemployed in rural areas, the urban poor, and children.²¹¹

The poor in Zambia are finding it more difficult to get good food and achieve a balanced diet. At a time when trends in nutritional status have been improving on a world-wide basis, they have worsened in Zambia. Even by 1990, and not accounting for a recent deterioration, the rates of under-nutrition and stunting among the under fives in Zambia was already twice the levels in Botswana, Lesotho and Zimbabwe.²¹² The Government’s goal of reducing moderate and severe malnutrition among children to 25 per cent by the year 2000 appears to be unattainable as the downward trend in the nutritional status of Zambia’s children continues.²¹³ In 1996, 50 per cent of children between 3 months and five years, or double the year 2000 target, were stunted, indicating chronic malnourishment; and 5 per cent showed signs of wasting, indicating acute malnourishment. The figures for a previous survey in 1991 record 39 per cent of children as

stunted and 6 per cent as wasted.²¹⁴ On balance, therefore, the nutritional status of Zambia's children has worsened since 1991. In 1992, a primary health care target was framed to reduce the percentage of underweight children under five from 23 to 18 per cent.²¹⁵ Yet even the starting assumptions have shifted: the 1996 survey recorded that 25 per cent of children were underweight as a result of a combination of both chronic and acute malnutrition.²¹⁶

While disease and inadequate dietary intake are the immediate causes of malnutrition, the underlying causes are food insecurity, the inadequate care of children and support for their mothers, insufficient health services, and an unhealthy environment.²¹⁷ Ultimately, these underlying causes are themselves linked to low levels of education and prevailing economic conditions. A positive correlation between malnutrition and low socio-economic grouping has been established in Zambia in the midst of the period of structural adjustment.²¹⁸ Malnutrition has also been associated with low household income, although the level of maternal education must be taken into consideration.²¹⁹

The Committee has established that '[v]iolations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger.'²²⁰ Considerable remedial action is required if Zambia is to reverse this deterioration in nutrition. To claim that it is unable to carry out its obligation to satisfy freedom from hunger for reasons beyond its control, the Zambian Government has the burden of proving that this is the case.²²¹

A State party must take the necessary steps to the maximum of its available resources.²²² One necessary step specified by the Committee in respect of a State party's obligation to realise the right to food is the adoption of a national strategy to ensure food and nutrition security for all.²²³ In its 1996 Letter of Development Policy to the Bank, the Government conceded that 'support for nutrition is characterised by institutional fragmentation, weak and grossly under-funded institutions, and lack of a clear national policy.'²²⁴ It promised to study the role, funding and management of the National Nutrition Commission. The Bank made completion of this study and the adoption of suitable policy recommendations a condition of second tranche release of ESAC II (FY96).²²⁵ It is therefore disappointing to note that three years later, the results of this study had still not been applied. Arrangements reflecting the development of the detailed policies and the institutional framework necessary to deal effectively with nutrition issues once again feature in the Bank's follow-on PSREPC (FY99).²²⁶ However, these stipulations are not the subject of a specific loan agreement tied to the release of funds and it remains to be seen whether they are implemented. The lack of progress to date is reflected in the fact that a policy document on nutrition, characterised as a basis for institutional reform and legislative review, was only completed for a planned presentation to the Cabinet in July 1999.²²⁷

Attention is drawn by the Committee to the obligation of State parties to the Covenant to realise the right to food in other countries.²²⁸ As a specific requirement under General Comment 12 on the right to food, 'international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis. Care should be taken, in line with the Committee's General Comment No. 2, paragraph 9, in any structural adjustment programme to ensure that the right to food is protected.'²²⁹ The evidence presented within this submission suggests that the World Bank and IMF have been negligent in this regard.

4. The control and treatment of communicable diseases

In respect of the right to health as codified in the Covenant, the Zambian Government is required to take the necessary steps for 'the prevention, treatment and control of epidemic, endemic occupational and other diseases'.²³⁰ The control of communicable diseases, including those which are sexually transmitted, is an integral part of the Zambian Government's Primary Health Care Programme.²³¹ While such primary care places an emphasis upon disease prevention, it also encompasses basic treatment. Certain diseases will, of course, require hospital care if they are to be treated successfully.

Overall, Zambia has a high level of morbidity.²³² Extrapolating from health survey data, a quarter of the population or about 2.4 million people are reporting illnesses or injuries at any given time.²³³ In respect of the prevention of disease, Zambia's incomplete record on immunisation has already been noted. There has been a failure to control other diseases, notably malaria, cholera, diarrhoea, tuberculosis and AIDS. Such debilitating diseases, and the cost of caring for sick relatives, continually pushes individual households into poverty.

In its 1994 Poverty Assessment, the World Bank noted 'a general increase in case fatality rates at hospitals.'²³⁴ This includes a sharp rise in hospital case fatality rates for major child illnesses. Data for the period 1982 to 1992 confirms that pneumonia, diarrhoea and malaria case fatality rates have all doubled.²³⁵ Increased fatality rates reflect the declining standard of hospital treatment. They also reflect increased poverty, malnutrition and a decline in resistance to disease. People suffering from AIDS are more likely to die from infections which could otherwise be cured or controlled. The impact of AIDS is considered in its own right in a final subsection.

a. Malaria

Malaria is endemic and its incidence doubled in Zambia between 1982 and 1992 from almost 170 cases to just over 350 cases per 1,000 persons.²³⁶ Malaria was the major cause of hospital admissions and the number one killer in all age groups in 1996.²³⁷ The rise in malarial cases is accounted for by the abandonment of vector control programmes by local councils because of inadequate resources, the general decline in health services, the inability of the poor to afford preventative drugs, and an increase in malaria strains resistant to prophylactics.²³⁸ The first three factors relate directly to the policy sphere.

b. Water borne diseases

An increase in the incidence of water borne diseases in Zambia has been described by the World Bank as one of the 'most glaring outcomes of the decay in urban infrastructure'.²³⁹ Whereas there were less than 2000 cholera cases each year from 1988 - 1990, a sudden flare-up of the disease in 1991 resulted in over 12,000 cases.²⁴⁰ The underlying poor state of water provision and insanitary conditions in poor urban areas has resulted in further serious cholera outbreaks with over 10,000 cases in 1992, 7,000 cases in 1993, and over 2000 cases in 1996.²⁴¹ While the number of reported cases fell to less than 200 in 1998, by June 1999 the number of cases rose to 11,327, the majority of which were in Lusaka district.²⁴²

The high prevalence of diarrhoea is associated with unsanitary conditions and a lack of access to safe water. Its high persistence is linked to malnutrition. Survey data for 1992 records that twenty-three per cent of children under five years had diarrhoea.²⁴³ A specialised survey conducted in the same year found a prevalence rate of 28 - 29 per cent in both rural and urban areas. The proportion of children with persistent diarrhoea exceeding two weeks in duration was exceptionally high: 23 per cent in urban areas and 15 per cent in rural areas.²⁴⁴ By 1996, the situation had not improved. Over 23 per cent of children under five were suffering from diarrhoea in the two weeks preceding the survey.²⁴⁵

A goal of the Primary Health Care programme is to increase the percentage of the population having adequate sanitation from 66 to 75 per cent in urban areas and from 37 to 57 per cent in rural areas.²⁴⁶ This differs somewhat from other stated aims of providing access to clean water and sanitation for 50 per cent of rural and 100 per cent of urban households.²⁴⁷ To achieve full realisation of the right to health, the Covenant requires State parties to take necessary steps for 'the improvement of all aspects of environmental...hygiene...'.²⁴⁸ It must be noted that the Committee specifically requires information from State parties on access to safe water and sanitation. The implication is that the full realisation of the right to health is denied in their absence.²⁴⁹

According to the United Nations, poor access to safe water and sanitation has contributed significantly to the decline in public health in Zambia.²⁵⁰ A specific criticism of the health sector reforms is that there has been a lack of coordination between the Ministry of Health and other departments with the responsibility for water and sanitation.²⁵¹ Government figures for 1996 suggest that 82 per cent of urban households and a mere 28 per cent of rural households have access to safe water.²⁵² Indeed, the figure for urban areas may be overstated when a breakdown in council water treatment and provision, itself a reflection of the collapse in local government finance, further erodes access to safe water.²⁵³ Overall, at least five million Zambians lacked access to safe water in 1996.²⁵⁴

Government figures for 1997 indicate that 12 per cent of urban residents, 30 per cent of those living in peri-urban areas and 88 per cent of those in rural areas do not have access to adequate, safe, convenient sanitation.²⁵⁵ In other terms, 65 per cent of the total population do not have access to safe and convenient sanitation.²⁵⁶ The implications of the privatisation of water supply and sanitation, especially in the highly urbanised provinces of Lusaka and the Copperbelt, have been examined in Section 2(IV) of this report. It is sufficient to recall that planning for the takeover of water and sewerage services formerly provided by the mines in many Copperbelt towns has been entirely inadequate.

In urban shanty compounds, where there is a concentration of poor residents, knowledge of real levels of access to safe water and sanitation is incomplete. This notwithstanding, Government data for low cost urban areas in 1996 suggests that 17 per cent of residents were obtaining water from unsafe sources and just over a third used public taps.²⁵⁷ For sanitation, 60 per cent used their own or communal pit latrines.²⁵⁸ In an area like Chawama - a poor but legal residential area of Lusaka - the World Bank indicated in 1994 that 95 per cent of residents used latrines or buckets for sanitation.²⁵⁹ In densely populated areas during the rainy season, the use of unlined pit latrines creates a health hazard as clean water supplies are threatened by the seepage of effluent.²⁶⁰

c. Tuberculosis

The number of notified tuberculosis cases has increased from 35,134 in 1996 to in the region of 40,000 cases in 1997.²⁶¹ In comparison, in 1985 there were 8,500 registered cases.²⁶² While tuberculosis is a disease which is associated with poverty, it is also associated with the spread of AIDS as HIV is a potent activator of dormant TB infection. Many people harbour the TB bacillus and, should they be infected by HIV, are at high risk of developing tuberculosis. It is estimated that 30 per cent of all AIDS deaths result directly from tuberculosis. WHO/UNAIDS have described the potential for growth of co-infection in developing countries as vast 'given the crushing prevalence of TB carriers in the general population (some 30 per cent) and the almost 6 million new HIV infections a year.'²⁶³

C. The impact of AIDS on social and economic rights

Introduction

AIDS is disease which, by its very nature, represents a grave problem for any country, especially when that country is poor. The onus must be upon other State parties to the Covenant and international organisations to take steps through international assistance and cooperation, to include economic and technical assistance, to achieve full realisation of the right to health.²⁶⁴ The World Bank and IMF must ensure, in line with article 22, that the other measures they adopt are compatible with the realisation of all rights under the Covenant, including the right to health. The principle recognised by the Committee that all State parties to the Covenant, and international agencies, should protect basic rights by promoting adjustment with a human face has a powerful resonance given the suffering caused by the AIDS crisis in Zambia.²⁶⁵ The Zambian Government is obliged to use maximum available resources to combat the threat AIDS poses to the realisation of the right to health and other rights recognised in the Covenant; it must also take appropriate policy measures and target assistance at the vulnerable.

While it is beyond the scope of this report to review the Zambian Government's programme to combat AIDS and its effects in its entirety, it is possible to make observations in three areas. First, to provide basic information on the incidence of HIV infection and AIDS in Zambia and to indicate its truly devastating impact upon the economic and social rights of many Zambians. The expectation is that the Committee, in consultation with other specialised UN agencies such as UNAIDS, UNICEF, WHO, UNDP, and the World Bank, will pursue some of the matters raised in a constructive dialogue with the Zambian Government.²⁶⁶ Second, attention is drawn to the adverse impact of specific measures, such as the imposition of user fees, on the prevention and treatment of HIV/AIDS. Finally, State parties to the Covenant are obliged to take measures to ensure equal protection of the rights of women, and special protection for mothers and children and all those who are vulnerable and disadvantaged.²⁶⁷ In Zambia, the plight of certain groups of girls and women, who suffer disproportionately either from a high rate of HIV/AIDS infection or from the burden of care the disease brings, is cause for serious concern. Likewise, many orphans of the virus are faced by a desperate situation.

1. The incidence of HIV infection and AIDS

According to estimates for 1999, more than 95 per cent of all HIV-infected people now live in the developing world which accounts for 95 per cent of all deaths to date from AIDS. Africa, and in particular sub-Saharan Africa, is the epicentre. The region accounts for 83 per cent of all AIDS deaths to 1999. Four-fifths of all AIDS deaths in 1998 occurred in sub-Saharan Africa and 70 per cent of those that became infected with HIV in the same year lived in the sub-region. A recent WHO/UNAIDS update portrays a shocking picture:²⁶⁸

The sheer number of Africans affected by the epidemic is overwhelming. Since HIV began spreading, an estimated 34 million people living in sub-Saharan Africa have been infected with the virus. Some 11.5 million of those people have already died, a quarter of them children. In the course of 1998, AIDS will have been responsible for an estimated 2 million African deaths - 5500 funerals a day. And despite the scale of death, today there are more Africans living with HIV than ever before: 21.5 million adults and a further 1 million children.

Countries in southern Africa have been particularly hard-hit by the epidemic.²⁶⁹ This includes Zambia. It is estimated that, by the end of 1997, the prevalence rate of HIV/AIDS among the adult population aged 15 - 49 years in Zambia was

19 per cent. Although not strictly comparable, the adult prevalence rate for sub-Saharan Africa was recently estimated to be 8 per cent.²⁷⁰ In total, 770,000 adults and children in Zambia were believed to be infected with HIV/AIDS at the end of 1997. There have already been almost 600,000 deaths in Zambia attributed to AIDS since the epidemic began in the early 1980s, including 97,000 deaths in 1997 alone.

HIV/AIDS in Zambia	
Estimated number of adults and children living with HIV/AIDS in Zambia (to end 1997):²⁷¹	
Adults (15-49)	730,000
Adult rate (%)	19.07
Women (15-49)	370,000
Children (0-15)	41,000
Estimated number of AIDS cases in adults and children that have occurred since the beginning of the epidemic:	630,000
Estimated number of adults and children who have died of AIDS:	
Since the beginning of the epidemic:	590,000
During 1997:	97,000
Estimated number of orphans:²⁷²	
Since the beginning of the epidemic:	470,000
At the end of 1997:	360,000

Zambia is a country with a mature AIDS epidemic. As a consequence, the damage caused by the disease is becoming increasingly visible.²⁷³ It had been calculated that AIDS will reduce life expectancy in Zambia by eleven years to an average of 43 years by 2005 when compared to the lifespan of fifty-four years otherwise predicted in the absence of the disease.²⁷⁴ By 1995, life expectancy had already fallen to less than 46 years. The decline to this date is explained by high maternal mortality and the high incidence of other fatal childhood diseases and does not capture the impact of AIDS.²⁷⁵ By as early as 1998 the predicted nadir of 43 years had already been undercut, with life expectancy reduced to just 40 years and six months. Studies in nine African countries, including Zambia, have calculated that life expectancy will be reduced by an average of seventeen years due to AIDS when compared with the increased lifespan which had been predicted.²⁷⁶

2. Selected impacts of AIDS

a. Productivity

The vast majority of those engaging in behaviour which puts them at substantial risk are in the age range 15 - 49. It is precisely this group which makes up the productive core of a population and upon whom the elderly and children are dependant. The final implications for economic development are unclear, the more so given a context of continued structural adjustment and uncertainty about HIV projection scenarios. However, the loss of labour and skills in the informal and formal economies is already being felt. The example is cited in the UNAIDS/WHO 1998 global AIDS update of large Zambian companies who have reported that AIDS illness and death cost more than their total profits for the year. Models have predicted that, by 2000, the impact of AIDS, in the absence of external assistance to cover medical and other transitional employment and retraining costs, would account for a 9 per cent reduction in GDP below the non-AIDS projection.²⁷⁷ A fall in GDP of 5 per cent was predicted solely on the basis of losses in the workforce.

b. The impact of AIDS on education

As discussed in Section 3(II), AIDS is having a significant adverse impact on education which will have repercussions for development in the longer term. HIV/AIDS prevalence among the teaching profession is high and mortality and sickness are depriving the system of experienced teachers, while simultaneously requiring that scarce resources are spent on recruitment and retraining. The learning ability of pupils in families affected by AIDS is being impaired by anxiety and disruption. Many of those who die leave a surviving partner who is often infected with the virus and in need of care. This burden of care all too frequently falls upon children and young adults who are withdrawn from school in order to tend to a sick relative or to generate household income. Girl pupils suffer more than boys in this respect.

c. AIDS, the health care system and user fees

Zambia's already overstretched and depleted health care system is being placed under increasing strain by the AIDS epidemic. The United Nations cites figures for 1992 which record that HIV/AIDS related illnesses accounted for 43 per cent of in-patient days in the hospitals surveyed.²⁷⁸ The current situation is undoubtedly even more acute, and the human suffering must not be lost sight of amid the statistics:

‘Two-thirds of the patients at the main hospital in Ndola, in the copper-mining region of northern Zambia, are dying of AIDS. Some have lost so much weight that their arms look like broken broom handles and their tattoos are shrivelled and illegible. Their immediate wish is not for costly antibiotics, but for food. In theory, the state-run hospital provides meals for all patients, but several complain that they have not eaten all day, and beg for 100 kwacha (four American cents) for breakfast.’²⁷⁹

The consequence of user fees in reducing the access of poor people with HIV/AIDS to health care is highlighted by the UN agencies as a particular concern in Zambia. Sexually transmitted diseases often go undetected and untreated because of the poor state of the health service.²⁸⁰ Attendance by people at clinics for the treatment of sexually transmitted diseases declined in Zambia after the introduction of user charges.²⁸¹ This is a serious outcome given the prevalence and consequences of such diseases: sufferers have a drastically increased risk of HIV infection.²⁸²

According to the 1996 Zambia Demographic and Health Survey, 27 per cent of women and 55 per cent of men claim to have used a condom during sexual intercourse over the preceding twelve months.²⁸³ However, the fact that less than 5 per cent of women and just over 6 per cent of men used a condom during their last sexual encounter is cause for serious concern.

3. AIDS/HIV and vulnerable groups

a. Orphans of the virus

The number of children orphaned by AIDS is shocking in its extent and consequences. By the end of 1997, 360,000 children under fifteen living in Zambia had lost one or both parents to the disease.²⁸⁴ To personalise the impact of this situation, a recent article cites the case of Faides Zulu, a grandmother from a shanty compound near Ndola.²⁸⁵ The old lady was supported by her daughter and her husband until they both died of AIDS. Now she must look after five grandchildren, using a small plot to grow vegetables which she then carries to the market in town, despite her frailty and advanced years.

Double orphans of the virus are particularly vulnerable. Commonly, they do not receive adequate care, are at greater risk of being abused, and are liable to slide into streetism.²⁸⁶ Article 10 of the Covenant requires, *inter alia*, that ‘Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.’²⁸⁷

The Zambian Government has closed most state-run orphanages. While the care offered in such institutions may have been inadequate, in its absence it is incumbent upon the authorities to make alternative provision. The reliance on relatives to provide a home when half the population live in extreme poverty, and when welfare payments reach less than 2 per cent of all Zambians, must represent a failure to target the vulnerable. The result is an estimated 90,000 homeless children living on the streets or in the bush.

b. HIV/AIDS and young women

Not only does an unequal burden of care fall on women and girls, but young women are particularly vulnerable to contracting the disease. HIV infection rates for girls 15 -19 years has been shown to be seven times the rate for males of the same age.²⁸⁸ In the main, this is because young girls, with little knowledge of contraception or the power to refuse sex, are being infected by older men.²⁸⁹ The use of condoms among teenage girls is low. Half of all teenage girls in Zambia are sexually active by the time they are 16, yet less than 12 per cent of all women aged 15 - 19 have ever used a condom.²⁹⁰ Less than 5 per cent of women in this age group used a condom the last time they had sexual intercourse.²⁹¹ Teenage pregnancy rates are high. Survey results for 1996 record that three out of ten girls aged 15 - 19 were either already mothers or were pregnant with their first child.²⁹² Poverty and low levels of education are factors which exacerbate this situation. Women with at least secondary education are four times more likely to use a condom than those with no education.²⁹³

HIV prevalence of 27 per cent was recorded among pregnant women less than twenty years of age visiting antenatal clinics in the major urban areas in 1993.²⁹⁴ Neonatal HIV infection rates are correspondingly high and analysis suggests that AIDS is contributing to rising child mortality rates in Zambia.²⁹⁵

Notes

¹ PSHDZ, p.64; also PA, paras. 8.53 and 8.63 ff.

² PSHDZ, p.64.

³ PA, para. 8.53.

⁴ Ministry of Health (1992a), *National Health Policies and Strategies (Health Reforms)*. The other two central objectives are to create environments conducive to better health and to disseminate knowledge on the art of being well.

⁵ Ministry of Health (1994), *National Strategic Health Plan 1995-1999: From Vision to Reality*. See also HSSP SAR, para. 1.14 ff., for an account of health reform and the Strategic Plan.

⁶ Oxford Policy Management (1996), 'Zambia Health Reform Programme,' para. 12. For an account of progress on decentralisation, see also HSSP SAR, paras. 1.25 ff and paras. 2.10 ff.

⁷ ER 1996, p.106.

⁸ Oxford Policy Management (1996), table 1, p. A4.5.

⁹ Ibid., para. 8.

¹⁰ UNICEF (1998), *Implementing health sector reforms in Africa: a review of eight country experiences*, p.2.

¹¹ HSSP PID, para. 2.

¹² Below the level of the DHBs, Neighbourhood Health Management Committees have also been created to encourage community-level participation in the health sector. Representatives are either elected or appointed by elders.

¹³ Each DHB appoints a District Health Management Team which plans health services to match local needs. However, some of the DHMTs have been established in advance of the District Health Boards.

¹⁴ Oxford Policy Management (1996), para. 18.

¹⁵ UNICEF (1998), p.39.

¹⁶ Prior to reform, the Ministry of Health received its budget allocation from the Treasury. Decisions were made centrally over the distribution of funds to each Provincial Permanent Secretary who controlled the flow of funds to the district and local levels. The result was often inflexibility and a mismatch of resources with the consequence that managers and health professionals on the ground did not receive their proper allocation.

Bureaucracy caused the system to fail. For example, voucher schemes for supplies often required the direct authorisation of the Provincial Permanent Secretary so that a special journey had to be made to obtain a signature. See PA, para. 8.13.

¹⁷ PFP (1995 - 1998), para. 146; also PSHDZ, p.66.

¹⁸ Oxford Policy Management (1996), para. 12.

¹⁹ *Idem*; also PFP (1995 - 1998), para. 147.

²⁰ PFP (1995 - 1998), para. 147.

²¹ UNICEF (1998), p.39.

²² Oxford Policy Management (1996), para. 40.

²³ Ibid., para. 41. On the subject of donor coordination, see also the HSSP SAR, paras. 1.52 ff; and the Joint Donor Statement, reproduced in *idem*, Annex 5 - Zambia: Health Sector Support Project.

²⁴ The common basket represents a unitary mechanism by which funds from the central Government budget for health are channelled to each district according to set planning, budgeting, disbursement, accounting and auditing criteria. Donor contributions are used to make up any shortfall between planned expenditure and the actual resources which are allocated to the Ministry of Health. See Oxford Policy Management (1996), para. 43.

²⁵ In 1996, only three agencies - DANIDA, SIDA, and UNICEF - committed funds totalling \$3.4 million. See *ibid.*, paras. 44 and 46; also 48 (iii).

²⁶ HSSP SAR, para. 3.1. At the time (i.e., 1994), this figure was based on the part of the Government's program for which there was agreed domestic and donor funding. The total was expected to be revised to reflect 'on-going implementation experience'.

²⁷ HSSP SAR, para. 3.3; see also para. 3.17.

²⁸ Ibid., paras. 2.5 and 3.5. See also Oxford Policy Management (1996), para. 21.

²⁹ *Idem*; also HSSP SAR, paras. 2.5 and para. 2.7. The remainder of Bank finance - that is, around 5 per cent - was earmarked for expenditure on recurrent budget support, policy development and external monitoring and evaluation.

³⁰ Ibid., para. 3.3.

³¹ also Oxford Policy Management (1996), para. 7.

- ³² *HSSP SAR*, para. 1.23.
- ³³ *Ibid.*
- ³⁴ *Ibid.*, para. 12.
- ³⁵ *ZDHS* (1996), para. 1.4; see also *HSSP SAR*, para. 1.17.
- ³⁶ The health centre is viewed as the first formal point of interface between the community and the health system: the 'client' will be screened, diagnosed and either treated with basic curative care or referred to the general hospital. See *HSSP SAR*, para. 1.18.
- ³⁷ *Idem.*
- ³⁸ For example, preventing future illness while providing curative care; advising on good nutrition practices when providing oral rehydration solution (for diarrhoea), and counselling in family planning and/or contraceptives. See *HSSP SAR*, para. 1.22.
- ³⁹ Oxford Policy Management (1996), para. 13. A recent review by UNICEF concluded that, in the case of Zambia, 'the impact of the reforms on health service delivery has been partial.' (UNICEF (1998), p.32).
- ⁴⁰ *HSSP SAR*, para. 4.5.
- ⁴¹ Oxford Policy Management (1996), para. 39.
- ⁴² The figures for 1969 and 1980, averaged for men and women, are from census results summarised in *ZDHS* (1996), table 1.1, p.3. The figure for 1995 is cited in the *ZHDR 1997*, p.16.
- ⁴³ World Bank (1997), *1997 World Development Indicators*, 'Mortality,' table 2.14, p.88.
- ⁴⁴ WHO (1999b), *World Health Report*, Statistical Appendix, Table 1.
- ⁴⁵ Diop, Seshamani & Mulenga (1998), 'Household Health Seeking Behaviour in Zambia,' p. xv.
- ⁴⁶ *PSHDZ*, p.63.
- ⁴⁷ In 1996, the Government calculated a funding gap of \$13 million for the period 1995 - 1999 based on a total health sector budget of \$132 million, to include domestic and donor finance. To arrive at the figure of \$132 million, the Government was to contribute \$60 million and donors \$56 million. Cost sharing - that is, user fees - were to contribute the remaining \$3 million. See Oxford Policy Management (1996), para. 31 and table 2.48 (ii).
- ⁴⁸ WHO (1999), *World Health Report*, p.34.
- ⁴⁹ Oxford Policy Management (1996), para. 33.
- ⁵⁰ For a discussion of the negative impact of cash budgeting and other management practices on social spending, see *PA*, paras. 4.16 and 4.76 ff.
- ⁵¹ For example, the reduction in real expenditure on health has not been as disproportionate as the budget cuts on education. See *intra*, Section 3(II), pp. 236 ff.
- ⁵² Catholic Commission for Justice and Peace (1999), 'Visions, Priorities and Parliamentary Responsibilities,' Post-Budget Statement.
- ⁵³ Mark Lynas (1999), 'Just what happens in hospitals' .
- ⁵⁴ See *Reporting Guidelines*, Article 12 of the Covenant, para. 9.
- ⁵⁵ *Ibid.*, paras. 4(f)-(h) and para. 5(h).
- ⁵⁶ Information is sought on 'the measures taken by your Government to assure to all medical service and medical attention in the event of sickness.' (*Reporting Guidelines*, Article 12 of the Covenant, para. 5(h)). Reference is also made to the proportion of the population having access for treatment 'within one hour's walk or travel.' (*Idem.*, para. 4(f)).
- ⁵⁷ The Committee seeks information on access of the general population to treatment by trained personnel for the treatment of common diseases and injuries, including data on the regular supply of essential drugs. Specific information is also required on the access of pregnant women and infants to trained personnel. See *Reporting Guidelines*, Article 12 of the Covenant, paras. 4(f) - (h).
- ⁵⁸ Derived from *ibid.*, paras. 5(h) and 5(i): the poor are a vulnerable group whose access to health care is diminished by their poverty. See also the Committee's Statement on Globalisation, para. 3, on user fees and reduced access of the poor to health care (reproduced in E/1999/22, Chapter VI).
- ⁵⁹ Definition adopted by UNDP, *ZHDR 1997*, p. 17.
- ⁶⁰ Diop, Seshamani & Mulenga (1998), section 4.1.3.
- ⁶¹ *HSSP SAR*, para. 1.42.
- ⁶² *Ibid.*, para. 8.14.
- ⁶³ George Aligiah, BBC News, 1999.
- ⁶⁴ *HSSP SAR*, para. 2.27.
- ⁶⁵ The Bank states this succinctly: 'a short distance to [a] health center should not be thought [of] as automatic access to health care.' (*PA*, para. 3.94).
- ⁶⁶ Calculated from Central Statistical Office (1994), *Priority Survey II 1993*, table 5.2.
- ⁶⁷ *LCMS* (1996), table 8.7. While the overall proportion of the population making such visits is shown to have declined, of those attending health facilities, about 6 per cent more were visiting Government run institutions. One possible explanation for the drop in the overall number of people visiting is that people increasingly only do so when they feel it is absolutely necessary. When they must make an essential visit, they seek the least cost option which, despite user charges, remains Government run institutions.
- ⁶⁸ See *Reporting Guidelines*, Article 12 of the Covenant, para. 4(f).
- ⁶⁹ Cited in *ESAC II R&R*, Annex A, 'Zambia - Social Indicators of Development,' p.28.
- ⁷⁰ Calculated from ratios of the number of doctors/100,000 population, cited by the UNDP in its *ZHDR 1997*, p. 18.
- ⁷¹ *Idem.*
- ⁷² *PA*, para. 8.16.
- ⁷³ *LCMS* (1996), table 8.8.
- ⁷⁴ *HSSP SAR*, para. 1.39.
- ⁷⁵ *PA*, para. 8.14.
- ⁷⁶ *HSSP SAR*, para. 1.41.
- ⁷⁷ *Idem.*
- ⁷⁸ *HSSP SAR*, para. 2.25.
- ⁷⁹ *ESAC II R&R*, para. 51.
- ⁸⁰ UNICEF (1998), Appendix H, p.81.
- ⁸¹ *ESAC II R&R*, para. 57 (i)(i).
- ⁸² *ESAC II R&R*, Annex J, Letter of Development Policy, para. 69.
- ⁸³ *ER 1997*, table 3.29.
- ⁸⁴ *Ibid.*, para. 208.
- ⁸⁵ *Ibid.*, para. 209.
- ⁸⁶ See *Reporting Guidelines*, Article 12 of the Covenant, para. 5(h) in conjunction with para. 5(i).
- ⁸⁷ Cf. *Reporting Guidelines*, Article 12 of the Covenant, para. 6.
- ⁸⁸ See Statement on Globalisation, op. cit., para. 3.
- ⁸⁹ *LCMS* (1996), table 8.5.
- ⁹⁰ Of the 11 per cent of the population who sought care at a health facility in 1996, 76 per cent chose a government clinic, health centre or hospital; 8

per cent a mission institution; 6 per cent an industrial or company institution; and 4 per cent, a private institution. See *ibid.*, table 8.7.

⁹¹ *Ibid.*, table 8.6.

⁹² See Diop, Seshamani & Mulenga (1998), section 6.1. The analysis is based on *LCMS* (1996) survey data.

⁹³ Fiedler, Levin, & Mulikelela, 'A Feasibility Analysis of Franchising the PROSALUD/Bolivia Primary Health Care Service Delivery Strategy in Lusaka, Zambia,' table 21.

⁹⁴ WHO (1999), *World Health Report*, Statistical Appendix, Table 7. Data is based on the period 1990 - 1995 and the poor:non-poor probability ratios have been averaged for men and women.

⁹⁵ User fees were initially introduced in Zambia in 1989. They were set at a rate of K4 (\$0.32) for registration and K50 (\$4.00) for a medical examination. There was little incentive to collect fees at the facility level as the fees were to be forwarded on to the district and provincial levels under the control of the Permanent Secretary of the Ministry of Health. See *HSSP SAR*, para. 1.49.

⁹⁶ UNICEF (1998), p.23.

⁹⁷ The average cost of consultation at a Government institution in 1996 was K804, although in urban areas this rose to K1828 or four times the amount charged in rural areas. (*LCMS* (1996), table 8.10). The average cost of consultations at a private health centre (K12,363) or with a traditional healer (K8,463) were significantly higher. However, the caveat still applies that the recorded figures do not reveal the total cost of treatment - payment for medicine, prescription charges, admission fees.

⁹⁸ *PA*, para. 8.72.

⁹⁹ Booth et al. (1995), 'Coping with Cost Recovery'; also *PA*, para. 8.72.

¹⁰⁰ Oxford Policy Management (1996), para. 32.

¹⁰¹ UNICEF (1998), p.48.

¹⁰² Watkins (1997), 'Cost-recovery and equity in the health sector: issues for developing countries,' subsection entitled 'Problems in exemption systems'.

¹⁰³ *SCR* (1997), Statistical Appendix, table 12.

¹⁰⁴ See *PA*, para. 3.94.

¹⁰⁵ *Idem.*

¹⁰⁶ The apparent average cost of each visit to a Government health institution in 1993 was K113, much less than the charges for traditional or private consultations (Central Statistical Office (1994), *Priority Survey II 1993*, table 5.3). However, the figure quoted for fees at Government institutions differs significantly from a breakdown of charges cited by the World Bank for urban health services: registration K100; consultation K500; prescription; admission K1500; mortuary costs of K1000 (see *PA*, para. 3.94). The difference is probably accounted for by two factors: the average cost of a consultation in rural areas is significantly less, lowering the average cost and masking high charges in urban areas; and the official statistics reflect the cost of consultation, not the total cost of consultation and treatment. The average cost of consultation at a Government institution in 1996 was K804, although in urban areas this rose to K1828 or four times the amount charged in rural areas (*LCMS* (1996), table 8.10). Once more, the cost of consultations at a private health centre or with a traditional healer were significantly higher. However the caveat still applies that the recorded figures do not reveal the cost of treatment - payment for medicine, prescription charges, admission fees. While fees charged by traditional healers are seldom less than at a Government clinic or hospital, payment can often be made on credit.

¹⁰⁷ *PA*, para. 3.59. When people living in rural areas are ill, official survey data suggests that they use traditional healers just 4 per cent of the time. However, detailed analysis of data from the same survey suggests that spending on traditional care among rural households averaged 20 per cent of the domestic health budget. See, respectively, *LCMS* (1996), table 8.7; and Diop, Seshamani & Mulenga (1998), table 4.1.2. The consultants conclude that formal surveys are not the best way to obtain information on the use of traditional medicine.

¹⁰⁸ Booth et al. (1995), 'Coping with Cost Recovery'.

¹⁰⁹ *LCMS* (1996), table 8.6.

¹¹⁰ The survey data and associated paradox is cited in Watkins (1997), 'Cost-recovery and equity in the health sector: issues for developing countries,' subsection entitled 'Willingness and ability to pay'.

¹¹¹ Reddy & Vandemoortele (1996), 'User financing of basic social services,' p.9.

¹¹² *Ibid.*, p. 16.

¹¹³ *PA*, para. 8.72.

¹¹⁴ *PSHDZ*, p.67.

¹¹⁵ See, for example, Booth et al. (1995), 'Coping with Cost Recovery'; Lake (1994), *User Charges in the Health Sector: Some Observations on the Zambian Experience*; also Foster (1993), *Cost and Burden of AIDS on the Zambian Health Care System: Policies to Mitigate the Impact on Health Services*. The latter study is cited in *PSHDZ*, p.67.

¹¹⁶ Kahenya & Lake (1994), 'User Fees and Their Impact on Utilisation of Key Health Services'.

¹¹⁷ Reddy & Vandemoortele (1996), p.15.

¹¹⁸ For example, the monthly attendance in a clinic located in a poor area in Lusaka declined sharply immediately after the introduction of user fees and still had not recovered a year later. See Lake (1994).

¹¹⁹ Reddy & Vandemoortele (1996), p.16.

¹²⁰ *GC* 3, para. 12.

¹²¹ In respect of the right to housing, see *GC* 4, para. 8(e); in respect of realisation of the right to education, see *GC* 13 para. 6(b)(i). *GC* 5 recognises the obligation to take positive action to reduce structural disadvantages and to give appropriate preferential treatment in the case of the disabled as a vulnerable and disadvantaged group (para. 9). The duty of the state to protect those old people who are vulnerable in times of recession and restructuring, notwithstanding resource constraints, is recognised by the Committee in *GC* 6, para. 17. *GC* 8 on economic sanctions and respect for economic, social and cultural rights pays particular attention to the obligation of the affected State to protect vulnerable groups and the obligation of those States applying sanctions to respond to any disproportionate suffering experienced by vulnerable groups (paras. 10 and 14; see also paras. 4 - 6 and para. 8).

¹²² *Reporting Guidelines*, Article 12, para. 5(b).

¹²³ *Ibid.*, Article 13, para. 5(c).

¹²⁴ *Ibid.*, Article 13, para. 5(d).

¹²⁵ Booth et al. (1995), 'Coping with Cost Recovery'.

¹²⁶ *LCMS* (1996), table 8.9.

¹²⁷ *Idem.*

¹²⁸ 35 per cent of the next-to-lowest reported not paying. The range is 42 to 48 per cent not paying for the other quintiles, including the highest and lowest. See Diop, Seshamani & Mulenga (1998), section 5.3.

¹²⁹ In the other four income quintiles the range is 29 - 49 per cent of patients who are exempted from fees at government hospitals. See *ibid.*, section 5.3.

¹³⁰ *Ibid.*, section 5.4. Somewhat paradoxically, recognition is given elsewhere in the report to the contribution of such exemptions in mitigating inequities of access, while their potential to do so 'is not fully realized because of significant errors in the administration of exemptions.' See *idem*, section 7. Conclusions.

¹³¹ The researcher was conducting a survey for the study by Booth et al. (1995). The citation is from Reddy & Vandemoortele (1996), p.51.

- ¹³²The estimates exclude patients exempt on the grounds of chronic disease. See Diop, Seshamani & Mulenga (1998), section 5.4.
- ¹³³Those not paying at government health facilities include 30 per cent among children between 5 and 15 years of age; 16 per cent among young adults between 15 and 25 years of age; 22 per cent among adults between 25 and 45 years of age; and 28 per cent among adults between 45 and 65 years of age. See *ibid.*, section 5.4.
- ¹³⁴Booth et al. (1995).
- ¹³⁵See Diop, Seshamani & Mulenga (1998), section 7. Conclusions.
- ¹³⁶Survey results suggest that only 2 per cent of those seeking health care at government facilities in 1996 were over 65. See *ibid.*, section 5.4.
- ¹³⁷Sumaili & Milimo (1996), *Health Sector Reform Review*, p.17.
- ¹³⁸*ZHDR 1997*, p. 57.
- ¹³⁹See Kakuwa (1997), 'Ensuring Accessibility of Health Care and Health Facilities by the Destitutes in Zambia'.
- ¹⁴⁰*ER 1997*, para. 228.
- ¹⁴¹*ZHDR 1997*, p. 20. By September 1995, the HCCS assisted 17,703 people, by August 1996, 25,150 people and by the end of 1997 it had assisted 40,000. For a brief review of the assistance offered each year, see *ER 1996*, para. 250; and *ER 1997*, para. 230.
- ¹⁴²*ER 1996*, para. 220.
- ¹⁴³On the issue of targeting see Kakuwa (1997).
- ¹⁴⁴*ZHDR 1997*, p. 20.
- ¹⁴⁵*Idem.*
- ¹⁴⁶*LCMS* (1996), table 8.9.
- ¹⁴⁷Diop, Seshamani & Mulenga (1998), section 5.3.
- ¹⁴⁸The lowest take-up at 37 per cent was for the next to lowest and middle income quintiles. See *ibid.*, section 5.3.
- ¹⁴⁹Makinen & Leighton (1997), 'Summary of Market Analysis for a Franchise Network of Primary Health Care in Lusaka, Zambia,' section 5.3.
- ¹⁵⁰See Diop, Seshamani & Mulenga (1998), section 6.1.
- ¹⁵¹For a critical review of Bank policy in this area, see Watkins (1997).
- ¹⁵²*Ibid.*, under the subsection entitled 'Problems in exemption systems'.
- ¹⁵³*HSSP PID*, para. 7.
- ¹⁵⁴World Bank (1996), 'Cost Sharing in the Social Sectors of Sub-Saharan Africa: Impact on the Poor,' pp. 28 - 29.
- ¹⁵⁵*HSSP SAR*, para. 2.32; see also para. 1.48.
- ¹⁵⁶The advantages of user fees listed by the Bank include strengthening the position of the Ministry of Health in its annual 'budget battle' with Ministry of Finance; providing incentives to health service managers to enhance both revenue collections and service quality by allowing retention of fees at the point of collection; the promotion of equity by requiring patients from higher income households to pay for the health care they receive; and their usefulness as a proxy measure of quality care, based on willingness of middle and low-income households to pay for services. (See *HSSP SAR*, para. 2.32 (a).
- ¹⁵⁷*Idem.*
- ¹⁵⁸*HSSP SAR*, para. 1.49.
- ¹⁵⁹*Ibid.*, para. 4.4.
- ¹⁶⁰*Ibid.*, 'B. Other Agreements,' especially para. 5.4 (a).
- ¹⁶¹*Ibid.*, para. 2.37. See also *idem*, 'B. Other Agreements,' especially para. 5.4 (d).
- ¹⁶²*Ibid.*, 'B. Other Agreements,' respectively paras. 5.4 (e) and (f).
- ¹⁶³Respectively, *HSSP SAR*, Annex 4 - Proposed program for annual consultations between donor agencies and the ministry of health, Zambia; and Annex 6 - Supervision Schedule.
- ¹⁶⁴*ESAC II R&R*, Annex J, Sub-sectoral budget allocations, p.26.
- ¹⁶⁵*PSREPC R&R*, Annex A, Social Spending in 1999, pp. 56 - 57.
- ¹⁶⁶*ESAC II R&R*, Annex J, Letter of Development Policy, para. 73.
- ¹⁶⁷*ESAC II R&R*, para. 52.
- ¹⁶⁸*PSREPC R&R*, para. 49.
- ¹⁶⁹Makinen & Leighton (1997), section 3.2.
- ¹⁷⁰*ZDHS* (1996), para. 1.4.
- ¹⁷¹*GC 1*, para. 6.
- ¹⁷²ICESCR, article 12(2)(a).
- ¹⁷³These targets are specified in Zambia's 1994 *National Programme of Action for Children* which arises from commitments made at the World Summit for Children.
- ¹⁷⁴*ZDHS* (1996), table 7.1.
- ¹⁷⁵The IMR of 79 deaths per 1000 live births for the period 1977 - 81 is cited in the World Bank's *PA*, p.18, which itself draws on data from the *Zambia Demographic and Health Survey*.
- ¹⁷⁶*ZDHS* (1996), table 7.1.
- ¹⁷⁷The 1990 census, for the reference period 1984, records under five mortality of 167 per 1000. See *ZDHS* (1996), table 7.2.
- ¹⁷⁸In Luapula Province under-five mortality over the last ten years to 1996 stood at 254 deaths per 1000 live births (*ZDHS* (1996), table 7.3).
- ¹⁷⁹*ZDHS* (1992).
- ¹⁸⁰*ZDHS* (1996), tables 8.10 and 8.11. The incidence of malarial type fever was 40.1 per cent, of Acute Respiratory Infections was 12.7 per cent and of diarrhoea was 23.5 per cent.
- ¹⁸¹Booth et al. (1995).
- ¹⁸²*Reporting Guidelines*, Article 12 of the Covenant, para. 4(d).
- ¹⁸³Reddy & Vandemoortele (1996), p.33.
- ¹⁸⁴*ZHDR 1997*, p. 17.
- ¹⁸⁵To be fully vaccinated, the WHO specifies BCG, measles and three doses each of DPT and polio vaccines. BCG protects against tuberculosis. DPT protects against diphtheria, pertussis and tetanus. The 1992 immunisation coverage figure of 67 per cent is reported in *ZDHS* (1996), p.113. However, the UNDP cites coverage of just 20 per cent in the same year, suggesting that the majority of children born in 1992, and therefore under 12 months, were not vaccinated. See UNDP, *ZHDR 1997*, p. 17.
- ¹⁸⁶*ZDHS* (1996), table 8.7.
- ¹⁸⁷BCG coverage declined from 100 per cent in 1996 to 59 per cent in 1997; DPT coverage fell from 83 per cent to 52 per cent; immunisation coverage against measles was 50 per cent in 1997 compared with 92 per cent in 1996. Figures for the other main vaccination against polio are ambiguous. While coverage for the oral polio vaccination fell from 81 per cent to 51 per cent, an increase in overall polio vaccination is recorded. See *ER 1997*, 'Immunisation,' para. 212.
- ¹⁸⁸*ZDHS* (1996), p.6.
- ¹⁸⁹Government of Zambia (1994), *National Program of Action for Children*.
- ¹⁹⁰*ZHDR 1997*, p. 17.

- ¹⁹¹ZDHS (1996), p.136.
- ¹⁹²ZHDR 1997, p. 17.
- ¹⁹³ZDHS (1996), table 8.4. The data is compiled from births in the survey during the preceding five years to 1996.
- ¹⁹⁴ZHDR 1997, p. 17, based on ZDHS (1992).
- ¹⁹⁵ZDHS (1996), table 8.5.
- ¹⁹⁶*Idem.*
- ¹⁹⁷Diop, Seshamani & Mulenga (1998), section 4.20.
- ¹⁹⁸The Committee requests information on professional care before and during childbirth and on the maternal mortality rate. The implication is that such maternal care is an important aspect of the right to health. See *Reporting Guidelines*, Article 12 of the Covenant, para. 4(g).
- ¹⁹⁹ICESCR, respectively, article 12, and article 11 on the right to an adequate standard of living, including adequate food.
- ²⁰⁰GC 12, para. 14.
- ²⁰¹*Ibid.*, para. 15.
- ²⁰²*Ibid.*, para. 19.
- ²⁰³*Ibid.*, para. 15.
- ²⁰⁴*Idem.*
- ²⁰⁵Afronet (1997) and (1998), *The Zambian Human Rights Report*, respectively Chapters 4 and 5 on Economic and Social Rights.
- ²⁰⁶GC 12, para. 26, drawing on ICESCR, article 7(a)(ii).
- ²⁰⁷Cf. the requirement within the Covenant to take measures, including specific programmes, 'to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge of the principles of nutrition....' (ICESCR, article 11(2)(a)).
- ²⁰⁸*Reporting Guidelines*, Article 11 of the Covenant, para. 2(b)(i-iii).
- ²⁰⁹GC 12, para. 13.
- ²¹⁰*Ibid.*, para. 28.
- ²¹¹*Reporting Guidelines*, Article 11 of the Covenant, para. 2(b)(i). Within GC 12, para. 13, reference is made to the vulnerability of landless persons and other particularly impoverished segments of the population, indigenous population groups whose access to their ancestral lands may be threatened, physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. It is also recognised that victims of natural disasters people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food.
- ²¹²PSHDZ, p.38.
- ²¹³Government of Zambia (1994), *National Programme of Action for Children*.
- ²¹⁴*Priority Survey 1991*, as cited in ZHDR 1997, p. 17. The LCMS figure of 46 per cent for the incidence of stunting in the UNDP report appears to be erroneously quoted. Direct reference to the LCMS (1996) gives a figure of 50 per cent.
- ²¹⁵ZDHS (1996), p.6.
- ²¹⁶LCMS (1996), table 16.12.
- ²¹⁷PSHDZ, p.39.
- ²¹⁸Central Statistical Office (1994), *Priority survey II 1993*, p.147.
- ²¹⁹*Ibid.*, pp.146-147; also PA, para. 2.45.
- ²²⁰GC 12, para. 17.
- ²²¹*Idem.*, drawing on GC 3, para. 10.
- ²²²ICESCR, article 2(1).
- ²²³GC 12, para. 21.
- ²²⁴ESAC II R&R, Annex J, Letter of Development Policy, para. 70.
- ²²⁵ESAC II R&R, para. 57(i)(ii).
- ²²⁶PSREPC R&R, para. 49.
- ²²⁷PSREPC R&R, Annex I, Letter of Development Policy, para. 43.
- ²²⁸GC 12, paras. 36 ff.
- ²²⁹GC 12, para. 41.
- ²³⁰ICESCR, article 12(2)(c).
- ²³¹ZDHS (1996), p.5.
- ²³²ZHDR 1997, p. 18.
- ²³³As part of the LCMS (1996), people were asked to report illness or injury which occurred in the previous two weeks. The survey took place from September to November and it should be noted that morbidity rates vary depending upon seasonal environmental conditions.
- ²³⁴PA, para. 8.57.
- ²³⁵PSHDZ, p.63 and figure 5.6.
- ²³⁶WHO figures, cited in *ibid.*, p.37, figure 4.5.
- ²³⁷ZDHS (1996), para. 8.4.
- ²³⁸PSHDZ, p.36 and p.63.
- ²³⁹PA, para. 3.80.
- ²⁴⁰PSHDZ, p.76. See also the World Bank's PA, para. 8.55.
- ²⁴¹PSHDZ, p.76; WHO (1997), *Weekly Epidemiological Record*, 72nd Year, 1 August 1997.
- ²⁴²WHO (1998), *Global Cholera Update 1998*; WHO (1999a), *Outbreak News*, 16 June 1999.
- ²⁴³ZDHS, 1992.
- ²⁴⁴Ministry of Health (1992b), *Diarrhoeal Diseases Household Case Management Survey: Zambia*. (Cited in PSHDZ, p.36).
- ²⁴⁵ZDHS (1996), table 8.11.
- ²⁴⁶*Ibid.*, p.6.
- ²⁴⁷Government of Zambia (1994), *National Programme of Action for Children*.
- ²⁴⁸ICESCR, article 12(2)(b).
- ²⁴⁹*Reporting Guidelines*, Article 12 of the Covenant, para. 4(b) and (c).
- ²⁵⁰PSHDZ, p.76.
- ²⁵¹Oxford Policy Management (1996), para. 15; 48 (i).
- ²⁵²LCMS (1996), para. 14.7.
- ²⁵³PSHDZ, p.76.
- ²⁵⁴ZHDR 1997, p. 17.
- ²⁵⁵ER 1997, para. 2.15.
- ²⁵⁶ZHDR 1997, p. 17.
- ²⁵⁷LCMS (1996), table 14.7.

²⁵⁸Ibid., table 14.12.

²⁵⁹PA, para. 6.30.

²⁶⁰PSHDZ, p.77.

²⁶¹ER 1997, para. 210.

²⁶²ER 1996, para. 233.

²⁶³UNAIDS & WHO (1998b), *AIDS epidemic update: December 1998*, p.3.

²⁶⁴ICESCR, article 2(1).

²⁶⁵See GC 2, para. 9.

²⁶⁶The basis for such consultation is provided in ICESCR, article 18. See also the Committee's *Rules of Procedure*, Rules 66 - 68.

²⁶⁷See, respectively, ICESCR article 3 and article 10. On the obligation to target measures to realise the rights of vulnerable groups, see GC 3, para. 12.

²⁶⁸UNAIDS & WHO (1998b), *AIDS epidemic update: December 1998*, p.3.

²⁶⁹For example, in Botswana, Namibia, Swaziland and Zimbabwe, current estimates show that between 20 per cent and 26 per cent of people aged 15-49 are living with HIV or AIDS. (Ibid., p.3).

²⁷⁰The adult prevalence rate for sub-Saharan Africa is also provided by UNAIDS/WHO and is an estimate of the proportion of adults (15 to 49 years of age) living with HIV/AIDS in 1998, using 1997 population numbers. The global average of adult prevalence is 1.1 per cent, although this figure is itself skewed by the high incidence of the disease in sub-Saharan Africa. Although the regional prevalence rate is based on earlier estimates using 1998 country models, the figures cited are provisional and reflect adjustments. They are not directly comparable with earlier or later series. See UNAIDS & WHO (1998b), *AIDS epidemic update: December 1998*.

²⁷¹These estimates include all people with HIV infection, whether or not they have developed symptoms of AIDS, alive at the end of 1997.

²⁷²Children who have lost their mother or both parents to AIDS (while they were under age 15).

²⁷³UNAIDS & WHO (1998b), *AIDS epidemic update: December 1998*, p.7.

²⁷⁴Fylkesnes, Brunborg & Msiska (1995), 'An update on the current HIV situation and future demographic impact, Zambia 1995' (cited in PSHDZ, p.60).

²⁷⁵The UNDP specifically rejects the explanation that this decline in life expectancy as officially reported is due to the increased probability of death in middle age because of AIDS since the mortality rates for older cohorts are not directly measured. See ZHDR 1997, p.16.

²⁷⁶The countries are Botswana, Kenya, Malawi, Mozambique, Namibia, Rwanda, South Africa, Zambia and Zimbabwe. All have an adult HIV prevalence rate of 10 per cent or more. See UNAIDS & WHO (1998b), *AIDS epidemic update: December 1998*, p.7.

²⁷⁷L. Forgy and A. Mwanza (1994), *The Economic Impact of AIDS in Zambia* (cited in ZHDR 1997, pp. 18 - 19).

²⁷⁸PSHDZ, p. 62.

²⁷⁹'Children of the virus,' *The Economist*, 14 August 1999, p.47.

²⁸⁰PSHDZ, p.60.

²⁸¹Booth et al. (1995).

²⁸²In 1991, 60 per cent of male STD patients tested in Lusaka were HIV positive. Outside of Lusaka, prevalence was 38 per cent in the same group. See UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.

²⁸³ZDHS (1996), table 11.13.1.

²⁸⁴UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.

²⁸⁵'Children of the virus,' *The Economist*, 14 August 1999, p.47.

²⁸⁶PSHDZ, p. 61.

²⁸⁷ICESCR, article 10(3).

²⁸⁸Webb (1996), 'The socioeconomic impact of HIV/AIDS in Zambia' (cited in UNDP, Zambia Human Development Report, p. 18).

²⁸⁹PSHDZ, p.61.

²⁹⁰The median age for sexual intercourse among women in Zambia is 16.4 years. See ZDHS (1996), table 5.5. The survey results on condom use is given in *idem*, table 4.3.1.

²⁹¹ZDHS (1996), table 11.13.1.

²⁹²Ibid., table 3.10.

²⁹³Ibid., table 11.13.1.

²⁹⁴11 per cent of antenatal clinic women less than 20 years of age who were tested outside of the major urban areas were HIV positive. See UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.

²⁹⁵Analysis by the Ministry of Health, cited in PSHDZ, p.60.

Summary of sections and concluding observations

The recommendations arising from these concluding observations are not intended to be unduly prescriptive. The authority of the Committee in interpreting the Covenant and in monitoring compliance is recognised.

The concluding observations are based on detailed arguments and information substantiated in the main body of this submission. As such, they are best read in conjunction with the main report.

Section 1 - The advisability of international assistance

- Balance of payments support to Zambia has been linked, first and foremost, to ensuring that foreign debt is repaid. The Commission on Human Rights has sought clarification in the past from the Bank and IMF over whether economic restructuring is designed to extract as much debt repayment as possible. The Commission's determination that debt repayment should not take precedence over the basic rights of people in debtor countries must be reiterated.
- The reduction in the levels of balance of payments support has been justified on the basis of the Zambian Government's poor governance record. The violations of civil and political rights referred to warrant a clear message of condemnation from the international community. However, at the same time, the economic conditionality which also lies behind falling levels of support and the adverse impact of this decline on the realisation of economic and social rights has been downplayed.
- While there has been a transfer of resources to project support and sector investment, this has not been commensurate with the declines in balance of payments support.
- In Zambia's case, the use of balance of payments support has not allowed for the freeing up of domestic resources to be spent by the Government, if so minded, on the social sectors. On the contrary, the shortfalls in foreign exchange required to service foreign debt and pay for imports have been covered by switching resources out of an already highly constrained domestic budget.
- It is of paramount importance that Zambia qualifies for full relief under the HIPC debt initiative. While the Enhanced HIPC Framework has received a qualified welcome from key development agencies, there are fears that debt relief may be used to impose more stringent economic conditionalities. This concern persists, despite the emphasis on poverty reduction at Cologne, and recent moves by the World Bank and IMF to integrate macro-economic and social planning.
- In a first phase, Bank adjustment credits were used as the vehicle to drive through a raft of economic reform measures with negative consequences for the enjoyment of economic and social rights:
 - the decimation of public expenditure with only belated protection of relative expenditure in the social sectors;
 - a shift in taxation away from investment to consumer VAT, to be paid by rich and poor alike;
 - the phasing out of producer and consumer maize subsidies, with an increase in the price of maize meal for the urban poor and a decrease in access to the market for poor farmers in isolated rural areas;
 - rationalisation of the parastatal and public sectors under which drastic cuts in staff levels have not been matched by suitable arrangements to cover compensation and redundancy payments;
 - deregulation of the labour market resulting in an Industrial and Labour Relations Act which contravenes trade union rights;

- the move to a commercial market in land with neither due protection of the right to housing of the poor and squatters, nor adequate safeguards to protect the interests of smallholders and women when land is converted for sale from customary tenure;
- and, beyond short-lived interim arrangements, a failure to effectively plan for and fund the takeover and running of social services in the Copperbelt by impoverished local councils. The current, but belated, Mine Township Services Project represents a reaction by the Bank to the refusal of the buyers of the final ZCCM packages to take on wider social responsibilities. It is limited in scope and geographical coverage and is premised on user charges and cost recovery. Unless the Bank can ensure effective regulation, the poor, as marginal consumers, are likely to experience lower levels of service and an increased denial of their basic rights to health, housing and an adequate standard of living.
- It is strongly recommended that the Committee review all of these measures, as supported by the Bank, with a view to determining their compatibility or otherwise with the article 22 of the Covenant on the advisability of international assistance.
- The Committee has already determined that every effort should be made at each stage of a development project to ensure that rights contained in the Covenant are duly taken into account. The World Bank must adopt procedures to ensure that a human rights assessment is carried out as part of programme and project appraisal, implementation, monitoring, and evaluation.
- Such a human rights impact statement could form the basis for agreement between the Bank, IMF, bilateral donors and the Government over specific human rights measures to be adopted. Where necessary, and to a greater extent than currently practiced, priority social actions should be given equal consideration alongside detailed economic measures and made the subject of covenanted loan agreements.
- In a second phase, while the IMF and Bank have continued to support an agenda of macro-economic and fiscal reform, the latter has shifted its emphasis towards investment in 'human capital,' to include a degree of social protection and support.
- Regrettably, measures to establish social safety nets have been limited to formal sector retrenchees, as a subset of those adversely affected by economic reform, and the institution charged with coordinating support has proved entirely ineffective. In the health sphere, the coordination of domestic and donor funds under an integrated health sector support program appears impressive. Unfortunately, decentralisation of management and an emphasis on primary care has not been matched by any improvement in health indicators. On the contrary, the imposition of user fees has reduced access of the poor to health services while exemptions and prepayment schemes have been shown to benefit those who are better-off in the first place. A parallel effort to coordinate investment in basic education is threatened by the failure of the Government to maintain budget allocations in the face of economic decline and the need to switch domestic resources to meet debt servicing. Furthermore, the future of the education programme is dependent on donor finance and is thereby jeopardised should wider donor support, which is often tied to economic and other conditionality, be withdrawn.
- At this juncture, it is sufficient to note how Bank conditionality to protect social expenditure has frequently been couched in relative terms, and always in the context of strict curbs on public expenditure and a massive decline in resources in real terms. Furthermore, specific agreements - for example, relating to reform of the welfare system or the implementation of national policies on drug supply and nutrition - have not been implemented on time, if at all. Please refer to the specific concluding observations on social welfare, education and health.
- The notion that responsibility for the denial of economic and social rights rests exclusively with either the international community or the Government of Zambia is rejected. The degree of culpability of different actors is determined by a close examination of the conditions leading to the adoption of specific legislation or policy measures. In this regard, attention is drawn to the responsibility of the Zambian Government under the Covenant to identify the most appropriate means by which the international community might assist in the realisation of economic and social rights.
- This requirement would be meaningless without a corresponding obligation on the part of the international community to respond to a request for assistance by ensuring that the measures it adopts are advisable and likely to contribute to the effective, progressive implementation of the Covenant.

- The Committee has indicated its readiness to identify the most appropriate means by which the international community might assist State parties, in accordance with articles 22 and 23 of the Covenant. It is therefore recommended that the Zambian Government should keep the Committee informed of the nature of its requests for international assistance and that the relevant agencies, and in particular the IMF and World Bank, should explain to the Committee how, in their view, the measures they propose further implementation of the Covenant. The adoption of regressive measures associated with stabilisation and adjustment must be fully justified.

Section 2(I) - Privatisation in the public interest

- Given that the enterprises which have been privatised ultimately belong to the people of Zambia; and given the right of persons to free expression and opinion based upon the freedom to seek, receive and impart information under the Covenant on Civil and Political Rights; it is imperative that the Zambian Government provides full information not only on the purchase price paid for each business, but also on the banking of the sale proceeds. In the light of concerns raised by the Parliamentary Committee on Public Investments, it is recommended that the Committee on Economic and Social Rights, in its determination of whether maximum available resources have been spent on the realisation of economic and social rights, should seek to clarify:
 - the amount of money from each sale which has been paid into the Privatisation Revenue Account;
 - whether privatisation proceeds, if any, have been paid into other accounts.
 - Depending on the answers given to questions over the banking of the proceeds, the Government should be invited to explain as to why it has diverted payments into accounts other than the PRA.
- The Privatisation Act specifies the use of the proceeds of privatisation for a number of purposes. In assisting the Committee to determine whether maximum available resources have been spent on targeted measures to realise economic and social rights, clarification should be sought on how funds from the sales, in relative and absolute terms, have been used to support redundancy payment schemes, alternative income generating projects and social projects in the public interest.
- There is provision under the Privatisation Act for the retention of shares in the Privatisation Trust Fund for their later flotation on the Lusaka Stock Exchange. Once more, given that the businesses concerned represent the common inheritance of all Zambians who have a right to participate in the fair distribution of the benefits of development, the Government should account for:
 - the number and value of shares which have been sold;
 - the number of individuals who have purchased shares;
 - details of the share-holdings of politicians and public figures;
 - the banking of the proceeds of each flotation in the Privatisation Revenue Account, as provided for in the Privatisation Act.
- The Committee ought to establish if any body in Zambia has effective responsibility for determining whether shares have been bought through third party proxies and whether action has been taken against those found to be in contravention of the Privatisation Act on this issue.
- The undertaking to ensure nondiscrimination is an obligation of conduct stemming from the Covenant, whereas the UN International Code of Conduct for Public Officials recognises that public officials shall be fair and impartial in the performance of their functions and shall at no time afford preferential treatment to any group or individual. In the interests of fairness and accountability, it is recommended that the Committee seek the views of the Zambian Government on:
 - the replacement of the ZPA and its appointed advisers in the handling of the privatisation of ZCCM with a negotiating team under Mr Francis Kaunda, as appointed by the President, in apparent contravention of the Privatisation Act;

- whether it considers there to be any conflict of interest raised by the appointment of members of the ZCCM board to the ZCCM negotiating team when the Privatisation Act specifies that the ZPA, and therefore not the company board of directors of a parastatal, is to handle all sales.
- the alleged dual role of Mr Francis Kaunda in heading up the negotiations for the sale of Chibuluma mine when it has been alleged that he had previously acted as an adviser to the company which emerged as the successful bidder for the assets in question.
- The poor record of Roan Antelope in maintaining working conditions and good industrial relations after privatisation appears to confirm the doubts expressed by the ZPA board over their lack of an industry track record. In light of the denial of economic and social rights which has resulted, and which is fully documented in Section IV of this submission, it falls within the remit of the Committee to seek clarification from the Government as to why the original decision by the ZPA to award the sale of the Luanshya package to another buyer was reversed. The Committee should also be furnished with a copy of any ruling by the High Court for Zambia in the case brought by First Quantum against the ZPA, ZCCM, Binani and the Government of Zambia.
- The Zambian Government has established an Anti-corruption Commission. In view of the allegations which have been made concerning corruption and self-dealing in the privatisation process, it is important to establish the degree of progress made in determining the validity or otherwise of these allegations. The Committee should satisfy itself that the Commission is functioning effectively, is adequately resourced, and is free from interference in the conduct of its work.
- It has been determined that corruption, self-dealing and malpractice represent a violation of both process and result in respect of the Covenant. In accordance with the Declaration Against Corruption and Bribery in International Commercial Transactions and Zambia's commitment to take appropriate action to facilitate access to documents and records about transactions and about identities of persons engaged in bribery in international commercial transactions; and in accordance with the UN's International Code of Conduct for Public Officials which stipulates that 'Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants'; and in the interests of fairness and accountability, it is strongly recommended that the Committee afford the Zambian Government the opportunity to respond in full to the following allegations which have appeared in the public domain:
 - the claim that the President holds, or has at one time held, shares in Binani Industries;
 - the allegation, attributed to sources within the Ministry of Finance, that the President has links with Socomer SA, the successful bidder in the purchase of Ndola Lime, despite rival bids from companies with a sound track record in the cement industry;
 - the claim that the President has an interest in the Israeli gem company Hagura;
 - the contention that Ministers were party to information about the lowest acceptable bids for assets to be privatised;
 - the allegations of asset stripping and the nonpayment of terminal benefits leveled against former and current members of the Government. It should also be noted that both the Parliamentary Committee on Public Investments and the ZPA have expressed concern that parastatal managers have sold assets and awarded themselves excessive benefits in the run-up to privatisation.

Section 2(II) - Employment, unemployment and work-based rights

Mass unemployment and the absence of an employment policy

- Commentators have noted the incompatibility with the right to work under the Covenant when government policy directed towards the achievement of economic growth is pursued at the expense of maintaining a permanent pool of unemployed labour. The MMD Government has forged ahead with fiscal measures to reduce inflation and used incentives to encourage investment: it is required to demonstrate to the Committee that the pursuit of these policies has not been to the detriment of short and medium term employment.

- The competition associated with liberalisation and the rationalisation associated with privatisation have triggered both business closures and mass formal sector redundancies in Zambia.
- The pursuit of low inflation through the stringent control of public expenditure, at the insistence of the World Bank and IMF, has resulted in the implementation of a wide-ranging Public Sector Reform Programme which has seen the loss of tens of thousands of jobs.
- Job losses in the formal sector have not been replaced by the creation of new posts. Despite wide-ranging incentives and deregulation to encourage private sector development, levels of both domestic and foreign direct investment have remained at a low level.
- The ILO Committee of Experts, in its examination of compliance with the ILO Employment Policy Convention, has already concluded that the Zambian Government has neglected to produce a national employment policy and has issued four consecutive observations on its conduct. The same Committee has criticised the Government for not taking measures to place employment objectives within an economic and social policy framework and, in the light of public sector job losses and the fact that job creation has been impeded under privatisation, for not seeking to examine how adjustment measures have impacted upon employment.
- The ILO Committee of Experts has repeatedly found it necessary to publicly remind the Zambian Government of its obligation to provide available data on the employment situation, to report on any progress in establishing a labour market information system, and to rectify omissions from its reports. The Committee on Economic, Social and Cultural Rights should itself seek further clarification from the Zambian Government on:
 - the total number of job losses in parastatal enterprises prior to, during and after their privatisation;
 - and the total number of businesses closed or liquidated either before they could be privatised or after they have been sold.
 - It is specified in the Employment (Amendment) Act that each employer must register with the local labour office details of the categories of employees to be retrenched, the reason for making those concerned redundant, and when the program will be carried out. This information must be copied to the Government's Special Retrenchment Division. In line with the obligation of State parties to undertake effective monitoring of the rights recognised in the Covenant, it is strongly recommended that the Committee ascertains the effectiveness of this information gathering and determines whether any body in Zambia is carrying out the official task of monitoring business closures and employment levels in companies after their privatisation.
- The majority of Zambians of working age must make a living in the informal sector which accounts for 85 percent of total employment.
 - The Covenant recognises the right to just and favourable conditions of work, fair wages, a decent living, safe and healthy working conditions, equal opportunity, rest and the reasonable limitation of working hours, the right to form and join trade unions, and the right to social security, including social insurance.
 - Employment in the unregulated informal sector in Zambia is all too often characterised by job insecurity, arbitrary dismissal, unsafe working conditions, exploitation, meagre wages, long hours without entitlements to holidays, a lack of worker representation and an absence of social insurance. The majority of people are engaged in petty trading for an average wage less than half that of the recommended minimum needed to feed a family of five in Lusaka.
 - While uneducated women and children remain particularly vulnerable in the informal economy, there is evidence that the wave of formal sector redundancies, the nonpayment of wages, and the lack of job creation has resulted in an influx of professional and semi-professional retrenchees and educated school leavers.
- In 1994, the Bank in its Poverty Assessment, identified the need to foster micro-entrepreneurs in Zambia's towns and cities as requiring priority action.
- Two years later, the Bank's Operations Evaluation Department reconsidered the circumstances of the self-employed in the informal sector. Its analysis is bleak and can only be read as a indictment of Bank inaction: 'Among the many factors that impede the development of entrepreneurship and skills in people are the following: declining life expectancy; the share of work women are already bearing; the traditional barriers to women's access to credit and land

ownership; the low level of personal savings due to poverty; the inability of the poor to risk their income sources (the low-risk route out of the ghetto, notably the public service, does not lead to entrepreneurship); the high percentage of youths heading households due to early deaths of parents; and a lack of knowledge of alternative lines of production.’ The Bank’s Country Assistance Strategy for financial years 1997 - 1999 failed to propose any direct measures aimed specifically at the informal sector beyond grants under the Enterprise Development Project to intermediary organisations offering business advice.

The non-payment of wages and terminal benefits

- There is widespread evidence that employees have not been paid wages owed to them; retrenched have not been paid their entitlement to terminal benefits; and retirees have not received pension payments. This situation constitutes a failure by the Zambian Government to protect employees from the violation of the right to fair remuneration. In the case of Government employees, there has been a direct failure by the State to fulfill the right to a fair wage. The expectation is that the Committee, as is its custom in the conduct of its work, will give due consideration to relevant articles in the ILO Protection of Wages Convention 1949 (No. 95) and the ILO Termination of Employment Convention 1982 (No.158).
- The nonpayment of wages, terminal benefits, and pensions has caused destitution and denies workers and their families the right to a decent and adequate standard of living. Workers in existing or newly privatised businesses facing liquidation are particularly vulnerable. They are given no protection under the Employment Act and are last in line to receive money owed to them after the payment of other creditors.
- The Committee is urged to seek clarification on the settlement of wage, redundancy, and pension claims in those companies, Government organisations, and local authorities named in this report. It is also urged to establish the circumstances prevailing in other organisations, especially those undertaking mass redundancy programmes and in those companies in receivership or liquidation.
- It must be noted that the Government failed to respond to an initial request for clarification from the ILO Committee of Experts on the nonpayment of wages by local authorities. This prompted the Committee to issue a public observation asking the Government to report in detail in 1999. It is recommended that the Committee on Economic, Social and Cultural Rights, in accordance with article 18 of the Covenant and rules 66 and 68 of its rules of procedure, liaise with the ILO on this matter.
- The Committee should determine whether the use of ‘in-kind’ payments in lieu of a cash settlement constitutes a denial of the right to fair remuneration. Specific instances of this practice - in particular, when the purchase price of employee housing more than absorbs an individual’s terminal benefits and leaves him or her in debt - are recorded within the section on employment and also in the section of this report on the right to housing.

Legislation

- The Industrial and Labour Relations Act, while it removes elements of compulsion in respect of union membership, also undermines sector-wide collective bargaining and seeks to impose undue controls on the way in which unions conduct their own affairs and to restrict the circumstances under which strike action is deemed legal.
- The Employment (Amendment) Act removes statutory obligations on employers to provide worker housing and social and medical services. While a State party to the Covenant is not required to ensure that employers provide such amenities under the right to just and favourable conditions of work, to prevent regression in enjoyment of the right to health or the right to housing, a Government must ensure that transitional arrangements are in place to protect employees and their dependants from the denial of their rights. This has not happened in Zambia. The Committee is referred to those concluding observations at the end of Sections 2(III) and 2(IV) which address, respectively, the Zambian Government’s failure to regulate employee house sales and the lack of domestic and international measures to ensure the takeover of social services in many Copperbelt towns as the mines are sold.
- Article 7 of the Covenant may be infringed if workers’ pay does not rise accordingly when in-kind benefits such as housing and health care are withdrawn. This threatens fair wages and prevents employees from earning a decent living

for themselves and their families. Moreover, Zambia has ratified the ILO Social Policy Convention (No. 117), article 11(7) of which reads: ‘Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.’

Conditions of work

- The ICFTU and ZCTU have both expressed their concern over deteriorating working conditions: discrimination, the failure to honour terminal benefits, the nonpayment or late payment of wages, denial of the right to join trade unions and the hiring and firing of people on insecure contracts for meagre pay. Many alleged violations relate to the conduct of employers in newly-privatised companies. The Zambian Human Rights Commission has received complaints from workers about their exploitation by employers, to include the South African-owned Shoprite supermarket chain.
- It is recommended that the Committee contacts the Human Rights Commission to clarify whether these and other complaints have been investigated and its findings published. It is further suggested that the Committee notifies both the unions and the employers concerned of its long-standing invitation to NGOs to submit pertinent information on matters covered by the Covenant.
- Despite pledges from the Zambian Privatisation Agency that existing working conditions are to be maintained or improved, there is evidence that the development agreements signed between the Government and the new owners of privatised companies contain caveats which allow for their renegotiation. For example, the attempt to withdraw housing subsidies at Luanshya mine by Roan Antelope sparked unprecedented social unrest on the Copperbelt. Furthermore, and backed by provisions within the Industrial Labour Relations Act, existing collective agreements are quickly superseded.
- In the absence of alternative arrangements, the failure to charge the Zambia Privatisation Agency with post-privatisation monitoring of conditions of employment jeopardises the obligation of the Zambian Government to report on compliance with the Covenant.

Training and business development

- The UN ACC Task Force on Full Employment and Sustainable Livelihoods has recognised that, because of poverty and inequality in Zambia, there is a need to supplement market reforms with policies on human resource development, support for business start-up, access to credit and carefully designed training. The ILO Committee of Experts has expressed its concern over the negative impact of economic reform on youth training programmes and over growing unemployment among urban youths in Zambia. It has concluded that, although the Government refers to programmes for job creation and training, no information is provided in the report to the ILO Committee on the nature and scope of these programmes and their objectives, nor does it give any evaluation of the results of these initiatives.
- To implement the right to work, the Covenant specifies that the steps taken shall include technical and vocational guidance and training programmes. Regrettably, training and retraining schemes in Zambia are proving to be entirely inadequate. The STEP-IN programme of support for business in the informal sector has been reduced to a single component, operates only in Lusaka, has trained or arranged credit for a very small number of beneficiaries, and is undergoing a crisis of funding. The retraining component under the National Social Safety Net has an abysmal record: only 234 retrenchees have received any training when formal sector job losses total 80,000. Private companies have failed to provide details on the training schemes required of them under development agreements signed on their purchase of a business. When information is available, the clauses in question are non-binding and do not cover the retraining or the preparation of retrenchees for a new start.
- Access to credit and support for enterprise start-up, especially for the self-employed in the informal sector, is almost nonexistent. Studies suggest that less than one percent seeks or secures loans from banks or financial institutions, showing the total lack of support from either Government or private funds.
- The credit component of the Bank’s Enterprise Development Project is aimed at much larger businesses. It is recommended that the Committee contact the Bank to determine the success or failure under the Matching Grant Scheme of support for intermediary organisations to provide help directly to informal sector businesses.

The resettlement of retrenchees

- The UN ACC Task Force on Full Employment and Sustainable Livelihoods has highlighted the policy of the Zambian Government to resettle former formal sector employees. There is a shortage of land, inordinate delays in gaining title and security of tenure, and a failure by the Government to meet its responsibility to provide infrastructure and services to all sites.
- The Committee should seek information from the Government on:
 - the number of people who have been resettled over the past five years, including a breakdown of the number of parastatal and civil service retrenchees;
 - where the main resettlement areas are located;
 - how many plots have been allocated;
 - the type of title or tenure under which resettlers gain access to land and specific figures recording how many of those who have been resettled have been granted title under a statutory 99 year lease.
 - The Committee should ascertain whether the government has any mechanism in place for monitoring the welfare of resettled retrenchees and should seek an explanation as to why the State has ceased to provide initial assistance with the cost of relocation, land clearance and agricultural inputs and food in the first year. In so far as those concerned may have little choice but to accept resettlement, the Committee should establish to what extent the Government applies internationally recognised guidelines on resettlement.

The advisability of measures adopted by the World Bank

- The measures pursued by the Bank requiring the rationalisation of the parastatal sector, the withdrawal of State subsidies, the liquidation of those State-owned businesses considered nonviable, and the implementation of a programme of mass redundancy in the civil service, must be considered ill-advised under article 22 of the Covenant in the absence of complimentary measures and due safeguards in minimise their adverse impact. In particular, it is recommended that the Committee seeks clarification from the Bank on:
 - why, in its pursuit of rapid privatisation and the implementation of the Public Sector Reform Programme, it failed to ensure that effective arrangements were in place to meet redundancy payments;
 - whether it considers its support for 'in-kind' redundancy compensation to be compatible with the right to fair remuneration when this has resulted in discrimination in the allocation of employee housing and a legacy of personal debt;
 - the lack of attention paid to the issue of social safety net support. In contrast to the web of conditionality surrounding progress on privatisation, the failure of the Bank to secure agreement over specific actions and benchmarks in the establishment of the National Social Safety Net represents a failure by omission.
- Finally, and in accordance with article 22, the Bank must justify why it has used adjustment credits to support the drafting and implementation of legislation which is incompatible with the Covenant. This applies, in particular, to the Industrial and Labour Relations Act, which appears to contravene a number of trade union rights; and to the Employment (Amendment) Act which has resulted in an increased denial of the rights to housing, health and an adequate standard of living in the absence of action by the Zambian Government, in conjunction with international assistance, to make alternative provision.

Section 2(III) - Access to land and the right to housing

A free market in land without safeguards to protect the right of the poor to housing

- The MMD Government has opened up a free market for land in Zambia and has further shifted the emphasis in the provision of housing from the public to the private sphere.
- While realisation of the right to housing is far from precluded by the development of a free market in land, its full enjoyment is threatened when the majority of the population is impoverished and when there are few safeguards in place to allow those with limited resources to gain access to secure tenure.
- The Committee acknowledges that a State may employ both public and private sector measures to realise the right to housing provided that the combined measures deliver the right for everyone in the shortest possible time, reflect the use of maximum available resources, and give priority to social groups living in 'unfavourable conditions'. Policies and legislation should not be designed to benefit already advantaged social groups at the expense of others.
- The right of investors to own land under secure tenure begins with constitutional protection of private property. There is no recognition within the Zambian Constitution of the right to housing and squatters' rights. The Investment Act helps investors to purchase land and affords protection from its compulsory acquisition unless by Act of Parliament and at market value. The Mine and Minerals Act facilitates the purchase under secure tenure, the conversion of customary tenure, and the long-term use of land for mining by investors in the industry.
- The right to housing derives from the inherent dignity of the human person. The Committee has therefore determined that it should be ensured to everyone without discrimination and regardless of economic status. Housing should not be viewed 'exclusively as a commodity.' In contrast, the commodification of land and housing lies at the centre of the Lands Act.
- The Lands Act (1995) has been introduced to abolish obstacles to the sale, purchase and ownership of land. Under the Act, foreign companies are free to own land; land is accorded a value as determined by the market; transactions are streamlined by making Presidential consent a formality; restrictions on the conversion of customary tenure to leasehold tenure are removed; land leased by the Councils, with certain exceptions, reverts to the State; a Land Tribunal is set up to determine disputes; yet, at the same time, stark reference is made in the Act to the illegality of squatting and the likelihood of eviction.
- The fact that most land in Zambia is held under customary tenure has been viewed as an obstacle to investment by the World Bank. A central tenet of the Lands Act has therefore been to allow for the conversion of customary tenure into 99 year statutory leaseholds which offer security of tenure and can be transferred through the market. Hence long-standing customary rights to land can be converted by an individual and sold once and for all, thereby jeopardising a whole range of interconnected rights.
- The principal check on conversion is the requirement of consent from the local chief before land is converted; yet the ultimate power to determine conversion in disputed cases rests with the Government-appointed Lands Tribunal. However, of perhaps greater concern is the likelihood that a powerful local elite will be motivated to convert tenure for profit. While chiefs, councils, applicants and the State are all to be consulted to differing degrees, small-holders, women, squatters, and similarly vulnerable groups have little or no say in the conversion process. The Committee has determined that increasing access to land by landless or impoverished members or segments of society should constitute a central policy goal.
- The right to housing should be ensured to everyone irrespective of income or access to economic resources. The existing mechanism by which land is allocated in Zambia has increasingly made it difficult, if not impossible, for poor people to gain full and immediate title to land. The Procedure on Land Alienation and allocation procedures for land in rural settlement schemes discriminate against the poor by requiring proof that an applicant has adequate resources to develop a plot. In conjunction with stipulation in the Lands Act that the value of State land must be realised in its alienation, it is readily apparent that an ability to pay is increasingly the basis upon which most statutory leases are acquired.

Insecurity of tenure

- Security of tenure is one factor determining whether or not a person enjoys the right to adequate housing. The Committee recognises a variety of tenures, *inter alia*, informal settlement, including the occupation of land or property. All persons should possess a degree of security of tenure which guarantees protection against forced eviction. State parties are therefore required, in genuine consultation with affected persons, to take immediate measures to confer legal security of tenure upon those lacking such protection.
- Domestic law and policy in Zambia runs contrary to this requirement. The Lands Act explicitly recognises the illegality of squatting in a country where there is no constitutional protection of a right to housing or basic squatters rights.
- Provision to accommodate squatters under previous administrations through the Housing Act (Statutory and Improvement Areas) and through the degazetting of Forest Reserves affords inadequate security of tenure.
- Poor urban residents in Statutory Housing Areas face long delays in gaining a council certificate of title. This does not offer the security of tenure of a 99 year statutory lease which can only be issued by the Commissioner of Lands. Residents in unplanned and unserviced Improvement Areas may only gain occupancy licenses authenticated by Land Record Cards which offer virtually no legal security of tenure as searches and demarcation has not been carried out.
- The Permanent Secretary in the Ministry of Environment has conceded that a lack of funds and unwarranted claims for land by non-squatters has disrupted resettlement schemes in degazetted Forest Reserves. Moreover, degazetting is only a necessary first step in obtaining title to land. As has been observed, poor applicants face significant difficulties in gaining title under the Procedure on Land Alienation.
- Oxfam, in its November 1998 *Report on Land Tenure Insecurity on the Zambian Copperbelt*, issued a set of recommendations. These are commended to the Committee. They include, *inter alia*:
 - amendment of the Constitution and Lands Act to provide squatters who have been in undisturbed possession of land for a defined period of time with occupancy rights and with protection from eviction; and to provide for compensation payable to squatters who are arbitrarily deprived of their rights of occupancy;
 - streamlining of the procedure by which land is demarcated and title deeds are issued;
 - increased protection of the interests of vulnerable groups and women under land alienation procedures, to include explicit recognition of the principle of non-discrimination in the Lands Act, related statutory instruments and land circulars;
 - the upgrading of Land Record Cards and Council certificates of title to full 99 year statutory leases.
 - safeguards to protect the interests of the wider community in the alienation of customary tenure, to include a statutory requirement that all adult members in the affected area are consulted and their wishes be given a high priority in any decision requiring their relocation.

The inadequacy of housing: habitability, location, services and infrastructure

- Adequate housing must be in a location that allows access to employment options, health-care services, schools, child-care centres and other social facilities. Most households in Zambia have witnessed a decline in access to employment, services and transport during the prolonged period of economic reform and structural adjustment. On average, all Zambians are denied access to eleven out of sixteen essential services, from social facilities to potable water, from education to shelter. All beneficiaries of the right to adequate housing should have sustainable access to, *inter alia*, safe drinking water, energy, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. Seventy percent of the country's existing housing stock is informal, poorly serviced or not serviced at all. Not only is access to these amenities at a low level in Zambia, there is strong evidence of regression. It is incumbent on the Government to justify this circumstance in the light of the principle of progressive realisation.

The house sales debacle

- Almost the entire stock of Government, local authority and parastatal housing has been put up for sale. The sell-off has proved a debacle in which the right to housing is frequently violated.
- The Committee recognises the importance of adopting formal legislative measures in realising the rights recognised in the Covenant, to include domestic remedies used to determine discrimination in the allocation and availability of access to housing.
- Serious concerns are raised by the absence of primary legislation in Zambia as a basis for the housing empowerment policy and the consequent neglect of fundamental guidance on issues such as a just definition of a sitting tenant, determining who may exercise a right to buy, and ensuring the fairness of allocation, pricing and conveyancing mechanisms.
- The mechanisms used for disposing of this State-derived housing stock have proved unjust and open to abuse. There has been extensive violation of the overarching principle of non-discrimination because of malpractice, corruption and intimidation. The result has been inequity and the forced eviction of *bona fide* tenants.
- The Presidential decree on the sale of council houses is perceived as arbitrary and in apparent contravention of the Local Government Act in respect of council autonomy. The pricing of council houses has been thrown into confusion following interventions by the President, amid allegations of gerrymandering. The result has been a lack of social justice and the creation of legal uncertainty over the price to be paid.
- In respect of the sale of civil servant housing, allegations of malpractice have been made against Government officials, as detailed in this submission.
- It is recommended that, in accordance with the principle of effective remedy in realising the right to housing, the Committee reviews the outcome of any internal or judicial investigation into those the accused of manipulating the sale process; and clarifies what measures were taken, following accusations of malpractice and corruption made by the CSUZ and NUPSW, and the suspension of the sale of Government houses by the President, to revise the allocation rules.
- The suspension of the ZCCM house sales was announced in April 1998 by the Minister for Mines and Minerals Development until such time as the company adopted correct and acceptable procedures. The Committee is urged to establish:
 - what safeguards have been implemented to protect the rights of sitting tenants in ZCCM houses;
 - the number of ZCCM houses remaining to be sold and the number of employees and others who have been refused the right to buy;
 - whether those wrongly refused the right to buy or else forcefully evicted from their homes have been duly compensated given that four-fifths of ZCCM's housing stock was sold before the sale procedure was suspended;
 - the nature of any rulings, and the number of pending cases before the Lands Tribunal, which deal with disputed claims over ZCCM houses or land.
- In respect of the sale of parastatal housing belonging to other companies handled by ZPA, the requirement that these be sold at market value has prompted claims of inequitable treatment from employees when council and ZCCM houses have been discounted. The perception of company housing as an economic asset to be used to pay of parastatal debt has left many employees vulnerable to high prices and eviction.

Debt and the absence of affordable finance

- The Committee has determined that housing should be affordable and subsidised where necessary to make it available to the poor. The Zambian Government has deliberately shifted the cost of housing from the State to owner-occupiers. As a minimum, it must therefore ensure that arrangements are in place to finance this transfer and that the public resources which are freed from the sale of houses are used to subsidise housing for vulnerable groups.
- To realise the right to housing, a State party to the Covenant is required to establish forms and levels of housing finance which adequately reflect housing needs.
- The National Housing Policy has failed to implement measures to deliver a private mortgage market or to make affordable home loans available through employers or the State; yet, regardless, the Government has pushed ahead with the house sale programme.
- Many tenants have been unable to pay the prices demanded or unable to access suitable finance without going into debt or, in the case of employees, trading away their terminal benefits and future livelihood. Many retrenchees have simply not been paid the terminal benefits owed to them. The home loans promised to civil servants have not materialised. Those unable to pay the balance of the purchase price have been caught up in a wave of secondary evictions

A reduction in essential financial support for local councils

- The Committee has determined that there must be coordination between ministries and regional and local authorities in order to reconcile policies with the obligations under article 11 of the Covenant. Regrettably, there has been no meaningful attempt by the MMD Government to reconcile its objectives of land disposal or home ownership with the need of local authorities to maintain their financial base to pay for local services.
- The Lands Act has further damaged the finances of local councils, already hard hit by cuts in their statutory funding. With certain exceptions, land leased by a Council, together with subleases, must be surrendered to the President. The immediate result is that annual ground rent is now channelled to central Government. The redistribution of money at the local level from richer to poorer areas within a town or city is thereby curtailed. The establishment of a centralised Land Development Fund does not offset this criticism. Councils must now apply to the Ministry of Lands to finance their proposals.
- The Auditor-General in Zambia has concluded that the decision of central government to dispose of local authority housing stock has deprived councils of essential revenue needed to run their operations. Income from the rental of houses has been an essential component of council budgets. Tenants interpreted the Presidential directive to sell as a signal to stop paying rent, while each house, as it is sold, is removed as a source of rental revenue.
- This steeply engineered decline in local council revenue, together with the neglect of adequate planning for the take-over of social amenities and infrastructure previously maintained by ZCCM, threatens a sharp deterioration in the realisation of the right to housing in many Copperbelt Towns. Concluding observations on this issue are elaborated at the end of Section 2(IV).
- The stock of State-derived housing of council, parastatal and government properties represents a common resource for the Zambian people. The Government has pledged to reinvest the sale proceeds in improving housing and infrastructure. Moreover, it has an obligation under the Covenant to use maximum available resources and to target vulnerable groups in order to realise the right to housing.
- Proceeds from the sale of council houses are understood to be deposited in the Housing Trust Fund. The Land Development Fund has been boosted in the near-term by the sale of State land.
- It is recommended that the Committee seeks to clarify how both Funds are operated in order to establish the degree of control exercised by central government in determining access to resources. It is important to ascertain the uses to which the revenue raised has been put, in particular the level of expenditure on the building of new social housing, or upon the upgrading of land and amenities in poorly serviced settlements.

- Oxfam, in its recent report on land tenure insecurity on the Copperbelt, recommended, as a matter of urgency, that additional donor funding be sourced to assist local councils in the improvement of basic service provision in poor urban areas and squatter settlements.

The vicious circle of intimidation and forced evictions

- Instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. States are obliged to guarantee legal protection against forced eviction, harassment and other threats. In contrast, the sale of all categories of public housing in Zambia has been conducted in an atmosphere of intimidation. The threat and use of eviction against sitting tenants has been commonplace.
- Councils, with no money to meet operational costs or even pay staff, have renewed their efforts to collect rents in lieu of payments for council houses or to recoup monies owed from those who have not paid their rates. Impoverished residents in many towns and cities named in this submission - Lusaka, Kitwe, Ndola, Chingola, Kabwe, Chongwe - have been served with warrants of distress allowing bailiffs to enter their homes, or have been disconnected from essential services. Many have been served with eviction orders.
- The deliberate disconnection of services - especially the water supply - is a serious violation of the right to housing. It undermines the right to health and threatens the right to life by increasing the vulnerability of residents, and especially infants and young children, to diseases such as cholera and dysentery.
- This wave of civil action and repossessions completes a vicious circle in which the security of tenure offered by home ownership has been subverted, so that those exercising their right to buy are now evictees.
- Yet the fact of extreme poverty, heightened by the non-payment of wages and terminal benefits, and the almost total denial of access to mortgages, when allied to what amounts to a compulsion on tenants to either purchase or lose their homes, can only be interpreted as reasonable cause as to why the majority of residents do not pay the money they owe. Evictions under these circumstances must equate to a denial of the right to housing.
- In respect of the sale of former ZCCM houses, the company's original policy of according priority to all ZCCM employees has resulted in the intimidation and eviction of *bona fide* sitting tenants, in apparent contravention of Government policy. Teachers, workers in ZCCM subsidiaries, and retired ZCCM employees living in mine houses, have proved particularly vulnerable in this regard. The Committee is requested to examine the current housing situation in respect of these groups.
- Once more, those living in worker housing in companies with substantial debts or facing insolvency, receivership and liquidation have been particularly vulnerable to eviction as attempts are made to sell their homes from under them to realise their asset value. It is strongly recommended that the Committee seeks clarification from the Government over the plight of employees and retrenched in this situation who are facing the loss of their homes and determines the degree of actual protection from eviction offered by the courts in this circumstance.
- The mass forced eviction of squatters and the demolition of their property which has taken place in urban and peri-urban land in Lusaka earmarked for improvement or development has taken place without due legal process. It should be reiterated that land now has commercial value. Petty traders and stall-holders have similarly seen their shacks and pavement kiosks destroyed by the local authorities.
- The displacement of ex-miners, villagers and township residents from mine land have also been planned and carried out by ZCCM and companies in the private sector. Concluding observations on these violations are withheld until the summary of Section 2(IV), when they are formulated in the context of both the State obligation to protect human rights and the direct responsibility of corporate parties to observe human rights standards.

Redress and the Lands Tribunal

- In relation to the sheer number and complexity of disputes over land, the newly established Lands Tribunal appears to be entirely overwhelmed. In order to determine the effectiveness of the Lands Tribunal in providing legal remedy in accordance with right to housing, it is recommended that the Committee asks the Government to provide information on:
 - the operation of the Lands Tribunal, including information on its staffing, the frequency with which it has met, and its overall level of funding;
 - the number of cases on which the Tribunal has reached a judgment, its current caseload, and the backlog of cases yet to be considered;
 - and in which locations the Tribunal has met. The criticism has been voiced that the Tribunal is overly centralised, making it expensive and difficult for those in outlying parts of the country to seek redress.
- It is of paramount importance that the impartiality of the Lands Tribunal is upheld. A dialogue between the Government and the Committee on this matter, to include a consideration of the judgments reached by the Tribunal, is to be encouraged.

The advisability of measures adopted by the World Bank

- The Bank has implemented measures in Zambia to promote a market-orientated system of transfer in order to secure appropriate land for investment. At issue is not the principle of the market, but whether the Bank has simultaneously promoted safeguards to protect the right to land of the poor, and has supported regulation to ensure equity in the housing sector. The evidence suggests otherwise, prompting concern that the measures employed by the Bank have been ill-advised and negligent when reviewed in line with its obligations under article 22 of the Covenant. In particular, it is recommended that the Committee seeks clarification from the Bank on:
 - why it has supported the drafting and implementation of a Lands Act which reinforces the illegality of squatting in a country where the occupation of land is often the only means of survival;
 - why managers and the Bank board failed to act on misgivings expressed by staff that facilitating the conversion of customary tenure threatened the prospect of the alienation of land for profit, thereby undermining the rights of small-holders and the those in the wider community without a voice;
 - the extent to which it has monitored the conversion process and assessed its adverse consequences on vulnerable groups;
 - whether it believes that there has been sufficient progress in the recognition and declaration of informal settlements; and what further action it has taken to ensure that the agreements reached in this regard under ESAC II have been honoured.
- The reliance on the Lands Tribunal as a counterbalance lacks credibility when the Bank has failed to strengthen its operation or ensure that it is adequately funded and accessible to all. The fact remains that the Tribunal can only apply the law, but cannot remedy inequity inherent within the law.
- Through agreements in its adjustment lending, the Bank has supported the disposal of Zambia's State-owned housing stock and has promoted legislation to end the obligation of employers to provide housing; yet it has omitted to consider the impact of these measures on the right to housing. In accordance with articles 22 and 23 of the Covenant, the Bank should explain why technical assistance was neither used to assist the Government in the design of an equitable sales mechanism, nor to determine whether an affordable system of home loans was in place prior to the sale.
- Bank support for the substitution of houses to replace cash in terminal benefits packages has proved particularly misguided. It is recommended that the Committee seeks to establish the extent to which the Bank was the architect of this proposal and whether, in the light of its findings, compensation should be paid to those left in debt or destitution as a result of this policy.

Section 2(IV) - The conduct of parastatal and private companies

- A consideration of the realisation or denial of economic and social rights in the privatisation of ZCCM is necessarily complex. International human rights standards apply to the conduct of the State, international donors, and private and parastatal companies. Each is therefore culpable when a specific right is denied as the result of a particular course of action which it has taken. The rights framework is sufficiently differentiated to avoid a simplistic analysis in which each entity is either entirely blameworthy or utterly blameless.
- The Government and the multilateral agencies may be culpable by action for excessive deregulation and by omission for the disintegration of social services; safeguards to protect employee and community interests may have been negotiated away; yet it is maintained that companies have a direct responsibility to uphold basic human rights.

Human rights and the responsibilities of the private sector

- It is because human rights standards have traditionally been applied to the conduct of States that it has been necessary to advance arguments as to why they are directly applicable to the conduct of companies. International human rights bodies are increasingly recognising, expressing their concern over, and actively considering the role played by companies in the realisation or denial of human rights.
- The international community and companies themselves have recognised standards governing corporate behaviour. The ILO Tripartite Declaration and OECD Guidelines may be voluntary and exhibit shortcomings, but they carry normative legitimacy and share a content with human rights instruments and labour standards.
- In the context of globalisation, the Committee recognises a corresponding increase in the role and responsibilities attributed to private actors, in particular transnational corporations. It has signalled that global investment and its regulation are issues within the remit of its work in monitoring compliance with the Covenant.
- Under article 18 of the Covenant, relevant work of the ILO as a UN specialised agency is to be given consideration by the Committee. The ILO Tripartite Declaration, together with information relating to its monitoring, are relevant to supervision of the Covenant and warrant consideration by the Committee.

The sale of ZCCM

- ZCCM has been the vehicle through which the Zambian Government has sought to fulfil certain social rights on the Copperbelt. It has operated as a parallel administration in providing all manner of municipal services. It has also run schools, hospitals, clinics and other social amenities in mining communities. Smallholders have farmed land rented to them by ZCCM, while extensive squatter settlements on mine land have been tolerated by the company.
- A first consultancy study on the future of ZCCM did seek to address the implications of disentangling the company's social and commercial functions. A system of tax credits was to be used to prevent the rapid withdrawal of private companies from social provision after the sale of ZCCM. Services were to be offered at a subsidised price by the new owners to allow for their use by poor residents. Concerned by a systematic and deliberate reduction in local government funding, the consultants recommended a review of council budgets and emphasised the need to plan for any transfer of social responsibilities in advance.
- This proposal and others in the Kienbaum study were never taken forward and the report as a whole was rejected.
- The subsequent Rothschild's report was commissioned and produced under pressure from the World Bank, other donors, and ZCCM's creditors to see the loss-making conglomerate sold.
- Regrettably, the Rothschild's report has not been published for reasons of commercial confidentiality. However, certain key findings have emerged: the recommendation to unbundle and privatise ZCCM entails deep-seated rationalisation and mass retrenchment; concessional funding is required to cover the cost of these redundancies; and an assessment of ZCCM's complex social role and plans for the future delivery of services after privatisation is deliberately set aside in

the interests of a rapid sell-off of the loss making conglomerate. The ad hoc solution is the use of development agreements under which the new buyers are to run social assets in the short-term for two years.

- Commentators have described the sale of ZCCM as an object lesson in how not to privatise and as one of the most protracted and problematic mining industry privatisations of all time. A rapid sale has not been achieved. Not only is the neglect of social rights an unjustified violation of the Covenant, but a narrow justification of their sacrifice on the grounds of economic expediency has lost all credibility.
- The privatisation of ZCCM has been hampered by Government indecision. It has been subject to the undue influence of donor institutions. Private companies have sought to exploit their purchasing power in a falling copper market. Moreover, the sale has been complicated by the fact that ZCCM is not wholly owned by the Government.
- Given Anglo American/ZCI's position as principal minority shareholder, privatisation could not proceed without its agreement. The South African company has been able to exercise considerable influence over the process: its negotiation of the exclusive right to develop Konkola Deep in return for waiving pre-emptive rights; the excise of the Mufulira smelter from its recommended sale package; conditionality relating to the prior sale of Nkana/Nchanga; and the retention of the right of Anglo appointed directors on the ZCCM board to vote on the final acceptance or rejection of each winning bid. As confirmed in a document produced in the High Court for Zambia, the objectives of ZCI/Anglo acting in the interests of their shareholders has not necessarily been consistent with the Government's aim of diversifying ownership.
- The initial strategy was to unbundle ZCCM and sell it in packages to different buyers in order to avoid its wholesale transfer to Anglo American. Following the collapse of the sale to the Kafue Consortium, the final outcome is that Anglo American has either bought or controls the core assets of ZCCM at a price substantially below that achieved in the previous year.

The failure of the Government to take steps to ensure continued social provision

- ZCCM has carried out governmental functions and, in doing so, it has become an extension of the Government in that its actions in breach of international obligations are attributable to the State.
- In the run-up to privatisation, the Government has abrogated its duty to ensure that these governmental functions are transferred to either central or local Government. This runs contrary to the Committee's determination that steps should be taken to ensure coordination between central and local government and reconcile policy measures with obligations under the multifaceted right to adequate housing. Realisation of the right to an adequate standard of living and the right to health must also diminish as a result. Articles within the ILO Social Policy (Basic Aims and Standards) Convention requiring the improvement of living standards as the principle objective of economic development and the use of town planning to avoid community disruption are similarly compromised.
- To end three years of stasis following the decision to privatise, the Government has belatedly established an Asset Holding Company (AHC) to take-over responsibility for municipal services. The measures have been precipitated solely by the refusal of the buyers of ZCCM's core assets to accept responsibility for social provision.
- The programme is to operate in five mining towns associated with the final sale of ZCCM. The future of provision in many other towns across the Copperbelt remains unclear, at a time when the initial commitments of the original buyers to run services for two years are coming to an end. Moreover, the programme is limited in scope to water and sewerage services. It addresses neither the management of other municipal services nor that of health facilities and mine schools. The AHC is itself an interim arrangement and, at this late stage, is not operational. The same applies to the body tasked with its regulation and to joint water companies formed by councils on the Copperbelt.
- Putting aside the administrative disarray, the commercialisation of water supply and sewerage services in urban areas is to be on a cost recovery basis. In the absence of effective regulation, this is liable to lead to the exclusion of poor residents from provision. This must threaten the realisation of the basic right to adequate, serviced housing and jeopardise the right to health. The unjustified adoption of deliberately regressive measures is incompatible with the undertaking of progressive realisation.

The use of maximum available resources

- The Government, even when faced with resource constraints, must demonstrate that every effort has been made to use all resources at its disposal to satisfy, as a matter of priority, minimum obligations. The Zambian Government has been criticised for establishing a system of taxation which accords unprecedented concessions to the mining industry. This will have negative repercussions on revenue, and ultimately on public spending, for decades to come. At the same time, the introduction of VAT has shifted the tax burden towards the poor. Such a regime must undermine Zambia's commitment under the Declaration on Social Development to ensure that taxation is fair, progressive, and sustainable.
- Criticism also centres on the failure of the Zambian Government to spend privatisation receipts on social provision. It is assumed that proceeds from the sale of ZCCM have been returned to the company in order to keep ZCCM afloat; nevertheless, it is incumbent on the Government to account for deposits made outside the Privatisation Revenue Account and to switch savings made from the withdrawal of subsidies to the social sectors.
- The neglect of preparation for the take-over of social provision and restraints on the ability of the Government to channel adequate funds to the social sectors is simultaneously a reflection of the agenda and influence of the World Bank, the IMF, and powerful private companies.

The advisability of measures adopted by the World Bank

- Once more, the measures the Bank has pursued in the privatisation of ZCCM have proved ill-advised when viewed in relation to the progressive implementation of the Covenant required under article 22 of the Covenant.
- Every effort should be made, at each phase of a development project, to ensure that the rights recognised in the Covenants are duly taken into account. This requirement has been neglected by the Bank in the design and implementation of the measures it has taken to foster the privatisation of ZCCM.
- Bank technical assistance and adjustment lending has supported a new Mines and Minerals Act which has guaranteed security of title to mine owners while undermining protection for customary tenure; it has ensured a pro-mining fiscal regime which has culminated in massive tax concessions for the new mine owners; and it has revised the Employment Act to end the obligations on employers to provide worker housing and services.
- The Bank acknowledges the need to resolve complex issues in the sale of ZCCM including the retrenchment of labour, the ownership of staff housing, and the provision of social infrastructure and municipal services. Yet it is the Bank-commissioned Rothschild's report which advises, beyond interim measures, to set aside the issue of social provision so as not to delay the sale. Legal covenants and conditionality in the associated adjustment credit relate solely to the adoption and implementation of the ZCCM privatisation plan. Preparations for the take-over of ZCCM social responsibilities and the mitigation of possible resettlement are not envisaged. In the light of the utter failure to establish an effective social safety net in Zambia, the limited extent of Bank action on this issue is exposed. The Bank's pursuit of rationalisation coincides with its continued insistence on austerity, thereby precipitating mass redundancies at precisely the time when social spending is slashed in real terms.
- Continued Bank/IMF lending has increasingly been predicated on the rapid conclusion of the sale. The negotiating position of companies bidding for mine assets has been considerably strengthened by the knowledge that the Government is under immense pressure from the donor community to jettison ZCCM.

Bank action in the interests of Anglo American

- The Bank is seen to be reacting to events, taking action through both its private and public arms in the interests of Anglo American. This raises issues of advisability, accountability, and discrimination.
- The Bank has conceded that the Kienbaum report was rejected because of opposition from Anglo and has acknowledged that the Rothschild's report, paid for by the Bank, had to deliver recommendations acceptable to the Anglo/ZCI directors to gain approval from the ZCCM board.

- The current use of IDA finance to cover the cost of ZCCM redundancies and service provision, in parallel with investment from the IFC in Konkola Copper Mines, confirms that both the public and private sector arms of the Bank are acting in accordance with preconditions set by a private company. Of serious concern is whether economic and social rights have been fully taken into consideration in the design and implementation of the measures in question, in accordance with article 22 of the Covenant.
- Anglo American has refused to take over the existing ZCCM workforce. The Bank's use of adjustment lending to meet the cost of prior retrenchments at ZCCM is vital to the interests of affected employees, irrespective of whether it has done so at the insistence of a private company.
- It is understood that the redundancy packages on offer will be equivalent to those offered by the State. Given the chaos and inequity which has characterised the payment of terminal benefits in the past, it is recommended that the Committee verifies for itself the adequacy of the compensation on offer to miners caught up in the current wave of redundancies.
- The Covenant encompasses the right to fair and equal remuneration. In accordance with the principle of non-discrimination, the Bank must explain why it has omitted to act when other equally deserving employees who have already lost their jobs as a result of privatisation have been deprived of their entitlements and denied access to assistance.
- The buyers of the final ZCCM packages have refused to take on responsibility for running social services. Instead, the sales are predicated on the Bank's Mine Township Services Project.
- A requirement under the Covenant is for the targeting of vulnerable groups. Juxtaposed to this, the Bank is supporting commercially-based reform measures under which access to services will depend upon market position. It is recommended that the Committee, in accordance with article 22, seeks clarification from the Bank on whether it considers the stated use of market forces in determining levels of access for different income groups as compatible with the requirements of the Covenant; and what specific measures the Bank is taking to safeguard the essential rights to water and sanitation of the poor.
- Anglo's purchase of the remainder of ZCCM's core assets has been conditional on securing the prior financial support of the IFC. The IFC Board has recently approved this investment. However, serious concerns relating to the realisation or denial of economic and social rights remain. It is recommended that the Committee seeks:
 - verification of whether or not IFC has given consideration to the rights recognised in the Covenant, at each phase of its support to date, as required under article 22 of the Covenant;
 - clarification of whether the IFC has reached binding agreements with Anglo/ZCI on environmental and social mitigation measures, including detailed timetables for their implementation;
 - verification that it will be two years before Anglo/ZCI will finalise detailed environmental and social management plans and what interim measures will be adopted;
 - confirmation that Anglo/ZCI has agreed to abide by applicable IFC operational policies and guidelines;
 - assurances from the IFC that OD 4.30 on involuntary resettlement has been fully complied with;
 - information on whether any IFC directors or staff have expressed reservations over whether the Corporation has been able to comply fully with requirements and review procedures on environmental, social and resettlement issues given the apparently compressed time-scale for evaluation and approval;
 - confirmation of the arrangements which are in place for the disclosure of the Interim Environmental and Social Management Plans, the Resettlement Action Plan, the consultation report on environmental and social conditions, and IFC's Environmental Impact Assessment.
 - Details should be forthcoming concerning: where these documents have been deposited for public viewing; whether they are available in local languages; and what other measures have been taken to ensure that the information is widely publicised and accessible to all, including disadvantaged groups. The Committee, affected persons and interested parties should be provided with copies on request of each document.
 - In the interests of accountability and participation, the Committee should seek a complete list of all community groups, national and local NGOs, and affected persons who have been consulted in the preparation of the above documents.

- The Committee, affected persons and interested parties should be provided with copies on request of the development agreement pertaining to Konkola Copper Mines. It is preferable that commercially sensitive information be excised from the agreement, rather than its presence within the text be used as a pretext to prevent disclosure of the development agreement in its entirety.

The fulfilment or rejection of corporate responsibilities

- Private companies associated with the privatisation of ZCCM have acted in different capacities: behind the scenes consultants, merchant banks and legal advisers; mining companies seeking to buy ZCCM assets; and Anglo American as both a bidder and shareholder. Such actors have been highly influential in setting the parameters for the sale, including the vexed question of separating ZCCM's commercial and social functions.
- The argument that companies are absolved of responsibility for upholding economic and social rights, provided they are in compliance with Zambian law and agreed terms is misplaced. This is because national laws are subject to the prior influence of the private sector and other agents of deregulation; and because firm or industry-level agreements reflect the strong negotiating position of companies in their individual or collective capacity. In Zambia, often the terms *first* agreed in negotiations are *subsequently* reflected in law.
- The ability of the Zambian State to take up direct responsibility for social provision through central or local government is precisely undermined by the tactics adopted by powerful corporate players.
- Despite the inclusion of tax and other incentives in the legislation governing investment in the mining sector, further, unprecedented tax breaks first conceded to the buyers of the mines in negotiations have subsequently been approved in successive budgets and expressed in amendments to the underlying legal framework. This has prompted some IMF directors to take the unusual step of publicly expressing their concern over the generosity and fiscal costs of the concessions on offer. Anglo American in particular has achieved extraordinary concessions and, in some instances, exclusive treatment.
- It is argued that the new proprietors of ZCCM have a responsibility to ensure that long-standing social provision in Zambia is neither unreasonably neglected, curtailed nor ended unless and until adequate measures are in place to ensure its take-over by other parties. To do otherwise threatens to diminish enjoyment of the right to an adequate standard of living as recognised in the Covenant and the ILO Social Policy Convention. Under the OECD Principles of Corporate Governance, companies are not only responsible for ensuring that the legally recognised interests of employees are respected, but also that due recognition is given to the interests of stakeholder communities.
- The expectation on the part of private companies is that the Government, the World Bank and, ultimately, employees themselves will henceforth meet the costs associated with aspects of their social welfare.
- If wages do not rise to compensate miners for the loss of in-kind social benefits, then employees will suffer a significant deterioration in their standard of living thereby infringing article 7 and article 11 of the Covenant. It is suggested that the Committee seeks to determine whether an assessment of the adequacy and cash value of housing and essential supplies and services, as required under article 11 of the ILO Social Policy Convention, is being made in respect of the remuneration paid to miners who will be affected by the withdrawal of service provision.
- A mechanism exists by which NGOs and other entities are invited to submit information to the Committee. It is recommended that the Committee contacts the new owners of each former ZCCM operation to invite information on:
 - whether they are still providing medical and educational services to: (i) employees and their dependants; and (ii) persons in the wider community under any existing or new Private Social Services Access Agreements;
 - whether they are continuing to maintain municipal services and infrastructure, given that, in most cases, the stipulated period of two years has expired or is due to expire;
 - the level of any user fees and charges which are being levied, or which a company plans to levy, from employees and other persons, for access to all educational, health and municipal services.

- In the event that the company in question is no longer responsible for social provision, it is incumbent on the Government to inform the Committee on the nature of any alternative measures which are in place to run schools, hospitals and clinics and to provide water, sewerage and other municipal services in the associated mining communities.
- Particular concern stems from the refusal of Anglo American, and presumably First Quantum/Glencore, to take over the provision of social services associated with the largest former ZCCM operating divisions. An enquiry from the Committee would help to clarify the reasoning behind this uncompromising stance, given both the unprecedented level of tax concessions the companies have won and the acceptance by other mine operators of social responsibilities, albeit for a limited period.

Corporate accountability and transparency

- Accountability and transparency are diminished by the ‘corporate veil’ of confidentiality. The denial of access to information within the Rothschild’s report has prevented affected persons, local councils and workers’ representatives from making their own preparations in advance of the sale. The negotiation of development agreements behind closed doors between the Government and the purchaser means that other affected parties are presented with a *fait accompli*. Yet, even when terms have been agreed, these documents are still withheld from public scrutiny.
- A requirement for transparency stems from the right to free expression and opinion based upon freedom to seek, receive and impart information under the Covenant on Civil and Political Rights; and from the right to development of all individuals on the basis of their active, free and meaningful participation. The importance of information disclosure is recognised within the OECD Guidelines, the Principles of Corporate Governance, and the ILO Tripartite Declaration.

The disturbances at Luanshya

- The inadequacy of the development agreements in protecting worker and community interests is demonstrated by the unrest sparked at the Luanshya and Baluba mine following an attempt by the Indian owners to reduce housing allowances and impose revised service charges. It is recommended that the Committee seeks clarification from both the company and the Zambian Government on:
 - the results of any investigation into the violence at the mine during November 1998, in particular the deaths caused by police action to control the protests;
 - how the grievances of workers have been resolved;
 - whether all those owed terminal benefits, pensions and wages by the company have had their claims met in full;
 - details of the current redundancy packages to be paid to workers made redundant by the company in February 2000;
 - any ruling by the Lands Tribunal on the case of the 3,000 sitting tenants denied the opportunity to buy their homes and threatened with eviction by ZCCM and Roan Antelope;
 - violations recorded by the ICFTU concerning the employment of expatriates in preference to qualified Zambians. Such practices appear to contravene the ILO Tripartite Declaration on the occupational development of nationals and to violate the principle of non-discrimination.
- Allegations of the intimidation and harassment of union officials, as reported by the ICFTU in its annual survey of trade union violations, warrants further examination by the Committee. The recent retrenchment of the leader of the local branch of the MUZ, amid claims of collusion between the company and the national executive of the MUZ, is a matter of particular concern. The ILO Tripartite Declaration confirms that arbitrary dismissal procedures should be avoided. Dismissal on the grounds of participation in union activities constitutes a violation of articles 4 and 5 of the ILO Termination of Employment Convention and article 6 of the Covenant itself.

Displacement and forced evictions

- The laissez-faire attitude once shown by ZCCM to squatters on mine land no longer characterises the position of the new private sector owners.

- The removal of people from mine land and their resettlement carries with it the inherent danger of forced eviction unless all due safeguards are strictly adhered to. Forced evictions are prima facie incompatible with the right to housing recognised in article 11 of the Covenant. The Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and protection of Minorities have likewise condemned the practice.
- Earlier attempts in 1997 by ZCCM and the local councils to evict squatters proved abortive, largely because of the collapse of the sale of the principal mines to the Kafue Consortium.
- The problem posed by squatter settlements on mine land persists. With the completion of the final sale of ZCCM, the plight of squatters on mine land is once more cause for immediate concern.
- The Commission, Sub-Commission and Committee all recognise the danger posed by development projects or programmes which result in forced evictions. The Committee warns international financial institutions to avoid compromising the right to housing, to scrupulously avoid involvement in projects involving large-scale evictions without the provision of all appropriate protection and compensation, and to rigorously apply the World Bank's resettlement guidelines in accordance with the obligations in the Covenant.
- It is important to differentiate between the current obligations of the IFC to apply OD 4.30 in the development of Konkola Copper Mines and the prior failure of the World Bank to apply the same resettlement guidelines in its support for the privatisation of ZCCM through IDA adjustment and technical assistance credits. Following the recommendation of Oxfam, the World Bank should appoint a resettlement specialist to examine resettlement issues in all the recently privatised mines and should implement its resettlement guidelines (OD 4.30) as a matter of priority.
- A number of mines have already been sold prior to satisfactory resolution of the issue of resettlement, storing up the potential for future conflict and violation of the right to housing.
- The demolition of houses and the eviction of miners by Cyprus Amax at Kansanshi is a cause for concern. The fact that some people have benefited from the actions of Cyprus Amax does not alter, let alone cancel out, the apparent denial of the right to housing suffered by others.
- It is a matter of deep regret that the assurances of ZCCM and ZPA confirming that miners would be entitled buy and live in their homes, regardless of whether or not the land was sold to Cyprus Amax, were reneged upon.
- Cyprus Amax and ZCCM should be given the opportunity by the Committee to respond to the criticisms levelled by Oxfam that they failed to consult with those affected prior to their eviction; that levels of compensation were inadequate and were not paid to the parish of St. Kizito; and that, contrary to the determination reached by the Committee that evictions should neither render people homeless nor vulnerable to the violation of other human rights, no provision was made either locally or in distant villages to rehouse the miners and their families.
- Oxfam was sufficiently alarmed by the prospect of impoverishment to recommend that the Zambian authorities engage in proper monitoring of those workers who have been repatriated to ascertain their circumstances. In accordance with the obligation to monitor under the Covenant, it is suggested that the Committee pursues this matter further.
- In respect of the future of the three villages jeopardised by the development of operations, the Committee should seek to ascertain:
 - the current status of plans to displace residents from Kyafukume, Kametele and Mushitala;
 - whether Cyprus Amax has built a new school and hospital in the Mbonge resettlement area;
 - and whether the company has provided help with the reconstruction of homes and paid compensation for disruption and loss of livelihood to anyone displaced to date.

Section 3(I) - Social policy and spending

- The Zambian Government may consider that its maximum available resources are spent on realising economic, social and cultural rights, but it cannot be presumed by this to have met its obligations under the Covenant. This determination is made by the Committee. Resource constraints certainly do not free a government from striving to ensure the widest possible enjoyment of rights; nor from monitoring the extent to which rights are not being realised; nor from devising strategies or programmes for their promotion.
- If there is no apparent justification for the reduction of specific social expenditure, the Committee has shown that it will conclude that there is non-compliance with the Covenant. When considering the Zambian Government's spending on the poor, two factors are vital:
 - firstly, whether the amount spent on the social sectors represents a higher or lower proportion of total public expenditure from one year to the next;
 - secondly, the overall or absolute amount of money the Government has to spend on the social sectors.
- During 1992 and 1993, social sector allocations averaged only 20% of domestic expenditure. This contrasts with the period 1981-85 when this share stood at 29%. This situation was criticised by the World Bank and conditionality within its adjustment credits has been used to raise relative social expenditure. It was not until 1996 that social spending stood once again at 29% of domestic expenditure, bringing relative allocations in line with the levels recorded a decade earlier.
- However, it is the catastrophic decline in overall levels of funding of the social sectors in real terms which is the cause of most concern.
- This problem has been exacerbated by the austerity measures demanded by the Bank and IMF. The protection of relative social expenditure must therefore be viewed in relation to the massive absolute reduction in public spending simultaneously insisted upon by the same institutions.
- Stabilisation measures required of the Zambian Government include strict cash budgeting; and the placing of limits on the amount of money the Government borrows for public expenditure, known as the public sector borrowing requirement.
- Despite some positive results of significance to the poor - the most notable of which is the control of hyper inflation - closing the budget gap has been accomplished mainly by severe cuts in Government expenditure rather than by raising revenue. Between 1991 and 1997, government expenditure fell from 40% to 27% of GDP. In real terms, it fell by almost a half from K1019 billion to K586 billion over the same period.
- It is apparent that budget cuts have had a devastating impact upon social spending as a component of overall Government expenditure. Taking an average of expenditure in any one year, over the period 1981-85 almost two and a half times as much was spent on the social sectors in real terms than during the period 1991 to 1993. On average over the period 1992 - 1998, the yearly social expenditure has been K26 billion less than the K138 billion spent in 1991.
- Ultimately, however, the progressive realisation of social rights is dependent not only upon resource allocations, but also the nature of the steps taken to ensure their implementation.
- The common framework underpinning many reforms in the social sectors is the Public Sector Reform Programme. Restructuring and reforms to promote best practice and efficiency are accompanied by the need to effect savings through massive cuts in staffing and the control of wages. The Public Sector Reform Programme has been pursued through successive Bank adjustment credits.
- Certain shared elements of reform appear to have immediate implications for the realisation or denial of social rights.
 - Rationalisation may reflect a drive to efficiency, but it has also been driven by the requirement to cut public expenditure. The stated aim of improving social service delivery is rendered unachievable by the sheer magnitude of the budget cuts which have been effected.

- The MMD Government's use of cost-sharing and cost recovery in the areas of education and health, unless accompanied by exemptions and targeted assistance, must jeopardise the corresponding rights of the poor.
- The emphasis on the delivery of primary services appears to coincide with the obligation to deliver essential minimum levels of each right. The use of sector investment programmes to coordinate domestic and donor resources accords with the principle of cooperation to realise the rights contained in the Covenant. Of course, it is the *de facto* implementation of these policies which determines whether the enjoyment of social rights is indeed enhanced.

Section 3(II) - Education

Education policy

- The Zambian Government has adopted a national policy on education. It encompasses the key policy reform elements of decentralisation, an emphasis on primary education, cost-sharing, liberalisation and deregulation.
- The policy is to be implemented through the Education Sector Investment Programme under which donor and domestic resources are to be integrated and used in a coordinated way. The priorities are to promote universal basic education, to address the needs of those outside the formal education system, and to provide youth training for employment. An overarching concern is to improve the education of girls.
- Current action focuses on the basic education sub-sector. The aim is to increase enrolment at the primary and lower secondary levels and to improve the quality of education measured by learning achievement. The move to a second phase of the Basic Education Sub-Sector Programme (BESSIP) is dependent on the fulfilment of donor conditionality.
- Already there is a question-mark over performance of the economy and the Government's ability to increase the education budget and make the necessary capital allocations. It is recommended that the Committee seeks to clarify the extent to which the Zambian Government has been able to maintain counterpart funding of BESSIP.
- The Ministry of Education has been restructured to concentrate on policy formulation and supervision. The initial pace of decentralising budgetary control and management through District and institutional Education Boards has been slower than planned and more realistic targets have now been set.

Prima facie non-compliance

- The Covenant is one benchmark by which the Zambian Government's record on education must ultimately be assessed. The reform programme is not an end in itself, but must achieve progressive realisation of the right to education.
- There is prima facie non-compliance with the Covenant if large numbers of Zambian children are denied access to the most basic forms of education. The latter is taken to encompass primary education which is compulsory and should be available to all.
- The enrolment, attendance and completion figures confirm that a significant number of Zambian children do not enjoy access to primary education. Furthermore, there is evidence of regression, contrary to the principle of progressive realisation.
- There are two underlying reasons for the decline in primary school enrolment and attendance rates.
 - First, there is an overall lack of capacity in Zambia's schools. This is a long-standing problem. In order to offer primary education to all, while maintaining class sizes at current levels, current capacity would have to expand by a third. The problem of a lack of places is especially acute in poor urban areas. In many rural areas, a surplus of capacity is explained by low attendance because the schools themselves are often located at a considerable distance from pupils.

- The second reason is a fall in demand for primary education and an unwillingness to send children to school. This explanation has come to the fore only in recent years and is a cause for concern. Parents feel compelled to withhold or withdraw children from school for many reasons, but the quality and cost of education are important factors.
- The Covenant requires a plan for the achievement of universal primary education which sets dates for its progressive implementation. The MMD Government has specified targets for the achievement of both universal primary and universal basic education. Increasing school enrolment is a major goal of BESSIP.
- To achieve universal primary education in Zambia by the target date of 2005 would require a growth in enrolment of 95,000 pupils per year. Regrettably, there is little likelihood that school capacity can possibly expand fast enough.

The low quality of education

- If the right to education is to be fully realised, the education on offer must be adequate in quality, relevant, and must promote the realization of the child's other rights.
- The poor quality of education in Zambia is reflected in low learning achievement. Three quarters of pupils in the penultimate grade in primary school are judged to be illiterate. The illiteracy rate among young men aged 14 - 20 has risen above that experienced by their fathers. Little attention has been paid to the needs of girls. Action by the Government under BESSIP to revise the curriculum and focus on literacy and numeracy on the early years and life skills in later years appears a positive development.
- Actual teaching time in the lower primary grades in Zambia amounts to little more than two hours each day or half the national target for time to be spent on instruction. It is significantly below the time allotted in comparable developing countries. The use of pupils in manual labour in rural areas is a significant problem. Many teachers already teach different classes in multiple shifts and are severely over-stretched.
- The Covenant is explicit in recognising that full realisation of the right to education requires that the material conditions of teaching staff shall be continuously improved. Within this submission, this has been taken to encompass both the teaching environment and conditions of service *per se*.
- Significant efforts have been made to rehabilitate schools, but the deficit in the quality of infrastructure remains high. Aspects of adequacy under the right to housing are extended to schools: there is a lack of access to safe water and basic sanitation. BESSIP has set new targets for the refurbishment and construction of classrooms. The Committee should seek to establish whether these are being met.
- The supply of essential teaching materials is completely inadequate. Government funding for textbooks, writing materials, and other requisites has been abysmally low. Plans under BESSIP to deliver textbooks and give priority to the improvement of schools designated as zonal centres requires close monitoring.
- Continuous improvement in the material conditions of employment of teachers is recognised under the right to education. The rights to just and favourable conditions of work and to the provision of training and vocational guidance also apply. Regrettably, the World Bank has recently concluded that teachers in Zambia are underpaid, poorly prepared and deployed, trained in insufficient numbers and provided with little support in schools.
- The proportion of untrained primary school teachers, especially in remote rural areas, is high. The plan is to eliminate the need for untrained teachers in the medium term. However, despite donor support, the move to a new system of training and work experience will require a huge investment of resources. Moreover, unless teaching conditions are improved, attrition rates in the teaching profession will remain high.
- This problem is exacerbated by the ill-health and death caused by AIDS. Even if the planned doubling of the output of teachers from training colleges is achieved, this will not keep pace with attrition.

- Teachers suffer from low morale, a perceived low status in the community, and low and declining real salaries. Incidences of depression, absenteeism and drunkenness are on the increase. Teachers have faced particular inequity in the allocation of housing, to include threatened and actual evictions.
- It is recommended that the Committee enters into a dialogue with the Zambian Government to determine:
 - the total number of trained and untrained teachers at both the primary and secondary levels;
 - the current annual rate of attrition in the profession and the rate at which teachers are being recruited and trained;
 - whether there is evidence of an improvement or deterioration in employment conditions, to include: the average pay of primary and secondary school teachers in relation to the official poverty line; details of the number and circumstances of any teachers owed wages; and information on the number and predicament of teachers evicted during the sale of public or parastatal housing.

Mitigating circumstances and resource constraints

- The failure to satisfy an essential minimum level of the right to education is a prima facie failure of obligation. Yet resource constraints must be taken into consideration in assessing compliance. The onus is on the Zambian Government to demonstrate that every effort has been made to use all available resources, as a matter of priority, in satisfying the right to the most basic forms of education.

Domestic spending on education

- The MMD Government's record in protecting relative public expenditure on education has been mixed. From a low level of relative spending on education in its first years in office, the proportion spent has risen in line with Bank conditionality. However, it must be noted that public expenditure has itself been decimated. Using the alternative indicator of spending as a proportion of GDP, Zambia's record is poor. Average expenditure on education over the period 1992 - 1996 as a proportion of GDP halved when compared to a decade earlier. Neighbouring countries in Africa have been spending over twice as much on education as a proportion of GDP.
- Yet it is the decline on education expenditure in real terms which is most apparent. The amount spent in the 1990s is half that of the 1980s. Real expenditure per student was \$50 in 1996 compared to over \$100 in 1983.

Priority spending on primary education

- The obligation to satisfy, as a minimum, the most basic forms of education must imply a concentration of scarce resources at the primary level. In the first four years of the 1990s, the proportion of the education budget spent on the primary subsector was significantly lower than the allocation of a decade earlier. Considerable progress has been made in the latter half of the 1990s. The primary subsector is receiving over 40% of actual expenditures, in line with spending in other countries in sub-Saharan Africa.
- A disproportionate amount of the education budget is still spent on higher levels of education to the benefit of higher income groups. However, there is evidence that a relative shift in favour of primary education of benefit to the majority of Zambians is being effected by the way in which donor funds are being used.
- The purely domestic element of expenditure on primary education has declined, in real terms, by 4% a year over the ten years to 1996. When donor funds are factored in, this decline is reversed and a significant increase in real spending at the primary level is recorded. In other words, while the Zambian Government's component of the total primary education budget has declined, this has been more than offset by donor funds.

International assistance, austerity and dependency

- Some argue that donor support for the education sector, while crucial, nevertheless allows the Zambian Government to reduce its own allocations from the domestic budget.
- There is no suggestion that donor support should be reduced. State parties to the Covenant have an obligation to seek international assistance which the international community has a degree of responsibility to provide. Donor assistance in support of the right to education is clearly warranted.
- This provision in no way diminishes the obligation of the Zambian Government to use its maximum available resources to achieve full realisation of the right to education. External resources ought to supplement maximum domestic expenditure on education, and not be used as a substitute by allowing Government commitments to be reduced.
- While the Zambian Government is accountable for its own mixed record on the relative protection of the education budget, it is not exclusively responsible for the catastrophic decline in real expenditure.
- Continued donor assistance is dependent on timely debt servicing. In Zambia's case, net transfers have been insufficient and the Government has been forced to draw upon domestic resources to meet its obligations. The \$60 million transferred to multilateral and bilateral creditors in 1996 represents one and a half times the amount spent by the Zambian Government on the primary education subsector.
- Moreover, multilateral adjustment lending has been conditional on stabilisation measures. Swingeing cuts in public expenditure have been required to bring the domestic account into balance. The limited Bank conditionality on the protection of relative education expenditure must be viewed in the context of the decimation of domestic expenditure simultaneously demanded of the Government.
- While the Committee recognises that adjustment is often unavoidable and encompasses austerity measures, under such circumstances action to protect the most basic rights become more, rather than less, urgent. Alongside the State, the World Bank and IMF have an obligation to ensure that the maximum possible protection is built-in to adjustment measures.
- Despite the requirements of article 22, the right to education has not been given due consideration by the Bank and IMF in the design and implementation of adjustment operations in Zambia. Oxfam has sharply criticised the inconsistency between educational objectives and the required fiscal targets. Zambia's experience powerfully demonstrates the need for education and social-policy planning to be integrated into the design of structural adjustment policies. It is strongly recommended that the Committee seeks to establish, in the light of this criticism, the extent to which the World Bank and IMF are seeking to systematically review the compatibility of current fiscal measures with realisation of the right to education.
- A dependency relationship has been created. While the money diverted from the domestic education budget to repay debt is currently replaced by donor funds, the funding of primary education is placed in considerable jeopardy should donor support for Zambia be withheld. There is little or no contingency funding in the budget for BESSIP. Poor performance of the Zambian economy or the Government's inability to provide counterpart funds are rated by the Bank as substantial and moderate risks to the programme. Moreover, any wider failure to meet economic conditionality that results in a further withholding of balance of payments support will once again manifest itself in increased denial of the right to education as the Government diverts domestic resources to repay debt.

The element free of charge

- The requirement in the Covenant that primary education must be free of charge is unequivocal. The principle of progressive achievement recognises that while rights cannot be fully realised in a short space of time, this nevertheless obliges a State Party to move expeditiously and effectively towards the goal of their full realisation.
- Primary education in Zambia is not free. Moreover, instead of progressive realisation of the right in Zambia, there is evidence of regression. The cost borne by parents and guardians is high and rising. Whereas households used to cover

the costs of uniforms and other indirect costs, they are now required, in addition, to fund half of the direct costs of primary education. The Committee has recognised that both direct and indirect fees jeopardise the realisation of the right to primary education.

- In the case of the right to primary education, the Zambian Government cannot cite resource constraints as a reason for its failure to adopt a plan of action which addresses the elimination of fees. On the contrary, Zambia's national policy on education is actively predicated on cost-sharing. The abolition of primary school fees is not an objective.
- The MMD's policy to promote community schools is inconsistent with the required adoption of a plan to ensure free education at the primary level. By meeting only certain specified costs, the Government simultaneously shifts responsibility for financing basic education from the State to community organisations and, ultimately, to impoverished parents and guardians. While appropriate self-help initiatives are to be welcomed, UNICEF has warned against the expectation that people in communities living below the poverty line will be able to meet these costs.
- The requirement under article 14 to plan for free primary education applies, almost by definition, to situations where financial resources are inadequate. The Committee has determined that where a State party is lacking in the financial resources and/or expertise required to prepare and adopt this plan, the international community has a clear obligation to assist. This obligation applies to, *inter alia*, the IMF and World Bank.
- The World Bank has assisted the Zambian Government to formulate a national education policy and to design a plan for its implementation through the BESSIP. Regrettably, the Bank has promoted measures which are incompatible with the element 'free of charge to all' under the right to primary education. This reflects the confusion in the Bank's global policy on education which fails to articulate its own or a State's obligations in human rights terms or to rule out the use of fees to fund basic education.

Targeting of the vulnerable

- Everyone has the right to education. This most certainly includes the poor and other vulnerable groups.
- Children from poor households in Zambia are less likely to attend primary school in the first place. They are more likely to be withdrawn from school because of economic factors. Their learning achievements are at a low level because of a lack of parental and material support. There is a high prevalence of malnutrition in Zambia which has been shown to adversely affect learning ability.
- Oxfam is unequivocal in condemning the way in which poor sequencing of structural adjustment in Zambia has caused impoverishment which has resulted in the withdrawal of children from school because of escalating fees and the use of their labour to generate household income.
- While willingness to pay for low quality education is a factor in the decision of poor parents and guardians over whether or not to send a child to school, there is no doubting the impact of cost-sharing and fees on access to education. UNICEF and Oxfam have noted the link between rising school fees in Zambia and falling school attendance and drop-out among children from poor households. It is recommended that the Committee seek an explanation from the World Bank as to why it has continued to provide tacit support for cost-sharing measures and user fees in education when its own Poverty Assessment criticised their adverse impact on the poor and recommended their elimination.
- A State party to the Covenant is required to target resources at vulnerable and disadvantaged groups. This applies even in times of severe resource constraints, such as those caused by structural adjustment. That element of the Public Welfare Assistance Scheme aimed at helping the poor with school fees and the cost of education in Zambia is at such a low level to be almost entirely irrelevant. Plans to revamp the targeting of assistance under BESSIP remain fundamentally under-resourced. Meeting the private costs in a single year of those households unable to send a child to primary school because of the expense incurred is far in excess of the entire BESSIP budget allocated to establishing and administering the bursary scheme over three years. The Government should be invited to comment on this situation.
- Many aspects of a child's status reinforce denial of their right to education in Zambia. In addition to the overriding factor of poverty, a child is put at considerable disadvantage if they live in rural area, if they are a girl, if they are an

orphan, if they are on the streets, or if they have special needs. Planned action under BESSIP to appoint a handful of teachers with special responsibilities for all vulnerable children will do little to improve their access to education. Further examination of this issue by the Committee is warranted.

- Persons with disabilities are entitled to the full range of rights recognized in the Covenant. The Committee emphasises that the effects of disability-based discrimination are particularly severe in, *inter alia*, the field of education. A State party does not meet its obligations by refraining from negative action or even by outlawing *de jure* discrimination against those with disabilities. Positive action and appropriate preferential treatment are required.
- Regrettably, there are few special schools or units in Zambia to teach children with a wide range of disabilities. As a consequence, at least eight out of ten children aged 7 -13 with a disability were not attending school and were therefore denied their right to primary education. The Government has an ostensible policy of integrating children with disabilities into mainstream schools. The Committee recognises such an approach as requiring concrete measures. In reality, teachers in Zambia are not trained or given guidance on how to teach children with disabilities and no provision is made for appropriate teaching materials or facilities. Neither has the Government carried out its obligation to monitor the educational situation of children with disabilities as a vulnerable or disadvantaged group.

Disparity in the education of girls

- The Convention on the Elimination of All Forms of Discrimination Against Women explicitly recognises the right of the girl-child to education. The non-discrimination clause in both the Convention on the Rights of the Child and the Covenant is of immediate effect and applies to all rights including the right to education.
- The Zambian Government is taking action to promote equality through its Programme for the Advancement of Girls' Education. PAGE is being implemented only in selected areas on a pilot basis, although there are plans to extend the programme to two more provinces and then the whole country under BESSIP.
- The greatest disparity in the enrolment of girls at primary school exists in remote rural areas. More girls than boys fail to complete their primary education because of higher drop-out rates and lower repetition rates. Evidence suggests that the learning achievement of girls in primary school is universally lower than that of boys.
- Overall attendance rates show that significantly more boys than girls aged 14 - 18 were in school. At the tertiary level, far fewer young women than young men continue their education. This situation will not improve until inequalities at lower levels of education are themselves addressed.
- Due to affirmative action under PAGE, although fewer girls than boys sit the exam to progress from primary school to secondary school, broadly equal numbers of both sexes are selected.
- It is pertinent to recognise that the right to education, alongside the majority of economic and social rights, is a right of the individual and as such must not be considered solely in aggregate terms.
- The fact that equal numbers of girls are progressing to secondary school does not alter the fact that 22,000 fewer girls sit the exam in the first place. On an aggregate basis, increases in the selection rate of girls over boys results in numerical equality; yet, because of the lack of capacity at the secondary level, this balance can only be achieved by denying individual boys a place in secondary school.
- The cost to individuals, and to wider society, of inequality and discrimination in the education of girls is deeply felt. The result is a diminishment of other human rights, including equal opportunity in employment. Education helps young women make informed choice about family planning, and improves child health care and survival rates when women start their own families.
- There is a self-perpetuating circle in that teenage girls with no education or with primary education are far more likely to become pregnant than girls with secondary or higher education, while pregnancy and marriage are reasons for their non-attendance at school in the first place. The recent and welcome announcement by the Government that pregnant girls should be allowed to continue their education after delivery must be implemented in practice.

- Girls are withdrawn from school because their household labour is perceived to be of greater benefit than the gains that will result from their education. This circumstance is common in poor household in times of hardship exacerbated by structural adjustment. Moreover, both UNICEF and the World Bank have shown that high school fees and the Government's policy of cost sharing are not only having a regressive effect on the education of poor children in general, but that girls are suffering disproportionately when hard choices are made over which children to withdraw or send to school.

Section 3(III) - Social Welfare

- To place the issue of social security and welfare assistance in context, it is necessary to recall that 69% or almost 6.6 million Zambians are living in poverty. This includes just over 5 million who live in extreme poverty.
- While the Government has adopted a National Poverty Reduction Plan, this remains to be brought to fruition. The provision of welfare assistance is one component of the overall strategy.
- The Committee recognises a broad right to social security under the Covenant beyond a system of social insurance available to those with a record of contributions. The universality of the rights in the Covenant is unequivocal. The Committee requests information on the extent to which any groups do not enjoy the right to social security at all or do so to a significantly lesser degree than the majority of the population.
- The Zambian Government is required to use maximum available resources to achieve progressively the full realisation of the rights recognised under the Covenant. Moreover, if essential minimum levels of each right are to be realised by the vulnerable and disadvantaged in Zambia, then social security for such groups is essential. The existence of user fees for health and education in Zambia reinforces the obligation on the Government to provide assistance to meet these costs to the maximum of its available resources if *prima facie* violations of the Covenant are to be avoided.
- The Public Welfare Assistance Scheme operates as a social safety net in Zambia. Its coverage is extremely limited and meagre resources are concentrated on the poorest and most vulnerable: orphans, the disabled, the elderly and unsupported children, women and dependants. Most payments from the scheme are for food, shelter, medical costs and educational fees.
- Regrettably, the level of funding for the PWAS has been utterly inadequate. In relative terms, annual payments made from the PWAS since 1994 have never amounted to even 0.1% of domestic expenditure. The amount spent in 1998 was the equivalent to 13 US cents for each of the five million Zambians living in extreme poverty. Only 2.5% of those classified as extremely poor were assisted under the scheme during the year.
- It is recommended that the Committee asks the Zambian Government to account for:
 - the low level of absolute and relative spending on the PWAS;
 - the fall in actual expenditure on assistance of 40 percent over the previous year in 1997;
 - the apparent absence of safeguards to ensure protection of the PWAS budget;
 - the high level of criticism levelled at the PWAS, the Department of Community Development and Social Services, and the National Social safety Net Coordinating Committee by, *inter alia*, the UN ACC Task Force on Full Employment and Sustainable Livelihoods, the World Bank, and Social Watch. This criticism suggests that the Government is failing to adopt deliberate and concrete steps in order to fulfil its obligation to move as expeditiously and effectively as possible towards the realisation of the right to social security.
- The PWAS is being revamped, although its revision has been subject to long delays. There is concern that the tightening of eligibility requirements will exclude many deserving Zambians from assistance. While there is an obligation to target resources on the vulnerable, the focus of inadequate resources on an ever smaller subset of those living in extreme poverty in no way reduces the underlying obligation of maximum resource use. It is recommended that the Committee seeks full information on the revisions to the PWAS, including the changed vulnerability profile and eligibility criteria.

- Specific attention is drawn to the welfare of retrenchees. The Committee itself recognises unemployment benefits as one category of social security. Zambia has ratified the ILO Termination of Employment Convention 1982 (No.158). This entitles a redundant worker to either terminal benefits or social security or both in combination. As has been documented, legal entitlements to terminal benefits in Zambia are frequently disregarded in practice. This heightens the obligation on the Zambian Government not only to ensure swift settlement of outstanding claims, but to provide social security to retrenchees.
- Information is sought from State parties to the Covenant about the role of international assistance in the full realisation of the right to social security. Article 22 provides a basis upon which the World Bank is required to account for the advisability or otherwise of international assistance measures.
- The Bank has used adjustment lending and technical assistance to support rationalisation and privatisation, but has done little to mitigate the impact of the inevitable wave of retrenchment. Agreements under Bank privatisation credits for the formulation of a social action plan have proved weak in the extreme. Less than 4% of privatisation related technical assistance was earmarked for the social action component. Moreover, requiring a plan of action does not guarantee the actual delivery and implementation of social support. In the context of the austerity measures simultaneously required by the Bank, the financing of an adequate safety net was always an unlikely prospect, notwithstanding the poor track record of the National Social Safety Net Coordinating Committee.
- It is recommended that the Committee seeks an explanation from the Bank as to why it has failed to do more to support social welfare measures to mitigate the adverse consequences of adjustment. The Bank should demonstrate to the Committee that it has systematically considered the full range of rights under the Covenant when advocating reform of the PWAS.

Section 3(IV) - Health

Reform of the health sector

- The MMD Government adopted a new national health policy in 1991 and has devised the National Strategic Health Plan (NSHP) to achieve its implementation.
- A key reform is the decentralisation of budgetary and decision-making powers to District Health Boards and Hospital Management Boards.
- Donor and domestic resources are being coordinated through a sector investment program. In 1997, total donor support for the health program was worth \$50 million which was matched by a similar level of Government expenditure.
- The World Bank's Health Sector Support Project has dovetailed with the NSHP. The Bank has acted as a lender of last resort to finance elements of reform not covered by others. Most Bank finance has been used to rehabilitate basic infrastructure and to provide drugs and other medical supplies.
- The main objective of the reform programme is to make the most effective use of limited resources. An essential package of health care services, to be made available to all Zambians, has been designed and costed. Services falling outside of these parameters will not be publicly funded.
- The aim is to tackle health problems at the household and community levels. An emphasis is placed upon preventive measures focusing on maternal and child care, family planning, nutrition, the control of communicable diseases, including the prevention of AIDS, the use of clean water, good hygiene, and sanitation. The health centre is the key link for the delivery of primary health care services to the household.

- Reform of the health sector exhibits many elements that appear to be compatible with progressive realisation of the right to health: a recognition of the need for increased financing; an emphasis on primary care of benefit to the majority of poor people and vulnerable groups, such as mothers and children; and an attempt to improve the level of coordination between international donors to advance their cooperation with the Government over health provision.
- Regrettably, and despite the implementation of many administrative reforms, the delivery of health care in Zambia has yet to improve significantly. On the contrary, the reality of poor and declining health in Zambia is shocking.

The use of maximum resources

- In a country where half of the population live in extreme poverty, private households are expected to meet half the total cost of health provision. For this given level of spending, health indicators in Zambia are consistently worse than might be expected.
- The Covenant requires the use of maximum available resources in delivering progressive realisation of the rights within the Covenant.
- During the MMD Government's first three years in office, relative spending on health was curtailed. In recent years, it has improved to account for 10 - 11 per cent of total domestic expenditure.
 - Yet again, the true magnitude of the decline in health sector funding is apparent when considered in real terms.
 - Expenditure on health in 1996 was less than half the amount spent in real terms in 1990. To place this decline in its proper context, by 1990, real per capita expenditure on health had already declined to less than half the levels of the early 1980s. Strict cash budgeting has sometimes resulted in the Ministry of Health receiving less than its budget allocation while the powerful defence ministry has exceeded its authorised expenditure.
- Such a dramatic real-term decrease in expenditure must threaten the sustainability of reform. The WHO's World Health Report for 1999 shows that total per capita spending on health in Zambia was only about half the \$12 suggested by the World Bank as necessary to fund the cost of a basic package of preventive and curative interventions.
- The presentation of Bank conditionality on health sector allocations in relative rather than absolute terms gives an appearance of social protection while actual spending is allowed to decline in line with the dictates of stabilisation.
- In its supervision of the Covenant, the Committee seeks information on the role of international assistance in the full realisation of the right to health enshrined in article 12. The austerity measures and economic adjustment insisted upon by the World Bank and IMF must be considered ill-advised under article 22 of the Covenant in the absence of an equally compelling and adequately resourced programme of social protection in the health sector.

Primary health care

- One specific element of the right to health which the Zambian Government has a core, minimum obligation to satisfy is the provision of essential primary care. Central to the health reforms is the definition of a Primary Health Care package.
- The Zambian Government is required under the Covenant to take steps necessary for 'the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.'
 - The number of children dying before their first birthday in Zambia has increased dramatically to 109 deaths per 1000 live across the period 1992 - 1996. Fifteen years ago, the same infant mortality rate stood at 79 deaths per 1000 live births. Across Zambia for the period 1992 - 1996, for every 1000 lives births, 197 children or almost a fifth are dead by their fifth birthday. Ten years ago, the under five mortality rate for Zambia was 167 per 1000. It is recommended that the Committee seeks an explanation from the Government for this regression in the realisation of the rights to life and health of infants and children.
 - The Committee requires information on immunisation in order to assess compliance with the Covenant. Government action to ensure universal immunisation coverage in Zambia has proved retrogressive. The introduction of user fees

caused a significant reduction in hospital deliveries. As a result, fewer babies were registered at birth and were subsequently vaccinated free of charge. The UNDP has linked low levels of immunisation in the first years of the MMD Government to rising child mortality rates. After a period of improvement, during 1997, immunisation coverage for three out of the four main vaccinations fell to an average of just 54%. This situation must constitute a prima facie denial of the right to health. It is incumbent upon the Government to explain this circumstance to the Committee.

- Under the Covenant, special protection should be accorded to mothers during a reasonable period before and after childbirth. A stated goal of the Primary Health Care programme is to improve maternal and child health services in order to reduce maternal deaths and complications. Regrettably, the maternal mortality ratio in Zambia was recently estimated at 649 deaths per 100,000 live births. UNDP has described this situation as one of the most disturbing aspects of Zambia's health scene.
- One factor contributing to high maternal mortality is the number of home births taking place in the absence of trained health personnel. Indicators reveal an increase in the number of home births. More than three quarters of deliveries to mothers in the poorest 40 percent of households take place at home. In rural areas, trained health professionals were in attendance at just one birth in four. It is apparent that the Committee considers access to such professional care during both pregnancy and delivery as essential for full realisation of the right to health. The prevailing situation in Zambia constitutes a prima facie contravention of the Covenant. Once more, the Government must explain any regression in the care afforded to mothers before and after the birth of a child.

Nutrition

- Both the right to health and the right to food are violated if a person does not receive the necessary nutrition they require.
- The obligation to respect existing access to adequate food requires the Zambian Government, as a State party to the Covenant, not to take any measures that result in preventing such access. Violations of the right to food can occur when a State adopts policies which are incompatible with pre-existing legal obligations relating to the right to food. The Committee recognises two elements - to facilitate and to provide - under the obligation to fulfil. Facilitation requires proactive State measures to strengthen people's access to the means to ensure their livelihood, including food security. Provision requires direct intervention by the State to fulfil the right to food whenever an individual or group is unable, for reasons beyond their control, to enjoy the right by the means at their disposal.
- In its 1997 and 1998 annual human rights reports on Zambia, Afronet records widespread denial of the right to food.
- In urban areas, and in the wake of the abolition of food subsidies, continued double-figure inflation, capped, low wages and massive unemployment are blamed for poor nutrition and food insecurity. The Committee has determined that a Government, as part of its strategy to realise the right to food, should adopt measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families.
- In rural areas, the flooding caused by El Niño in early 1998 prompted the Government to declare 34 out of 72 districts, in seven of Zambia's nine provinces, as disaster areas. However, beyond natural events, economic liberalisation to encourage cash crops is blamed for a fall in the production of maize as a staple and for creating dependency on expensive inputs. Seasonal household food insecurity among subsistence farmers is exacerbated by the lack of on-farm storage facilities, forcing the sale of crops at low prices during a time of abundance. In the months prior to the next harvest, households are forced to buy in commodities at high prices in order to feed themselves. Many cannot afford to do so.
- A State party has a clear obligation to protect the right to food of vulnerable groups. This obligation is of particular significance in times of severe resource constraints, whether caused by economic adjustment or climatic conditions. A positive correlation between malnutrition and low socio-economic grouping has been established in Zambia in the midst of the period of structural adjustment.
- The poor in Zambia are finding it more difficult to get good food and achieve a balanced diet. At a time when trends in nutritional status have been improving on a world-wide basis, they have deteriorated in Zambia. In 1996, 50% of children between 3 months and five years were stunted, indicating chronic malnourishment, and 5% showed signs of wasting, indicating acute malnourishment. The figures for a previous survey in 1991 record 39% of children as stunted

and 6 percent as wasted. On balance, therefore, the nutritional status of Zambia's children has worsened since 1991. The Government's own targets on the reduction of malnutrition are not being attained.

- One necessary step specified by the Committee in respect of a State party's obligation to realise the right to food is the adoption of a national strategy to ensure food and nutrition security for all. In its 1996 Letter of Development Policy to the Bank, the Government conceded that 'support for nutrition is characterised by institutional fragmentation, weak and grossly under-funded institutions, and lack of a clear national policy.'
- The Government undertook to study the functioning the National Nutrition Commission in 1996. Three years later, the results of this study had still not been applied and the issue of nutrition is once more the subject of Bank loan agreements. It is recommended that the Committee seeks to establish the current effectiveness or otherwise of the National Nutrition Commission.
- The International Monetary Fund (IMF) and the World Bank are urged by the Committee to pay greater attention to the protection of the right to food in their lending policies, credit agreements, and measures to deal with the debt crisis. Special care should be taken in any structural adjustment programme to ensure that the right to food is protected. The evidence presented within this submission suggests that the World Bank and IMF have been negligent in this regard.

The control of disease

- The Zambian Government is required to take the necessary steps for 'the prevention, treatment and control of epidemic, endemic occupational and other diseases'. The control of communicable diseases, including those which are sexually transmitted, is an integral part of the Zambian Government's Primary Health Care Programme. While such primary care places an emphasis upon disease prevention, it also encompasses basic treatment.
- In respect of the prevention of disease, Zambia's incomplete record on immunisation has already been noted. The rise in malarial cases is accounted for by the abandonment of vector control programmes by cash-strapped local councils, the general decline in health services, the inability of the poor to afford preventative drugs, and an increase in malaria strains resistant to prophylactics. The first three factors relate directly to the policy sphere.
- The increased incidence of water borne diseases in Zambia has been described by the World Bank as a glaring outcome of the decay in urban infrastructure. Several serious cholera outbreaks have occurred throughout the 1990s. The high prevalence of diarrhoea is associated with unsanitary conditions and the lack of access to safe water. Its high persistence is linked to malnutrition. There has been no improvement in the high proportion of children suffering from diarrhoea in Zambia between health surveys in 1992 and 1996.
- The Committee has interpreted adequacy in housing to constitute, *inter alia*, facilities essential for health including access to safe drinking water and sanitation. The Committee specifically requires information from State parties on access to safe water and sanitation. The implication is that the full realisation of the right to health is denied in their absence.
- Access to sanitation and safe water in Zambia is at a low level. Moreover, there is evidence that provision is declining. Government figures for 1996 suggest that 82% of urban households and a mere 28% of rural households have access to safe water. 65% of the total population do not have access to safe and convenient sanitation. A specific criticism of the health sector reforms is the lack of coordination between the Ministry of Health and other departments with responsibility for water and sanitation. The privatisation of water supply and sanitation, especially in the highly urbanised provinces of Lusaka and the Copperbelt, in the absence of due safeguards and regulation, will inevitably result in the denial of services to poor residents.

Access to health care

- States parties to the Covenant are required to take steps to create conditions to assure medical care to all in the event of sickness.
- While the Zambian population appears to be relatively well served in terms of the number of health facilities, such indicators only have meaning if the infrastructure delivers a good standard of care. A recent fall in attendance at

Government health institutions, despite persistently high levels of morbidity, most likely reflects a declining level of service.

- The Committee, in its supervision of the right to health, demonstrates a concern with the quality of care on offer. Two indicators used are access to qualified staff and the regular supply of essential drugs.
- By 1995, there were twice as many people to each doctor in Zambia when compared to the early 1980s. Four-fifths of doctors are concentrated on four provinces along the line of rail. There have been dramatic falls in the number of nurses. Access to qualified staff improves with the ability to pay: only 15% of the extremely poor saw a doctor during their visit to a health facility as opposed to 36% of the non-poor population.
- The continued absence of a workable policy on the supply of essential drugs is a failure of obligation by omission. Both the Bank and UNICEF have criticised the Zambian Government over its delay in delivering a National Drug Policy. Problems of effective implementation remain and the supply of even essential drugs remains sporadic. It is recommended that the Committee seeks to clarify the prevailing situation in this regard.

User fees and the denial of access to health care

- The exclusion of people from access to health care on the grounds of their poverty and inability to pay must constitute discrimination. Article 2(2) of the Covenant specifically precludes discrimination on the grounds of social origin, property or other status.
- Among the extremely poor, six out of ten persons, despite being sick, did not go for a consultation at a health facility. In a recent survey in Lusaka, almost half of those who considered themselves ill did not seek health care because of lack of money.
- The adverse consequences of poverty on the realisation of the right to health are all too readily apparent. According to the World Health Organisation, a poor person in Zambia is three times more likely to die between the ages of fifteen and fifty-nine than a non-poor person and over three and half times more likely to die between birth and five years of age.
- A 1993 directive from the Ministry of Health authorised the universal introduction of medical fees in all districts. This was done under the rubric of 'cost-sharing' as part of the National Health Policy.
- The Committee is of the view that that the introduction of user fees or cost recovery policies in the health sphere, without due safeguards, significantly reduces the access of the poor to services which are essential for their enjoyment of the right to health.
- The World Bank, in its 1994 Poverty Assessment, viewed the premature introduction of user charges in Zambia as in danger of derailing the entire process of health reform and thereby destroying any positive signs of emerging change. A participatory poverty assessment revealed that user fees were placing mainstream health care in both rural and urban areas out of the reach of the poor. Moreover, without improvements in quality of care, people were being asked to pay for a service which was getting visibly worse.
- Despite the Government's insistence that user fees are set at a 'symbolic' level, they were introduced in advance of working system of exemptions. Oxfam is of the view that this was a deliberate policy in order to maximise cost recovery. UNICEF has criticised the lack of consultation with the general population over the introduction of charges.
- The utilization rates of both hospitals and clinics declined precipitously in Zambia following the introduction of user fees. Sharp falls in attendance were recorded in both urban and rural areas and in all types of facilities, health centres as well as hospitals. In urban areas, the poorest neighbourhoods showed the sharpest declines. The fall in attendance has not proved to be short-lived. The reduced use of facilities as a consequence of the introduction of user fees it is a problem which has persisted in the longer term.
- In light of the adverse impact of the introduction of user fees on the realisation of the right to health of many poor Zambians, further examination of this issue by the Committee is warranted.

A failure to target exemptions to assist the poorest

- The right to health is universal and applies to everyone. The Committee has emphasised that programmes must be targeted to protect the rights of the vulnerable and disadvantaged.
- The Zambian Government, in order to fulfil its obligation to achieve progressive realisation of the right to health, must not only justify the regressive nature of user fees, but must also satisfy the Committee that it has adopted measures to protect the poor and other vulnerable groups from their adverse consequences.
- The current system of exemptions is characterised by the poor targeting of vulnerable groups. The system has been undermined by a lack of resources.
 - During 1996, 55 per cent of the extremely poor paid for consultations compared with 60 per cent of the non-poor. The burden of charges has not, therefore, been shifted from the poor to the non-poor.
 - About a quarter of patients are denied exemptions when they are entitled to them. At the same time, a significant number of those who are ineligible according to the official criteria are being granted waiver of payment. At a prior stage many people may not use health facilities in the first place because they are unaware that they do not have to pay. The elderly are least likely to seek medical care for this reason. It is recommended that the Committee seeks to obtain a breakdown of the number of people in different social groups who were granted exemptions from user fees for health care in 1999.
 - The Health Care Cost Scheme, by which the poor are meant to receive assistance towards medical care, is hopelessly under-funded. Combined spending on health, education and other support services equated to just 8 US cents for each Zambian living in extreme poverty in 1997. The HCCS was initially available on a pilot basis, reaching only 3% of the rural population and 15% of the urban population. The Committee should verify the extent of its present coverage.
 - The HCCS and other prepayment schemes have benefited richer Zambians and not those living in the greatest poverty. At Government clinics and health centres covered by pilot schemes in Lusaka and the Copperbelt, almost half the patients in the highest income quintile participated in the prepayment scheme. In contrast, less than 12 percent of the sick in the lowest income quintile participated. Hence the poor paid higher fees directly out of pocket much more frequently than the better off.
 - Exemptions and prepayment schemes do not, in any case, cover the cost of drugs and treatments which account for half of the expenditure on health in poor households.

The advisability of measures adopted by the World Bank

- The World Bank does not advocate a totally deregulated market in health care. However, it has advocated the promotion of market-orientated mechanisms, including cost recovery and user charges. Critics of Bank policy maintain that the imperatives of cost recovery and equity are contradictory when, as is the case in Zambia, the majority of the population is so poor as to require exemption.
- The Staff Appraisal Report for the Health Sector Support Project reveals that the Bank was fully aware of the Government's intention to employ user fees for cost recovery; of the fact that charges were having an adverse impact on attendance; and of the serious danger to reform posed by introducing fees in advance of improvements in service standards. Regrettably, and despite the close involvement of the Bank and other donors in shaping and monitoring health reform through their supervision of the Health Sector Support Program, they have failed to act to protect the interests of the poor.
 - The authors of a Bank discussion paper on cost-sharing, citing Zambia where user fees were implemented before exemption mechanisms and safety nets were in place, recommended that the Bank should pay more attention in its lending portfolio to the detail of such policies. In the context of the advisability of international assistance measures, it is recommended that the Committee seeks an explanation from the Bank over this apparent neglect.
- The use of World Bank conditionality in adjustment credits has only succeeded in protecting spending on the PWAS and HCCS in relative terms and at abysmally low levels. The Government has avoided implementing revisions to the PWAS, as agreed with the Bank.

- Bank support for the privatisation of ZCCM, without long-term safeguards to ensure continued access of residents of the Copperbelt to former ZCCM hospitals and clinics, is a cause for concern. It is inaccurate to suggest that such facilities only serve those who are better-off. In many instances, they serve the wider community. The new mine owners have full scope to privatise these facilities. User charges are certain to rise and the exclusion of those without the ability to pay must lead to a denial of their right to health.

The impact of AIDS on economic and social rights

- AIDS is a disease which, by its very nature, represents a grave problem for any country, especially when that country is poor. The onus must be upon other State parties to the Covenant and international organisations to take steps through international assistance and cooperation, to include economic and technical assistance, to achieve full realisation of the right to health. The principle recognised by the Committee that all State parties to the Covenant and international agencies should protect basic rights by promoting adjustment with a human face has a powerful resonance given the suffering caused by the AIDS crisis in Zambia.
- AIDS is having a truly devastating impact upon the economic and social rights of many Zambians. It is estimated that, by the end of 1997, the prevalence rate of HIV/AIDS among the adult population aged 15 - 49 years in Zambia was 19%. Although not strictly comparable, the adult prevalence rate for sub-Saharan Africa was recently estimated to be 8%. In total, 770,000 adults and children in Zambia were believed to be infected with HIV/AIDS at the end of 1997. There have already been almost 600,000 deaths in Zambia attributed to AIDS since the epidemic began in the early 1980s, including 97,000 deaths in 1997 alone.
- By 1995, life expectancy in Zambia had already fallen to less than 46 years. The decline to this date is explained by high maternal mortality and the high incidence of other fatal childhood diseases and does not capture the impact of AIDS. By as early as 1998 the predicted nadir of 43 years had already been undercut, with life expectancy reduced to just 40 years and six months.
- AIDS prevalence is highest among those who make up the productive core of a population. The impact of AIDS-related illness and death on the workforce, together with the drain of State and domestic resources associated with the care of the sick, is likely to suppress economic recovery.
- AIDS is having a significant adverse impact on education. HIV/AIDS prevalence among the teaching profession is high. The learning ability of pupils in families affected by AIDS is being impaired by anxiety and disruption. Children are withdrawn from school in order to attend to a sick relative or to generate household income. Girl pupils suffer more than boys in this respect.
- Attention is drawn to the adverse impact of specific measures on the prevention and treatment of HIV/AIDS. The Zambian Government has an obligation to take concrete steps to achieve progressive realisation of the right to health.
 - The consequence of user fees in reducing the access of poor people with HIV/AIDS to health care is highlighted by the UN agencies as a particular concern in Zambia. Attendance by people at clinics for the treatment of sexually transmitted diseases declined after the introduction of user charges. This is a serious outcome given the prevalence and consequences of such diseases: sufferers have a drastically increased risk of HIV infection.
- State parties to the Covenant are obliged to take measures to ensure equal protection of the rights of women, and special protection for mothers and children.
 - The number of children orphaned by AIDS is shocking in its extent and consequences. By the end of 1997, 360,000 children under fifteen living in Zambia had lost one or both parents to the disease. Double orphans of the virus are particularly vulnerable. Commonly, they do not receive adequate care, are at greater risk of being abused, and are liable to slide into streetism. Article 10 of the Covenant requires, *inter alia*, that 'Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.'
 - The Zambian Government has closed most state-run orphanages. The reliance on relatives to provide a home when half the population live in extreme poverty and welfare payments reach less than 2% of all Zambians must represent a failure to target the vulnerable.

- Not only does an unequal burden of care fall on women and girls, but young women are particularly vulnerable to contracting the disease. HIV infection rates for girls 15 -19 years has been shown to be seven times the rate for males of the same age. In the main, this is because young girls, with little knowledge of contraception or the power to refuse sex, are being infected by older men. Half of all teenage girls in Zambia are sexually active by the time they are 16, yet less than 5 percent of women aged 15 - 19 used a condom the last time they had sexual intercourse. It is recommended that the Committee seeks to clarify the measures adopted by the Zambian Government to promote safe sex.
- Teenage pregnancy rates are high. Survey results for 1996 record that three out of ten girls aged 15 - 19 were either already mothers or were pregnant with their first child. Poverty and low levels of education are factors which exacerbate this situation. HIV prevalence of 27 percent was recorded among pregnant women less than twenty years of age visiting antenatal clinics in the major urban areas in 1993. Neonatal HIV infection rates are correspondingly high and analysis suggests that AIDS is contributing to rising child mortality rates in Zambia.

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Bibliographic material is organised under six subsections: (i) References with notational abbreviations; (ii) Books, periodicals and Government papers; (iii) Newspapers and magazines; (iv) United Nations and International Labour Organisation official documents; (v) Zambian legislation and related circulars; (vi) Documents produced in the High Court of Zambia; and (vii) International human rights instruments, labour standards and codes of conduct.

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