

# Zambia

## Deregulation and the denial of human rights

**Submission to the Committee on  
Economic, Social and Cultural Rights**

### Executive Summary

**Based on the full submission of March 2000**



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# **Zambia: Deregulation and the denial of human rights**

## **Executive Summary**

### **Key Message of the Report**

The final report is the first ever comprehensive human rights analysis of privatisation in Zambia. The main argument of the report is that economic reforms, 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 the majority of Zambians are denied their fundamental human rights. Privatisation in Zambia was seen as setting a model - not just for Africa but the whole world - for this reason it is vital to examine what went wrong to prevent the same mistakes being made in the future.

The report is not against privatisation as such but the manner in which it was carried out: the lack of transparency and accountability; the diversion of resources from the sales; and the almost complete lack of regard for the immediate negative impacts on the majority of Zambians living below the poverty line.

### **Relationship between Privatisation and the Debt**

Zambia's state as a heavily indebted poor country was one of the main reasons why the donor community and the World Bank and IMF had such influence over GRZ in dictating the scale, terms and time-scale of one of the most ambitious privatisation programmes of any developing country. Development assistance was directly conditional on the rapid disposal of the ailing, state-owned enterprises (SOEs). Donors argued that the sales would bring in much needed new investment and revitalise the whole economy. In addition, the sale of the decaying mining company, ZCCM, would, Zambians were assured, help to pay off Zambia's debt. Proceeds from the sales and debt relief under the Heavily Indebted Poor Country Initiative – HIPC – would allow Zambia to start with a clean slate.

But privatisation in Zambia has been regarded by organisations like Transparency International (which monitors corruption worldwide) as “a looting exercise”; serious international business journals have reported 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. Even the ZPA noted that “management of certain state owned enterprises (SOEs) provided themselves extraordinary and excessive benefits in anticipation of privatisation”. Public pressure from the donors to sell off ZCCM - at a time of falling world demand for copper – made it a buyers' market. The new investors were able to make demands that GRZ was not able to refuse and the agreements struck are grossly disadvantageous to the majority of Zambians.

## Structure of the Report

The report is written so that it could be sent to the UN Committee on Economic, Social and Cultural Rights - an expert body which meets in Geneva to assess whether Governments are complying with their obligations to further the right to education; the right to an adequate standard of living; the right to housing and shelter; the right to health and the right to food. Anyone who knows Zambia, knows that today all these rights are being violated.

The report is divided into six sections:

Section 1: Donor Influence and the “Advisability” of International Assistance

Section 2: Privatisation and Deregulation

Section 3: Employment, Unemployment and Workers Rights

Section 4: Access to Land and the right to housing

Section 5: Conduct of Parastatal and Private Companies

Section 6: Austerity Measures and the Impact on health, education and social welfare

## Section 1: Donor Influence and the Advisability of International Assistance

The main purpose of this section is to stress the joint responsibility of the World Bank, IMF and donor community with GRZ in denying Zambians their basic rights. The UN insists that all international cooperation should have as its starting point the objective of helping to ensure that GRZ is able to provide its people with core rights to health, education, adequate standard of living etc. The report brings out evidence that the needs of the poor were not a high priority in the privatisation process.

- Balance of payment support mainly geared at ensuring that the debt was paid
- Reduction of balance of payment support because of governance problems and the failure to sell off ZCCM quickly enough had catastrophic impacts on the well-being of Zambia’s poor.
- Shortfalls in foreign exchange required to service debt forced GRZ to take out money from the already highly constrained domestic budgets
- HIPC - very slow to come on stream and may not offer solutions to extreme poverty
- Adjustment loans used by the Bank as a vehicle to drive through economic reforms - many of which had an immediate, negative impact on economic and social rights
- Imposition of VAT shifted burden of tax onto the poor.
- Drastic staffing cuts in public sector occurred in the absence of any adequate social safety nets
- Deregulation of maize led to higher prices for the urban poor and loss of access to market for poor, remote farmers
- Move to commercial land market but the rights of urban poor and squatters to adequate housing not protected
- Failure to plan for and fund the take-over and running of social services in the Copperbelt even though Councils impoverished - only short term arrangements with some new mine owners
- World Bank’s Mine Township Services Project is in part a desperate reaction to the refusal of the new investors in ZCCM to take on wider social responsibility.
- New arrangements for social provision are based on user fees and cost recovery and are likely to reduce access of urban poor to basic services.

The UN believes that economic reforms should be scrutinised by World Bank/IMF and GRZ before agreements are signed (relevant for PRSP). It insists that much greater priority should be given to social actions and not only to economic measures.

In recent years the IMF and World Bank have started to give more emphasis to social protection but given the scale of poverty in Zambia, is it adequate?

The main objective of submitting the complaint to the UN Committee is to force the World Bank/IMF and GRZ to explain their failure to protect the poor in the past and to show how the measures they are now proposing will increase poor Zambians enjoyment of core rights. It is an additional tool for Zambian civil society and should reinforce their efforts around the PRSPs.

## **Section 2: Privatisation and Deregulation**

This section shows why privatisation has been conducted in such a way as to damage the public interest. State owned enterprises (SOEs) belonged to the Zambian people and they have a right to information - there is an absolute necessity for GRZ to provide full information on the prices paid for SOEs and explain what has happened to the sale proceeds.

It is well known from parliamentary reports that:

- Money has not been paid into the Privatisation Revenue Account but has been diverted into other accounts
- The public has a right to know who has purchased shares and an inquiry should be held to reveal details of share holdings of politicians and public figures.
- There is extreme disquiet with the way the sale of ZCCM was handled (e.g. the Luanshya deal), not by ZPA but by the ZCCM negotiating team.

A question that remains unanswered is why the World Bank and donors did not protest at the violation of the provisions of the Privatisation Act, designed to prevent political interference in the sales, when the ZPA negotiating team was replaced by the ZCCM negotiating team.

## **Section 3: Employment, Unemployment and Workers Rights**

It was always recognised by GRZ and donors that liberalisation and privatisation would entail massive formal sector redundancies. This is not compatible with the right to work and the International Labour Organisation (ILO), the main intergovernmental body overseeing workers' rights, has severely criticised GRZ for neglecting employment policy over this period. At the ILO's annual meetings Zambia is represented by GRZ, representatives of Zambia's business community and the trade unions. The ILO has stated bluntly that GRZ failed to put employment objectives into its economic and social framework.

The ILO is calling for the full costs of liberalisation and privatisation to be made public: how many businesses were closed or liquidated? What is the total number of job losses - prior to, during and after privatisation? Only then can Zambians understand the full economic and human cost of privatisation.

The UN requires just and favourable conditions of work, including a decent living wage. For the 85% of Zambians of working age working in the informal sector this is not the case. Most are petty traders and their average wage is less than half that recommended as the minimum needed to feed a family of five.

The World Bank has to take its share of the blame: it was aware of these problems: in 1994 it had commissioned a participatory poverty assessment which warned about increasing poverty in urban areas. But no action was taken to mitigate the negative impacts - other than making grants to some business advisory centres. The response of the donors and the World Bank to the scale of problems ordinary Zambians were facing to feed, clothe, house, educate their children and care for their families' health was completely inadequate.

Main problems identified by the ILO:

- Non payment of wages owed
- Retirees denied their terminal benefits
- Retirees denied pensions
- Decline in youth training programmes
- Growing unemployment among young people

These failures all caused destitution and the denial of the right to an adequate standard of living. Workers in companies, which were closed or liquidated were the last in line and only received what was due to them once other, commercial creditors were paid.

Conditions of work for some miners working for new companies have deteriorated, most notably at the Luanshya mine, which was sold in highly controversial circumstances to the Binani company, now registered in the U.K.

### *Responsibility of the World Bank*

- Failure to insist on adequate safeguards to protect the interests of the workforce, no attempt was made to see if redundancy payments could be met by GRZ or SOEs.
- Disregard for the complete inadequacy of the social safety nets.
- Complacent assertion that redundant workers would easily find work in the informal sector.
- Failure to ensure that ZPA equipped and able to do post privatisation/liquidation monitoring of retrenchees.

## **Section 4: Access to Land and the right to housing**

A free market for land was seen by the World Bank as an essential pre-requisite for private sector investment. The UN states that the right to housing is threatened when the majority of the population are poor and there are few safeguards to allow them to obtain security of tenure. The UN's priority is to help the disadvantaged but the whole thrust of the reforms in Zambia have been to privilege the wealthy and foreign private investors.

The right to housing derives from the inherent dignity of the human person. The UN criticises the view that housing is merely a "commodity". The Lands Act (1995) has been introduced to abolish obstacles to the sale, purchase and ownership of land. The right of investors to own land under secure tenure begins with the protection given in the Zambian Constitution to private property and the absence of any recognition of squatters rights.

The privileged position of the wealthy and foreign investors over ordinary Zambians has been further entrenched with the amendments made to the Mines Minerals Act and the Investment Act. The Investment Act protects investors from compulsory acquisition and the Mines and Minerals Act facilitates the purchase and conversion of customary land or the long-term use of land for mining. The only check on the conversion of customary land is the need for the consent of the local chief – smallholders, women, squatters have no say in the matter.

### *Insecurity of Tenure*

As the Oxfam Report Land Tenure Insecurity on the Copperbelt (1998) showed the process of gaining tenure is arduous and complex for the urban poor. People living in Improvement Areas have no security at all, even if many have a misplaced belief that they do.

The UN states that adequate housing must be in a location that allows access to employment options, health care, schools and other social facilities. Yet, on average all Zambians are denied access to eleven out of sixteen essential services from social facilities to potable water, from education to shelter. 70% of Zambia's housing stock is informal and either poorly serviced or not serviced at all. Since privatisation began there is evidence of a strong decline in housing conditions. This violates the principle that while a government may not be able to afford to improve living standards immediately, it has to justify any worsening of the situation. GRZ, the World Bank and the donors all need to explain why the increase in insecurity and decline in standards in housing and shelter were necessary.

Almost the entire stock of GRZ, council and parastatal housing has been put up for sale. The result of sell-off has been to create chaos and uncertainty.

- Mechanisms used for disposing of state owned houses has been arbitrary
- Whole process of house sales has been flawed because of malpractice, corruption and intimidation
- Many tenants have been unable to pay the prices demanded or to access loans without incurring debt – they now face disconnection from services or eviction
- Miners in ZCCM houses were promised full title and were forced to accept to purchase their homes instead of receiving their terminal benefits. Many would have preferred cash and to move away in search of new jobs. But they are trapped. The promise that they would be given full individual titles is not being honoured: most will not receive full title – as it is difficult, costly and time-consuming to convert block titles to individual plots.
- Many new ‘‘owners’’ are unable to maintain their properties or pay council rates
- Refuse collection has broken down
- Existing squatter settlements are becoming congested because of evictions or sub-letting of mine houses.
- The Lands Tribunal has been overwhelmed by the scale of the problems and has been ineffectual in protecting poor families from evictions.

### *Responsibility of the World Bank*

Much of the chaos resulting from the manner of the house sales is the responsibility of GRZ. But the World Bank pushed for the sale of all state owned housing and for changes in employment legislation obliging owners to provide housing for employees. Very little consideration was given to the potentially devastating effects of its sudden and inexpert implementation.

## **Section 5: Conduct of Parastatal and Private Companies**

Human rights traditionally only apply to States. They have the primary responsibility for ensuring that their population enjoys good health, secure housing, education and employment. But in a globalised world the power of the private sector means that there is an increasing need to expect similar obligations from private companies.

Multinational companies are guided in their actions by the OECD Guidelines for Multinational Enterprises which states what standards of behaviour OECD governments expect of their companies when operating within the OECD area or abroad. Companies are expected to respect domestic law but also to ensure that they behave in a way that is consistent with the human rights obligations of the host State.

Throughout the 1990s the single main aim of the donors, the World Bank and IMF was the rapid sale of ZCCM. The advice from the consultants, Rothschilds, to achieve this aim, was for all parties to ignore the social dimensions. So the best that could be achieved was to get some new mining companies to agree to maintain the same level of services for an interim period of two years. But most have not adhered to this. Towards the end of the protracted sale of ZCCM companies like Anglo and First Quantum refused to accept this clause.

### *Problems presented by the Private Sector in Zambia*

Development Agreements with binding legal agreements between the new investors and GRZ were negotiated in secret and they are not public even after the sale.

- Mining Companies, like Anglo American, have obtained excessive concessions in terms of taxation, royalty payments, repatriation of profits and have ensured that any liabilities for redundancy payments, ZCCM debts and past and even future environmental pollution is all shouldered by ZCCM/GRZ.
- Binani /RAMCOZ acquired the Luanshya mine in a highly controversial deal in 1997
- RAMCOZ failed to put in any investment in the mine
- It reneged on its pledges to the workforce e.g. there was a strike and a riot in November 1988 after RAMCOZ unilaterally decreased housing allowances; target bonuses were not paid to miners in January 1998; in March 1999 ex miners made redundant by RAMCOZ protested about non-payment of terminal benefits
- Local companies supplying RAMCOZ have not received payment and now are threatened with bankruptcy.

### *Resettlement of communities living on Mine Land*

Companies like Anglo claim to be observing World Bank Resettlement Guidelines (in fact this is a requirement for the support they have received to develop the Konkola mine from the IFC, the private sector arm of the World Bank). But they are failing to do so in a number of ways:

- Inadequate consultation on the resettlement action plan in violation of World Bank, CDC and IFC guidelines
- Refusal to provide copies of the Environmental Impact Assessment and Environmental Management Plan – NGOs can only read these large volumes at KCM's HQ and copies are not facilitated.
- Resettlement is being provided for communities living in Chililabombwe but nothing is being done to assist long-term settlers on mine land in Chingola.
- Informal settlements on ZCCM land at the Nchanga mine were secretly "excised" from the sale in negotiations between ZCCM and Anglo American but the council was not informed, copies of redrawn maps have not been made available despite NGO requests and no efforts have been made to provide services to these communities.

Other companies have forcibly evicted long term settlers from mine land with no consideration for the devastating consequences for the families concerned. In February/March 1998 the US company, Cyprus Amax, evicted miners and their families from the Kansanshi mine compound, demolished all the mine houses (which were in a good state of repair) and the little Catholic Church. They provided no assistance to those who were forcibly evicted and did not compensate the Church for the illegal destruction of its property.

Plans are now afoot to privatise water and sewerage services which will place them out of reach of most communities on the Copperbelt.

### *Weakening of Environmental Protection*

Environmental aspects of mining activities in Zambia are regulated not by the 1990 Environmental Act but by the much less stringent provisions of the Mines and Minerals Act. The secret development agreements provide mining companies with even greater protection by exempting them from liability for fines or penalties or third party claims made in respect of the past activities of ZCCM. A company like RAMCOZ was given until 2011 before it was required to implement an Environmental Management Plan.

## **Section 6: Austerity Measures and the Impact on health, education and social welfare**

There has been a catastrophic decline in overall levels of funding of social sectors in real terms in Zambia which has been exacerbated by the austerity measures demanded by the World Bank and the IMF.

- 69% of all Zambians are living in poverty. 5 million live in extreme poverty.
- The number of children enrolled in primary school has fallen – 3 out of 10 children of primary school age are not even enrolled.
- Escalating fees have resulted in higher drop out rates and falling school rolls
- 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 a half times more likely to die between birth and five years of age.

GRZ has not used privatisation receipts to fund social provision. While some of the proceeds from the sale were used to keep ZCCM afloat, there is a need – as the Report of the Parliamentary Committee on Economic Affairs (November 2000) on the privatisation of ZCCM reiterated - for a full investigation into the sales. The Committee reported that it had been unable to obtain a full list of assets owned by ZCCM . The report criticised GRZ for flouting the law and accused Ministers and officials of negligence.

GRZ and the World Bank neglected to make adequate preparation for the transfer of social provision from ZCCM to local councils.

The whole thrust of the World Bank's technical assistance and adjustment loans over this critical period was to provide guarantees of security to new investors and the severe impacts of a combination of economic contraction, debt and mass retrenchment were largely ignored.



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# Introduction

Zambia is undergoing an extensive programme of economic reform which began in the first years of the 1990s. It is argued that, in order to compete in the global market place, economic reform in Zambia has been, and remains, unavoidable. The reformers maintain that hardship and a reversal in social standards for many are 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. The economic logic used appears to be compelling, but it neglects to take into consideration two vital factors:

- first, that the way in which reform is carried out determines the degree to which the poor in Zambia suffer as a consequence;
- second, that the Zambian Government, as well as the IMF and World Bank as the architects of structural adjustment in Zambia, have equally compelling obligations under international law which they must abide by.

It is widely known that Governments have obligations to protect human rights under international law. What is less well known is that the range of human rights to be protected includes not only familiar civil and political rights - such as freedom of speech and the right to vote - but also economic and social rights. These rights are endorsed by all governments in the Universal Declaration of Human Rights and more than one hundred and forty States have ratified, and are bound by, the two Covenants which develop both sets of rights. This includes Zambia. Examples of economic and social rights include, among others, the right to health, to education, to housing, to an adequate standard of living, to just and fair conditions of work and to special protection of children and the vulnerable. In other words, a range of basic human rights must be safeguarded under the economic reform programme, and it should not be assumed that these two imperatives are incompatible. On the contrary, the Committee on Economic, Social and Cultural Rights [hereafter, the Committee] refuses to advocate one political or market system as more suited to the protection of economic and social rights, but instead seeks to judge each solely on its achievements and failings in respect of the Covenant on Economic, Social and Cultural Rights [hereafter, 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. It has embarked on what has been described as 'one of the most ambitious economic reform programs on the African continent.' 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.

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. 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. 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.

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. Government figures attest to a net loss of some 81,000 paid jobs in the formal sector over the period 1992 to 1998. 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. Rationalisation of the civil service, if implemented to plan, will see 57,000 redundancies.

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. 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. 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.

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. 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. 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.

## B. 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.'**

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. 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.

On the face of it, there is widespread denial in Zambia of the most basic rights within the Covenant. **Everyone has the right to an adequate standard of living, including adequate food**, yet seven out of ten Zambians continue to live below the poverty line. 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.

**Everyone has the right to adequate housing**, yet almost seventy per cent of Zambia's housing stock is classed by the Government as 'informal and poorly serviced or not serviced at all.' 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. In rural areas, a mere 28 per cent of households have access to safe water. Whereas there were 2000 cholera cases back in 1978, there have been sudden flare-ups of the disease in the 1990s affecting tens of thousands of people. In the latest outbreak, 11,327 cases were reported to June 1999.

**Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.** 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 an estimated 40 years and 6 months in 1998. Zambia is obliged under the Covenant to take steps necessary to reduce infant mortality. The number of children dying before their first birthday has increased dramatically to 109 deaths per 1000 live births. 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. 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. In 1996, 78 per cent of children had been vaccinated by their second birthday. A fifth of Zambian adults are infected with HIV/AIDS.

**Everyone has the right to education. To fully realise this right, primary education shall be compulsory and available free to all.** Three out of ten children of primary school age in Zambia are not enrolled in primary school. Overall primary level enrolment ratios have fallen by 14 percentage points since 1986. **State Parties to the Covenant recognize that special measures of protection and assistance should be taken on behalf of all children and young persons who should be protected from economic and social exploitation.** It is estimated that there are at least 75,000 street children below the age of 18 in Zambia. 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.

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. 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*.

The MMD Government must therefore be judged on its record in meeting these obligations and this submission seeks to highlight those instances when it has seemingly failed to do so. 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 Bank 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.

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. 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.

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:

A first section considers **donor influence** - in particular, through the World Bank and IMF - in driving through the reform programme in Zambia. A second section on **deregulation and privatisation** moves on to consider how laws and policies designed to remove constraints on the conduct of parastatal and private companies have simultaneously denied many Zambians their basic rights to development, to just and favorable conditions of work, and to land and housing. A final section on **austerity and the denial of social rights** considers the wider, adverse impact of structural adjustment and stabilisation. The sectors of social welfare, education and health are examined in detail in a supplement to this summary.

## Section 1

### Donor influence and the advisability of international assistance

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. 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.

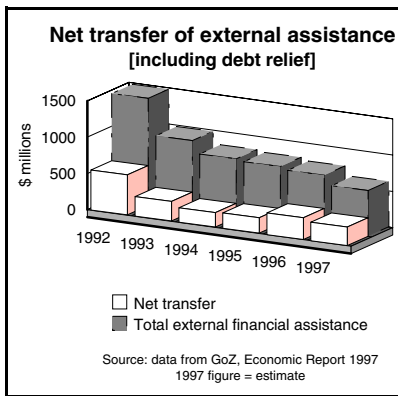
The initial focus is upon the overall level of resources which the international community has committed to Zambia during the 1990s and the degree to which this assistance has been suited to fighting poverty and improving access to basic services. The assumption that all assistance contributes towards the realisation of economic and social rights must be rejected. 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.

#### A. 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. Nevertheless, in 1993, total external financial assistance remained high at \$982 million. In recent years, external assistance has fallen sharply. The Government of Zambia's estimate for 1997 puts the figure at \$630 million.

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.

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.' 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.

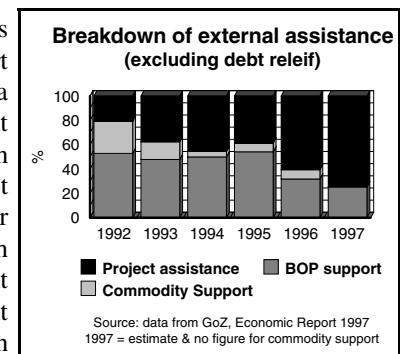
## B. The suitability of the type of assistance for poverty alleviation

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. It does not, of itself, constitute direct investment in the country. 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. Whether spent on individual projects or through sector programs, project assistance is characterised by direct investment. A number of implications for poverty alleviation and the realisation of economic and social rights follow from the very nature of each type of aid.

### 1. Balance of payments support

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. 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 creates significant difficulty for the Government which is forced to take money out of its own foreign reserves to meet debt servicing. The reduction in the levels of balance of payments support has been justified by the international community on the basis of the Zambian Government's poor governance record, but has also been clearly linked to the failure to conclude the sell-off of ZCCM. The violations of civil and political rights warrant a clear message of condemnation from the international community. However, the adverse impact of the reduction on the realisation of economic and social rights has not been given due attention, even though its consequences are painfully apparent.



Second, the World Bank concedes, in Zambia's case, 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.' 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.

Overall, the Government still spends almost twice as much servicing overseas debt than it does on all the social sectors combined, despite initiatives by the World Bank, IMF and foreign countries to reduce this burden of debt. Zambia is still to qualify for full debt relief under the HIPC debt relief initiative which has been heavily criticised by Oxfam:

‘In headline figure terms, Zambia will make large budgetary savings if the Boards of the IMF and the World Bank accept staff recommendations to provide the country with HIPC Initiative debt relief....But headline figures are more misleading than usual in the case of Zambia. The debt sustainability analysis carried out by IMF/World Bank staff shows that: Actual debt service payments will increase sharply from \$136m in 1999 to \$170m in 2000 before peaking at \$252m in 2002. Debt repayments will increase from 24 per cent of government revenue today to 35 per cent in 2001 - 02. Average repayments for 2000 - 03 will be 46 per cent higher than for 1997 - 98. ’

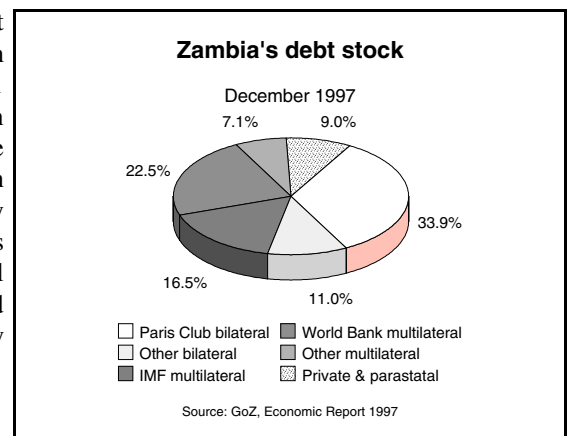
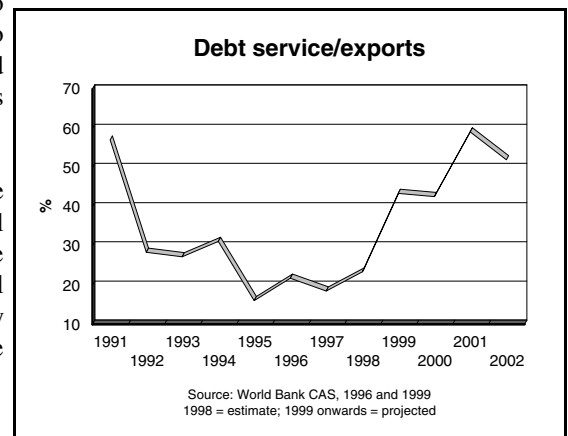
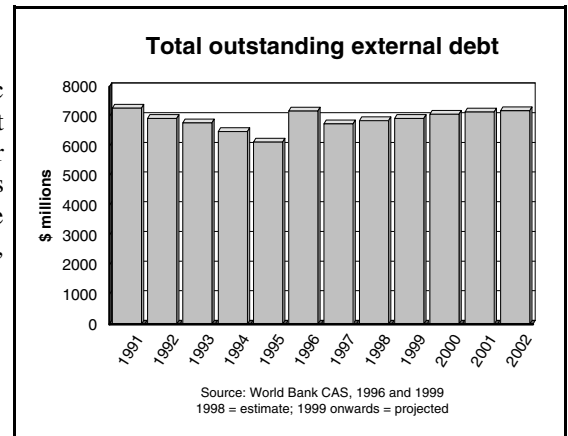
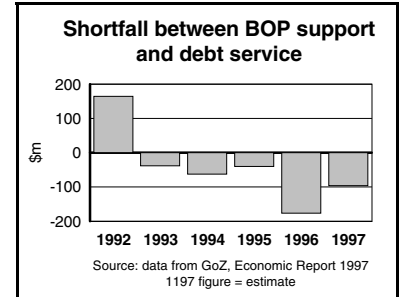
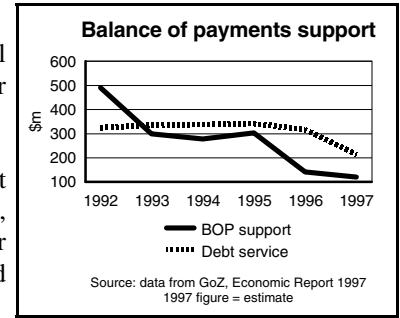
At this juncture, it is hard to escape the conclusion that cutting public expenditure - even expenditure on social provision - ensures that bilateral and multilateral creditors are paid their dues. This is counter to the determination by the Commission on Human Rights has determined that debt payments 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.

## 2. 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.

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, further attention is focused throughout upon World Bank interventions targeted at poverty





alleviation to assess whether these offer mitigation commensurate with the sheer scale of hardship caused by the adjustment and stabilisation programme.

## **C. Bank action and the denial of economic and social rights**

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.

### ***1. The obligation of the Bank to promote economic and social rights and avoid action resulting in their denial***

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. 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.' 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.'

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.' 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.' 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.'

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.'

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.' 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.'

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. 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.

## ***2. The negative impact of adjustment conditionality upon the enjoyment of economic and social rights***

The UN's Special Rapporteur on Economic, Social and Cultural Rights has, by citing statements from the IMF and Bank in support of social development, 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. Notwithstanding the recent poor performance of the economy, this pattern of welfare decline is apparent in Zambia.

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.

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.' A similar resolution was adopted by the Commission on Human Rights.

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: 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.

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. 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 sections on social welfare, education and health.

## Section 2

# Privatisation, deregulation and the denial of human rights

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.’

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.

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...' 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.' 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: the inadequacy of the framework for regulating privatisation in Zambia; deregulation of employment and the right to work; access to land and the right to housing; and the conduct of parastatal and private companies when constraints on their activities have been removed.

## I. Privatisation in the public interest

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.

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. The Act further determines how the list of enterprises to be sold is drawn up and what modes of sale are allowable. The Act lays down parameters for competitive bidding and the conduct of negotiations. Arrangements for the issue and holding of shares are specified for when the option of public flotation is used. 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.

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. 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. 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.

### A. A basis in international standards

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. 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. 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. 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; 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. 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.

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'. 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. 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.' The UN has also adopted the International Code of Conduct for Public Officials and recommended it to Member States.

In respect of the Covenant on Economic, Social and Cultural Rights, the undertaking to ensure non-discrimination is an *obligation of conduct*: 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.' Neither corruption nor 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. 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. There is an obligation to move expeditiously and effectively towards the goal of full realisation. 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. 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. Furthermore, 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.

## **B. Privatisation and failures of 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. 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. Yet there have been significant lapses in accountability arising both from the formulation of the Privatisation Act and deviation from the prescribed privatisation process as a result of political interference in key sales.

### ***1. In-built failures of accountability***

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. 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. This situation was earlier criticised by the Parliamentary Committee on Public Investments. 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, an urgent ZPA board meeting can be called without the usual fourteen days notice. Indeed, meetings have been convened at very short notice making it impossible for all members to attend. Second, only five members of the board are required to decide and vote on any matter. Provided 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: see below for a critique of how the sale of the Luanshya Mine package was conducted.

## ***2. Accountability and deviation from the Privatisation Act in practice***

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. Regrettably, there are numerous occasions - often involving the sale of the largest parastatals - when the set procedures under the Privatisation Act have been subverted.

Negotiations over the sale of the mining parastatal were being led by the international merchant bank, N.M. Rothschild. However, 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. Furthermore, the chief executive of ZPA is a Director of ZCCM. One of the known member's of the ZCCM Privatisation Negotiating Team is also a Director of ZCCM. 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 reality, it is the ZCCM board and the Government itself, not the ZPA, who are handling negotiations over the sale of ZCCM. 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.

Once each individual agreement has been finalised by the negotiating team, the Privatisation Act specifies that the Minister of Finance *shall* sign the final Sales Agreement to transfer shares to the selected bidder. Once more, the process specified in the Privatisation Act is not necessarily followed. The power of decision over the sale of ZCCM actually lies with a special Cabinet subcommittee (also known as the Committee of Ministers).

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. 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. 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. 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.

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. The front runner to win the sale had been First Quantum, a Canadian mining company with a sound industry track record. Binani, on the other hand, has no copper mining experience and some analysts questioned whether it had the necessary financial backing to fund its ambitious plans for the Luanshya operations. First Quantum sought a reversal in the High Court of the decision to sell to Binani.

The legal action has brought a number of facts to light. First Quantum had indeed originally been selected, on a purely commercial basis, as the winning bidder by ZPA. In doing so, the ZPA board followed the expert recommendation of its advisors, the merchant bank N.M. Rothschild, rather than the wishes of the Government/ZCCM. This decision was officially reversed following an urgent meeting between Cabinet members and a minority of the ZPA board, in an apparent contravention of the Privatisation Act. 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'. 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 bid. 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.

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 the section on the conduct of parastatal and private companies. Latest information suggests that the company is in such severe financial difficulties that it may be forced to close down its operations.

## **C. Transparency and access to information**

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....'

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 are precluded from bidding and must disclose any conflict of interest in matters relating to the privatisation process. 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. There are stiff penalties under the Act for the unauthorised disclosure of information. 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*, including the names of registered consultants and advisers, the names of bidders and how much they are bidding, and the successful bidders and the reason they have been selected. 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. A parliamentary select committee on parastatals monitors the operations of ZPA.

### ***1. In-built failures of transparency***

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.

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. There is often a protracted delay in revealing the details of certain deals. This engenders mistrust: '[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.' [Theo Bull, cited in *Profit Magazine*, December 1997/January 1998]. Furthermore, what the ZPA's reports and accounts omit 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. This makes it impossible for an informed 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.

### ***2. Allegations of corruption and self-dealing***

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.’

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.’ 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. 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 practice 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.

Allegations of asset stripping and the nonpayment of terminal benefits leveled against former and current members of the Government, most notably in respect of the General Pharmaceuticals Company. The Parliamentary Committee on Public Investments has also expressed its concern over asset stripping by parastatal managers in companies prior to their privatisation. 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.’

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. It has also been alleged, based on information 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. Furthermore, it is also claimed that the President has interests in the Israeli gem company Hagura, which is running Kagem Mining, the State owned emerald producer, and holds, or has at one time held, shares in Binani Industries.

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.’ 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.’ 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 and whether the Commission is functioning effectively, is adequately resourced, and is free from interference in the conduct of its work.

### ***3. Discrepancies in the banking and use of privatisation proceeds***

Many former state enterprises have been running at a loss and will continue to do so until the new owners invest in them. Yet, even if the market dictates that the prices realised are low, it might still be expected that the sheer size of the privatisation programme 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.’

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. 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, again before many major sales, 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. 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. 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 without the prior authorisation 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.

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.

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. 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. 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, although it is 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.

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. Please refer to the sections below which outline 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'. Participation in development moves beyond access to information to encompass 'the fair distribution of the benefits resulting therefrom'. 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.' 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. 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.

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 the section on the conduct of parastatal and private companies for a more detailed analysis of the nature and implications of the tax regime applicable to the mining sector.

The focus here is 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**

In a small number of cases, managers and employers have been given the first opportunity to bid for the company in which they work. 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. 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. 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. 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. 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**

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. 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. 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.'

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: example are given in the full report.

The ZPA, in its selective presentation of privatisation to the public, emphatically denies that foreign firms will take money out of Zambia. 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, Zambia is 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. 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.

### ***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.

The World Bank has long been preoccupied with the issue of the endorsement of the privatisation program in recognition of its anticipated unpopularity. 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. The Fund holds shares which the Government owns in some of the newly privatised companies. Shares are released to be sold on the Lusaka Stock Exchange. 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 flotation. 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. The flotation of other major companies is envisaged.

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. 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.

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.

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. 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.

## **II. Employment, unemployment, and work-based rights**

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. Information, where available, is 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 is 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. As part of this assessment,

consideration is 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.

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. 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. 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. A final subsection examines 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. Mass unemployment and the absence of an employment policy**

### ***1. The formal sector***

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. By October 1998, 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. Total cuts in the public sector workforce of 57,000 are planned. 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. 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. The true cost of the rationalisation program at ZCCM is the loss of some 17,000 positions between 1992 - 1997, at least 12,500 of which comprise redundancies, termination or non-renewal of contracts, and early retirement. 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. It 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.

### ***2. The informal sector***

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. 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 the informal sector 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.’

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; yet the licensing and operation of small-scale businesses have been deregulated as a requirement of both ERC and PIRC II adjustment lending. This coincides with increased concern expressed by the ILO over deregulation. In 1997, the ILO Governing Body's Committee on Employment and Social Policy noted that the vast majority of the labour force in Zambia worked in the informal sector and fell outside of any regulatory framework. The Committee recognized the poor quality of employment and working conditions: job insecurity, inadequate worker protection, and health and safety were all issues of concern following labour market deregulation. In order to overcome these constraints in Zambia and the other review countries, the Committee recommended increased support and cooperation from organisations within the UN system, to include the Bretton Woods Institutions. The Bank's Country Assistance Strategy for Zambia (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.

## **B. The non-payment of wages and terminal benefits**

There is widespread evidence, presented in the full report, that employees have not been paid wages owed to them; retrenchees 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. Relevant articles in the ILO Protection of Wages Convention 1949 (No. 95) and the ILO Termination of Employment Convention 1982 (No.158) are similarly jeopardised.

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. In the run up to privatisation, notable closures and liquidations have included the Memaco Group, Zambia Airways, and the United Bus Company of Zambia. 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. 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.

The use of ‘in-kind’ payments in lieu of a cash settlement is a particular problem in Zambia and constitutes a denial of the right to fair remuneration. Specific instances of this practice, when the purchase price of employee housing more than absorbs an individual's terminal benefits and leaves him or her in debt, are examined in the section on land and housing.

## **C. The failure to safeguard conditions of work**

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. Particular attention is drawn to 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.'

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.

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.

## **D. Trade union rights**

Agreements were reached under the Bank's ESAC II adjustment lending to reform the Industrial and Labour Relations Act (ILRA). 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. 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.

## **E. Training, business development and employee resettlement**

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 retrenched have received any training when formal sector job losses total 80,000.

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 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. In so far as those concerned may have little choice but to accept resettlement, it is of paramount importance that the Government applies internationally recognised guidelines on resettlement. There is little or no evidence to suggest that this is the case.

## **III. 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. A free market in land without safeguards to protect the poor**

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.

## **B. 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. 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 compensation payable to squatters who are arbitrarily deprived of their rights of occupancy. The development agency advocates streamlining of the procedure by which land is demarcated and title deeds are issued and increased protection of the interests of vulnerable groups and women under land alienation procedures. This includes explicit recognition of the principle of non-discrimination in the Lands Act, related statutory instruments and land circulars. Oxfam also recommends the upgrading of Land Record Cards and Council certificates of title to full 99 year statutory leases and the introduction of safeguards to protect the interests of the wider community in the alienation of customary tenure. This should 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.

## **C. Housing in Zambia**

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. 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. 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 the Employment Act to provide worker housing has been ended.

### ***1. 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.

### ***2. The house sales debacle***

#### **a. Discrimination and inequity in the sale procedures**

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, as evidenced in the full report.

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 by the CSUZ and NUPSW against Government officials, as detailed in the full submission. On 26 June 1997, the President suspended the sale of Government houses because of widespread malpractice, corruption and the harassment of sitting tenants. The Government house sales recommenced under revised rules, but the process remains dogged by controversy and inequity.

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. 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. 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.

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. However, the suspension was not retroactive and therefore did not apply to completed transactions. The MUZ - a strong supporter of the sell-off - claimed that eighty per cent of the contracts of sale had already been signed.

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.

## **b. 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.

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.

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.

### c. 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.

#### Revenue from the house sales

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. 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. 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. 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).

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. 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. 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.' The Agency's bleak vision has been realised. A parallel conclusion applies to the sale of council and government houses.

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 the section on the conduct of parastatal and private companies.

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. 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, despite an obligation under the Covenant to use maximum available resources and to target vulnerable groups in order to realise the right to housing.

### ***3. 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. In respect of other parastatals, once again, it is those living in worker housing in companies with substantial debts or facing insolvency, receivership and liquidation who have been particularly vulnerable to eviction as attempts are made to sell their homes from under them to realise their asset value.

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. A more detailed examination of these violations is withheld until the section on the conduct of parastatal and private companies, 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.

## **D. Redress and 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). 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. Beyond specific disputes, it may also generally inquire and adjudicate on any matter affecting land rights and obligations. Any person aggrieved by a decision of the Tribunal may appeal, within thirty days, to the Supreme Court.

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.

The Tribunal meets at places and times determined by the Chairperson. 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. 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. 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.

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 aspects of the right to adequate housing.

## **E. 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.

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 the Bank's PIRC II adjustment loan 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.

The land reform agenda was carried forward under the ESAC loan 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.’ 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’. 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. It acknowledged that fulfilling tasks and meeting deadlines that involved a ‘third party, such as parliament,...proved difficult to implement. in a timely fashion.’ 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 for the implementation the Lands Act (1995). Substantial progress in this regard was made a condition of second tranche release of the credit. 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.’ A further stipulation was the functioning of the Lands Tribunal.

A positive development sought by the Bank under ESAC II was for the recognition of informal settlements in urban areas and their full legalisation. 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.’ 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.

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. 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.

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. Furthermore, ESAC II supported the revised Employment Act which repealed the requirement on employers to provide housing or a housing allowance to employers.

Once more, criticism 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.’ 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.

## IV. The conduct of parastatal and private companies

This section 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 dismantles or suspends 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.

### A. The direct application of international human rights law to private companies and parastatals

#### 1. *The direct responsibilities of private companies to realise human rights*

A consideration of the realisation or denial of economic and social rights in the privatisation of ZCCM is necessarily complex. It is argued that 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. It is because human rights standards have traditionally been applied to the conduct of States that it is necessary to advance arguments as to why they are directly applicable to the conduct of companies.

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. 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. 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.’

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...’ 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. 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]. Once more, there is a corresponding article in each Covenant. 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. 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. Examples falling into the latter two categories are given in the accompanying table.

<b>Expressions of concern</b>
<p>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.' Similarly, attention has been drawn by the Committee to the negative impact of oil companies working in the Ogoniland of Nigeria. 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. It has recommended that measures be taken to ensure that law and order remain State responsibilities. 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.</p>
<b>Active consideration</b>
<p>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 <i>and enterprises</i>, 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. 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.</p> <p>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.'</p>

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 framework. However, as in the case of Zambia, national law and regulation is frequently inadequate. 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. A state cannot be held responsible for the actions of those within its jurisdiction unless (a) the action is attributable to it, and (b) 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. 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'. 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'.

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. 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. 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. 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.

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.' Evidence is presented 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. 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*. 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.

## **B. The privatisation of ZCCM**

### ***1. 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.

A subsequent report carried out by the merchant bank N.M. Rothschild 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.

## ***2. 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 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.

## ***3. 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.

### **a. 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 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. 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'.

A related element of the sale requires the 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. Hence 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. The IFC recognises that there are concerns over the project in respect of the environment, health and safety of personnel, and adverse social consequences. 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.

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. 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. 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.

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.

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'. 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.

## **b. 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.

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. 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.' 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, 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.' 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. Moreover, an increased reliance on the free market and the growing role of private providers are recognised as features of globalisation. 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. 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 on an adequate standard of living. 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.' 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; 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.

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.’

#### **4. 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.

##### **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. 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; and exemptions from the payment of Import Declaration Fees and withholding tax on loan interest. 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.

##### **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. 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. This will significantly reduce the company’s costs and increase profitability. 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 full report.

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 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.

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. 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. 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 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:

‘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.’

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. 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.’ 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.

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.

## C. The reality of privatisation: the denial of economic and social 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. However, disclosure of documents in respect of the court case instigated by 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 on the Copperbelt 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. 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.

#### a. **Implications of the sale for levels of employment, conditions of employment, and trade union rights**

##### i. *Employment levels*

RAMCZ made a commitment not to make any compulsory redundancies. However, the RAMCZ 'employment protection' clause is limited to a period of two years. Moreover, the company's commitment to desist from compulsory redundancies is itself subject to alteration as the terms of the development agreement and the Approved Programme of Mining Operations can be cancelled or varied. 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'. In other words, there is little to prevent the company from making redundancies whenever it wishes.

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.' ['Economy Watch,' *The Post*, 16 November 1998].

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.' ['Nkana held back in Anglo-ZCCM deal,' *Africa Analysis*, 29 October 1999]. 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'. The thrust of the Guidelines is to engender a positive management approach towards employee representatives. The ILO Declaration of Principles affirms the right of workers to establish



and join a trade union of their choosing, seeks protection against acts of anti-union discrimination, interference, or the hindrance of union representatives, and recognises collective bargaining rights.

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. 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.

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. 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. The intimidation of the local MUZ leader, Mr. Pwele, and other union members prior to and during the industrial action at Luanshya is a matter of record.

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. 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. 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.'

### *iii. Conditions of employment*

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.' A similar formulation is used in the OECD Guidelines. Article 7 of the Covenant constitutes a basis for this requirement in international human rights law.

The development agreement confirms that RAMCZ will honour the terms and conditions in the contracts of employment of transferring employees. As with the collective agreement in force with the union, such contracts are open to

#### **Sustained industrial unrest at Luanshya**

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. 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. This discourteous treatment appears to contravene the letter and spirit of ILO principle 51. 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.' In the case of the ex-miners, this provision is their legal entitlement.

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. 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.

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.

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.

## **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. 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. 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. 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.' The financial constraints facing Roan Antelope have slowed the development of operations and limited the business opportunities for local companies.

## **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. 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. The company agrees to apply existing eligibility criteria for registering dependants entitled to these services.

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. 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. 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. Almost identical provision is made in respect of the use of recreational facilities and access to municipal services.

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. 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.

RAMCZ are only bound to maintain municipal services and infrastructure for two years at the most. 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. 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.

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. Immediately thereafter, the local council is required to make offers of employment to Transferring Employees engaged in providing municipal services. 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.' 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.

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. 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. 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.'

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. 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. 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.

#### **d. 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.

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. 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. It is also obliged to perform Environmental Clean Up Obligations which are outlined in a schedule attached to the Agreement.

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. Moreover, fines or penalties in excess of those applying on the date of the Agreement cannot be imposed. 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. The company has power to dispute this decision of non-compliance and have the matter referred to a nominated Sole Expert. 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. 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.' 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. 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'.

### **e. 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. 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.

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. 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. 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. 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. 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.

## ***2. Displacement and forced evictions by ZCCM and private companies***

### **a. The threat to squatters on ZCCM land**

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.

## **b. 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. 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. 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. 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. 160 miners and their families and 55 youths on short-term contracts lost their jobs.

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. This is in stark contradiction to the assurances issued by the Zambian Privatisation Agency when the Kansanshi Mine was sold:

‘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. 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. 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. 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. 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. 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. 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. 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.

The future of three villages is in jeopardy - Kyafukume, Kametele and Mushitala. 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 from Kansanshi 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. 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. 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.

Cyprus Amax has expressed itself as 'cautiously optimistic' over a move to production. 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. 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. Oxfam has reported that the company 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.

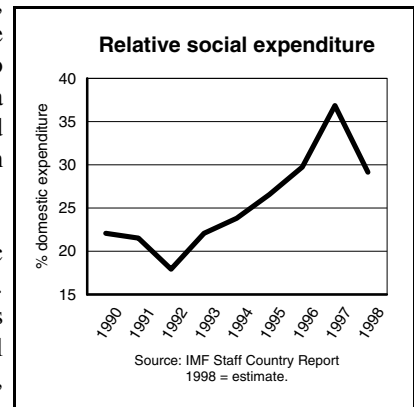
## **Section 3**

### **Austerity and the denial of Social Rights**

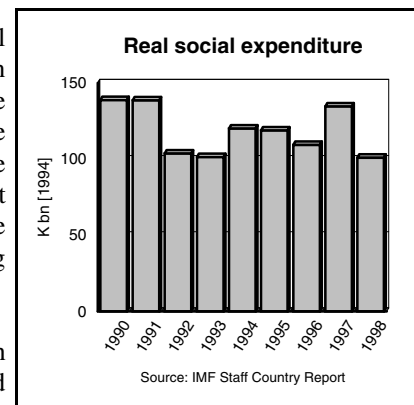
The Zambian Government may consider that its maximum available resources are spent on realising economic, social and cultural rights, but it cannot be presumed by this to have met its obligations under the Covenant. This determination is made by the Committee. Resource constraints certainly do not free 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; and 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.

Please refer to the accompanying supplement for a detailed analysis of the adverse impact of austerity measures on enjoyment of the rights to education, welfare assistance and health.

## Supplement

# The adverse impact of austerity measures on the rights to education, welfare assistance and health

## I. Education

### A. Education policy

The Zambian Government has adopted a national policy on education which seeks 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. 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. However, 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 to maintain counterpart funding .

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.

### B. Prima facie non-compliance

#### *1. Access to primary education*

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. The net enrolment ratio (NER) for children of primary school age in Zambia is falling. In 1985, 96 per cent of Zambians of primary school age were enrolled. By 1994, this figure had dropped to 83 per cent. Figures for 1996 record a further decline in the NER to 72 per cent. 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. Almost a third of those who should have been in school were not present. Primary school completion rates have fallen from 83 per cent in 1990 to 78 per cent in 1996. Recent survey data suggests an even worse scenario: as many as 35 per cent of those who enrolled in Grade 1 will no longer be enrolled in primary school at Grade 7.

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.

## ***2. 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. However, actual teaching time in the lower primary grades in Zambia currently amounts to little more than two hours each day or half the national target for time to be spent on instruction. It 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.

Significant efforts have been made to rehabilitate schools in Zambia, but the deficit in the quality of infrastructure remains high. While 1,100 schools have been rehabilitated, 1,400 more warrant the same attention and a further 1,000 require rebuilding. Aspects of adequacy under the right to housing are extended to schools: there is a lack of access to safe water and basic sanitation. In Lusaka in 1995, for every 114 pupils there was one toilet. Under BESSIP, the aim is to rehabilitate 1,600 classrooms and build 3,000 new ones by 2001. The supply of essential teaching materials is completely inadequate. Government funding for textbooks, writing materials, and other requisites has been abysmally low. 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. 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. Plans under BESSIP to deliver textbooks and give priority to the improvement of schools designated as zonal centres require close monitoring.

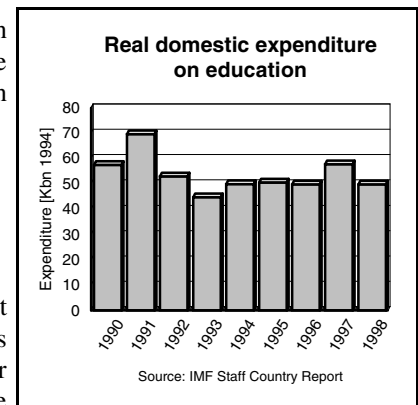
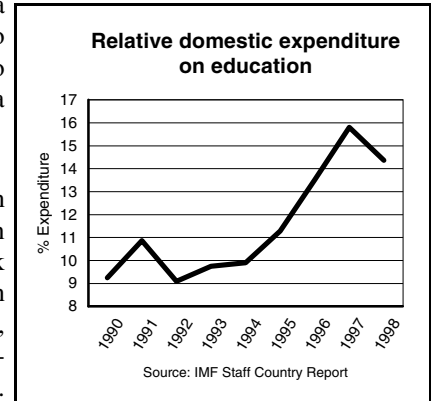
Continuous improvement in the material conditions of employment of teachers is recognised under the right to education. The rights to just and favourable conditions of work and to the provision of training and vocational guidance also apply. Regrettably, the World Bank has recently concluded that teachers 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.

## C. Spending on education: mitigating circumstances and resource constraints

### 1. Expenditure on education

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.

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.



### 2. 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. There is evidence that a relative shift in favour of primary education of benefit to the majority of Zambians is being affected 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.

### 3. 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. 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. Instead, 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.

## D. 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.

## E. 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. 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. It is incumbent upon the World Bank to justify 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.

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.

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 are not attending school and are therefore denied their right to primary education.

## F. 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.

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.

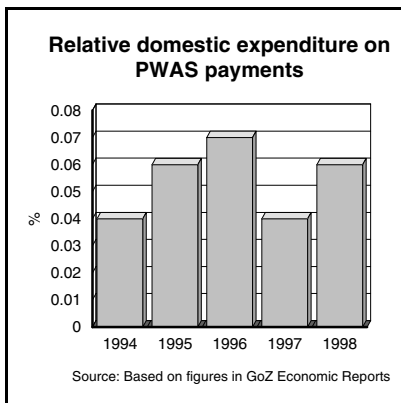
Girls are withdrawn from school because their household labour is perceived to be of greater benefit than the gains that will result from their education. This circumstance is common in poor household in times of hardship exacerbated by structural adjustment. Moreover, both UNICEF and the World Bank 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.

## II. Welfare assistance

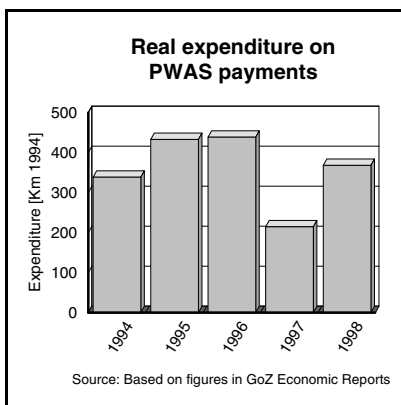
To place the issue of social security and welfare assistance in context, it is necessary to recall that 69% or almost 6.6 million Zambians are living in poverty. This includes just over 5 million who live in extreme poverty. While the Government has adopted a National Poverty Reduction Plan, this remains 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. Spending in 1997 under the PWAS on assistance - support services and the health and education schemes - amounted to K517 million. 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 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. 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.



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. 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.' The World Bank itself has described the PWAS as suffering from design weaknesses, limited administrative capacity and low budget allocations. The UN ACC Task Force on Full Employment and Sustainable Livelihoods is of the opinion that the effectiveness of the scheme 'has been very limited.'

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.

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 retrenched.

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.

## III. Health

### A. Reform of the health sector

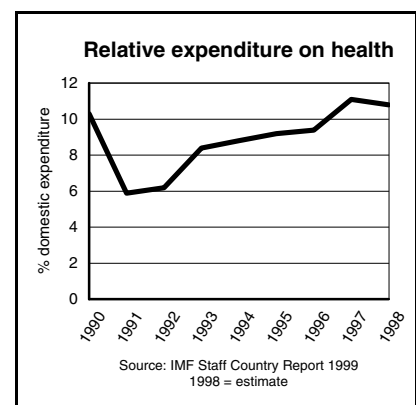
The MMD Government adopted a new national health policy in 1991 and has devised the National Strategic Health Plan (NSHP) to achieve its implementation. A key reform is the decentralisation of budgetary and decision-making powers to District Health Boards and Hospital Management Boards. Donor and domestic resources are being coordinated through a sector investment program. 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.

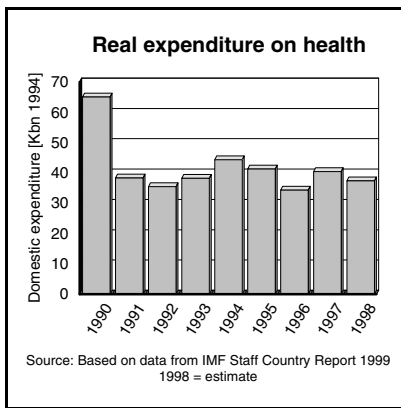
Reform of the health sector exhibits many elements that appear to be compatible with progressive realisation of the right to health: a recognition of the need for increased financing; an emphasis on primary care of benefit to the majority of poor people and vulnerable groups, such as mothers and children; 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.

### B. The use of maximum resources

The Covenant requires the use of maximum available resources in delivering progressive realisation of the rights it codifies. 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. However, 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.

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. 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.

## C. Primary health care

### 1. Maternal and child 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 births 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 live 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.

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.

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.

### 2. Nutrition

Both the right to health and the right to food are violated if a person does not receive the necessary nutrition they require. 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. 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. A positive correlation between malnutrition and low socio-economic grouping has been established in Zambia in the midst of the period of structural adjustment. Nutritional status have been improving on a world-wide basis, but has 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 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.' Three years later, the lessons have not been applied and the issue of nutrition is once more the subject of Bank loan agreements. At the same time, the 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.

## **D. 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. 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.

## **E. Access to health care and the impact of user fees**

### ***1. Facilities and the quality of 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. 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.



## 2. *User fees and the denial of access to health care*

### a. **The imposition of user fees**

The exclusion of people from access to health care because of their 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 in Zambia, 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 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 use fees it is a problem which has persisted in the longer term.

### b. **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. About a quarter of patients are denied exemptions when they are entitled to them. The burden of charges has not, therefore, been shifted from the poor to the non-poor. 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 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.

### c. 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 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.

## F. 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.

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. 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. 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.