

Introduction

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

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

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

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

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

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

A. The economic reform programme

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

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

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

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

B. The results of economic reform

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

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

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

C. The benchmark of economic and social rights

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

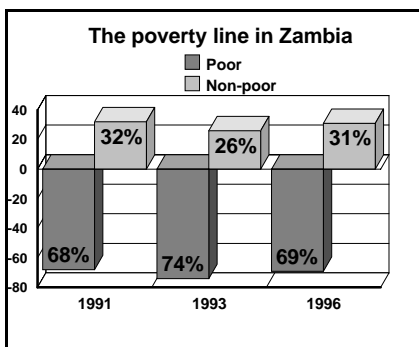
'...a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.'²¹

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

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

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

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



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

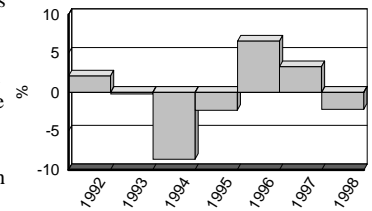
This situation has obvious repercussions for the realisation of basic rights. At a time when trends in nutritional status have been improving on a worldwide basis, they have remained static or have even deteriorated over the last twenty years in Zambia. In 1996, 50 per cent of children between 3 months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

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

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

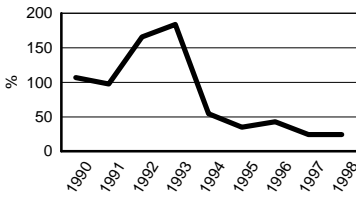
Of course, it is argued that it takes time for the results of economic reform and structural adjustment to be reflected in the GDP figures. Growth over the period 1999 - 2001 is expected to be around 5 per cent, although in the current climate of economic uncertainty, this projection appears over-optimistic.

Real GDP - percentage change



Source: IMF Staff Country Report

Inflation - retail prices [av. annual % change]



Source: IMF Staff Country Report

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

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

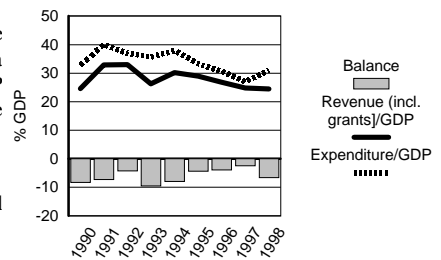
- The value of any savings which people might have had - for example, from redundancy payments - was hard hit by high inflation in 1992 /1993.
- Even with reduced inflation at a level of around 25 per cent, increases in the cost of living are still outstripping increases in income.
- Inflation continues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

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

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

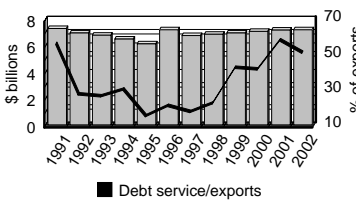
- Some of the cuts in expenditure represent real savings and improved efficiency.
- Yet a drastic cut in Government spending has also reduced the amount of money available for social spending to help the poor.

Domestic budget



Source: IMF Staff Country Report

External debt



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

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

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

Total amount owed by 1997:
\$7,143,000,000

Equivalent to
\$770
owed for every Zambian.

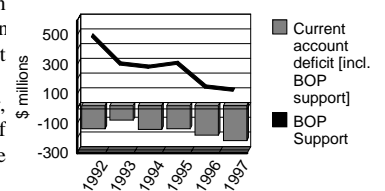
servicing will be the equivalent of half the earnings from all exports by 2001.

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

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

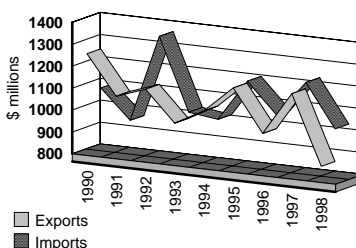
If it had not been for balance of payment support from donors, this deficit would be higher still. However, this assistance has itself fallen significantly in recent years because donors have withheld funds over issues of poor governance and because they have insisted on measurable progress towards the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

Balance of payments [support & current account deficit]



Source: GoZ, Economic Report 1997

Imports and exports



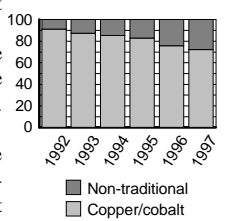
Source: IMF Staff Country Report

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

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

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

Type of exports



Source: GoZ, Economic Report 1997

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notes

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

² GC 3, para. 10.

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

⁴ GC 3, para. 9.

⁵ CAR, para. 3.13 ff.

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

⁷ CAS (1996), para. 1.

⁸ CAR, para. 2.16.

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

¹⁰ Economist Intelligence Unit (1999), *Country Briefing*, 4 June.

¹¹ The sale of the Nkana and Nchanga Mines - accounting for 54 per cent of ZCCM's copper reserves - collapsed when the Kafue Consortium (Phelps Dodge of the USA, Avmin of South Africa, Noranda of Canada, and the UK's Commonwealth Development Corporation) withdrew from the deal in April 1998. By mid-1999, agreements with Anglo American of South Africa over both the management of Nkana/Nchanga and the development of key deposits at Konkola Deep had still not been finalised.

¹² SCR (1999), Statistical Appendix, table 3.

¹³ Ibid., Statistical Appendix, table 8. The data is provided by the Government of Zambia's Central Statistical Office.

¹⁴ ZPA (1997a), *Status Report*, 31 December 1997.

¹⁵ PSREPC R&R, Letter of Development Policy, Annex J, para. 25.

¹⁶ Pledges summarised in ER 1995 and ER 1997. Figures for actual foreign direct investment from PSREPC R&R, Zambia - Key Economic Indicators, Annex B.

¹⁷ Calculated from job creation figures cited in ER 1997, table 3.23.

¹⁸ ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Convention No. 122, Employment Policy, Zambia, 1999, para. 1.

¹⁹ The total outstanding debt owed by Zambia at the end of 1998 was \$6.86 billion, although this figure remains to be adjusted. In contrast, the entire Zambian economy in 1998 generated in the region of \$3.4 billion. Estimates cited in the CAS (1999), Annex B7.

²⁰ SCR (1999), Statistical Appendix, table 9.

²¹ GC 3, para. 10.

²² The Committee's strongest condemnations have been reserved for those States whose economic prosperity is not matched by minimum rights for large sections of their populations. The Committee has, on occasion, used the precept of *prima facie* non-compliance in the context of developing countries; for example, by reminding the government of The Gambia - whose poverty was reflected in 1993 by a ranking of 167 out of 173 in the UNDP's Human Development Index - of its basic obligation to ensure that compulsory primary education is available free to all and to adopt a detailed plan where this right is not assured. (See E/C.12/1994/20, para. 203). The explicit language of violation is avoided.

²³ The interpretation in GC 3, para.10, is significant in opening the way for the Committee to declare that the Covenant has been violated. In the past, clear and widespread denial of the most basic of rights protected under the Covenant was not deemed a sufficient basis for saying a State had violated its obligation. The assumption was that rights were contingent on resources. In effect, a government was given the benefit of the doubt and could maintain that it did not have the necessary means while the veracity of its argument was ascertained. This burden of proof has been reversed.

²⁴ In the second approach, people themselves are asked how they would characterise being poor.

²⁵ Central Statistical Office (1997), *The Evolution of Poverty in Zambia*.

²⁶ World Bank (1997), *1997 World Development Indicators*, table 2.5.

²⁷ LCMS (1996), table 16.12.

²⁸ Ministry of Local Government and Housing (1996), *National Housing Policy*, para. 3.1.

²⁹ GC 3, para.8(b).

³⁰ PSREPC R&R, Zambia Social Indicators, Annex A.

³¹ LCMS (1996), table. 14.7.

³² *Idem*.

³³ PA, para. 6.30.

³⁴ LCMS (1996), table. 14.7.

³⁵ WHO (1998), *Global Cholera Update 1998*; WHO (1999a), *Outbreak News*.

³⁶ The figures for 1969 and 1980, averaged for men and women, are from census results summarised in ZDHS (1996), table 1.1, p.3. The figure for 1995 is cited in ZHDR 1997, p.16.

³⁷ WHO (1999b), *World Health Report*, Statistical Appendix, Table 1.

³⁸ ICESCR article 12 (2)(a).

³⁹ The IMR is for the period 1992 - 1996. See ZDHS (1996), table 7.1.

⁴⁰ The IMR of 79 deaths per 1000 live births for the period 1977 - 81 is cited in the PA, Chapter 2, p.18 which itself draws on data from the Zambia *Demographic and Health Survey*.

⁴¹ BCG coverage declined from 100 per cent in 1996 to 59 per cent in 1997; DPT coverage fell from 83 per cent to 52 per cent; immunisation coverage against measles was 50 per cent in 1997 compared with 92 per cent in 1996. See ER 1997, 'Immunisation,' para. 212.

⁴² ZDHS (1996), table 8.7.

⁴³ UNAIDS & WHO (1998a), *Epidemiological Fact Sheet on HIV/AIDS and sexually transmitted diseases: Zambia*.

⁴⁴ Based on the net enrolment ratio (NER) which compares the number of those enrolled of the correct age for primary education compared with the number of children in the population at large who should be enrolled at that level. See Kelly (1998), 'Primary Education in a Heavily Indebted Poor Country: The Case of Zambia in the 1990s,' p.2.

⁴⁵ The figures derive from analysis of the LCMS (1996) data on attendance by grade by the Study Fund, as cited in Kelly (1998), p.3.

⁴⁶ LCMS (1996), table 7.3. The school attendance rates are for children aged 7 - 13 and do not take into consideration whether a child is attending the appropriate grade for their age.

⁴⁷ Figures are from the SACMEQ Report 1997. See this submission, Section 3(II), fn. 63.

⁴⁸ The official estimate is 492,000. See LCMS (1996), p.12. Taking the age range from 0-18, the number of estimated orphans rises to 670,000.

⁴⁹ Children of the street and children on the street both included: the latter have a home to go to, the former do not. The data on streetism is from Lungwanwa & Macwan'gi (1996), *Street children In Zambia: a situation analysis* (as cited in Kelly (1998), pp.22 ff.).

⁵⁰ ICESCR, article 2

⁵¹ The initial impression is that some of these clauses introduce an element of discretion or even uncertainty into what a state party must do and when it must do it to see that the Covenant is implemented. In fact, the degree of latitude in interpreting a State party's obligations is determined by the Committee.

⁵² The World Bank Group comprises public and private sector arms. In the former category are the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). IDA provides concessional finance to qualifying countries of which Zambia is one. Unless otherwise indicated in the text, references to the Bank or World Bank in this submission refer to IDA. The private sector arm of the Bank encompasses the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

⁵³ The destination of FDI is, however, massively skewed. Five developing countries - Argentina, Brazil, China, Mexico and Poland - accounted for half of the total in 1997. See World Bank (2000), *Entering the 21st Century: World Development Report 1999/2000*, table 1.1 and box 3.1.

⁵⁴ GC 3, paras. 13 and 14.

⁵⁵ ICESCR article 23 identifies the furnishing of technical assistance and other activities as the means of international action for the achievement of the rights recognised in the Covenant.