

Section 2

Privatisation, deregulation and the denial of human rights

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

Notes

¹ *PIRTA M&R*, para. 6.

² ICESCR ratified by Zambia on 10 April 1984.

³ *GC 3*, para. 8.

⁴ *Idem*.

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