

Section 3

Austerity and the denial of social rights

Introduction

The three social rights in the Covenant which are given consideration in this section are the rights to health, education and social security.¹ Their realisation or denial is examined in relation to the overarching and legally binding obligations applicable to all rights in the Covenant.²

The analysis is divided into four main parts: (I) an overview of social policy and spending is followed by a review of the education, welfare and health sectors (II - IV). Close reference is made throughout to the corresponding rights in the Covenant and the apparent degree of compliance or non-compliance.

I. Social policy and spending: an overview

The question of the allocation of resources to the social sectors is of paramount importance. Whether or not the Zambian Government is using its maximum available resources is one factor which determines compliance with the Covenant. At the same time, any review of absolute and relative social expenditure must take into consideration the conditionality applied by the World Bank. Ultimately, however, the progressive realisation of social rights is dependent not only upon resource allocations, but also the nature of the steps taken to ensure their implementation. Attention is focused on the common elements of reform - rationalisation, decentralisation, cost recovery, private provision - as part of the Government's overall Public Sector Reform Programme.

A. The use of maximum available resources by the Zambian Government to secure social rights

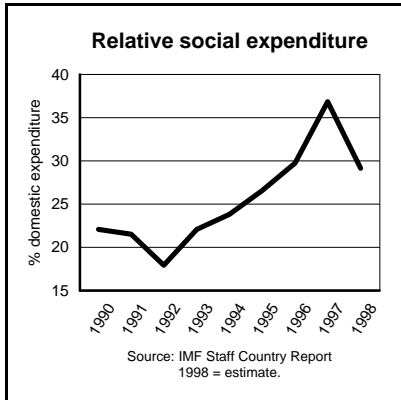
Introduction

The Zambian Government may consider that its maximum available resources are spent on realising economic, social and cultural rights, but it cannot be presumed by this to have met its obligations under the Covenant. This determination is made by the Committee. Resource constraints certainly do not free a government from striving to ensure the widest possible enjoyment of rights; nor from monitoring the extent to which rights are not being realised; nor from devising strategies or programmes for their promotion.³

If there is no apparent justification for the reduction of specific social expenditure, the Committee has shown that it will conclude that there is non-compliance with the Covenant. When considering the Zambian Government's spending on the poor, two factors are vital: firstly, whether the amount spent on the social sectors represents a higher or lower proportion of total public expenditure from one year to the next; secondly, the overall or absolute amount of money the Government has to spend on the social sectors.

1. Relative social expenditure

Out of eight African countries, Zambia ranked next to bottom above Nigeria in respect of the percentage of Government expenditure spent on social provision in 1991.⁴ The proportion of social spending in the highest ranked country, Ghana, was over three times that spent in Zambia.⁵ This situation did not change for the better in the first years of the MMD Government. Social spending in relation to domestic expenditure decreased by over three percentage points in 1992.⁶ Year on year social allocations were down by a sixth. During 1992 and 1993, social sector allocations averaged only 20 per cent of domestic expenditure. This contrasts with the period 1981-85 when this share stood at 29 per cent. Up to 1993, the Government was criticised by the World Bank and other donors for not spending enough money on social services:



'The volume and share of social sector spending has fallen dramatically, and the Government has not been able to reorient its savings from cutting subsidies or from other items to ameliorate that decline...Government has not been able to keep its promises to protect spending in social sectors and to increase their share of total spending.'⁷

The introduction of adjustment loan agreements on social spending after 1993 is reflected in an increase in the proportion of Government domestic expenditure on social provision. ESAC I required the Government to improve budget allocations to and within the social sectors during 1994.⁸ The Government complied with this requirement, although the Bank admits that the budgetary increases under ESAC I were only 'a stop-gap measure, aimed at avoiding a real decline in spending rather

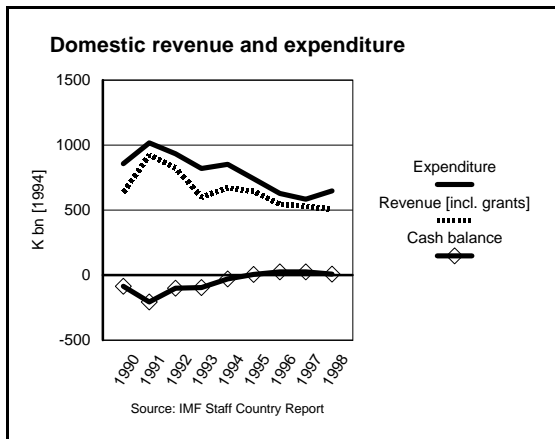
than a significant or sustainable improvement.'⁹ Legal covenants in the ERIP and ESAC II required the Government to maintain levels of social sector spending in 1995 and 1996 respectively.¹⁰ The Bank confirms compliance with the specified levels of social sector spending agreed under both credits.¹¹ During 1997 and 1998, the Bank reports that the Government maintained the social budget even though this was not a condition of an IDA credit.¹² The Bank's latest adjustment loan, the Public Sector Reform and Export Promotion Credit, specifies slightly increased relative social expenditure during 1999 and ties the second tranche release of funds to actual disbursements.¹³

Despite this conditionality, it was not until 1996 that social spending stood once again at 29 per cent of domestic expenditure, bringing relative allocations in line with the levels recorded a decade earlier. However, in the case of Zambia it is the catastrophic decline in overall levels of funding of the social sectors in real terms which is the cause of most concern. The underlying question is whether other loan agreements on the stabilisation measures required of the Zambian Government have so constrained public expenditure as to effectively exclude the delivery of increased social support.

The Bank uses limited social conditionality to seek benefits for the poor or, in other terms, to promote economic and social rights. At the same time, the Bank has fostered an all-encompassing web of economic conditionality which has systematically diminished the capacity of the Zambian Government to respond to the social hardship experienced by the vast majority of Zambians. What begins as concern over the compliance of the MMD Government with social conditionality and its obligations under the Covenant ends with concern over the advisability of the measures employed by the Bank to realise economic and social rights.

2. Absolute expenditure and stabilisation

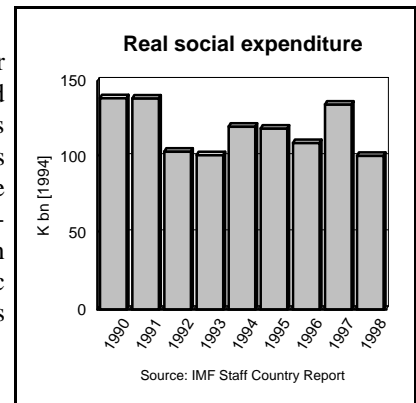
The stabilisation programme is that part of overall economic reform which is designed to bring the Government's finances under control in order to balance the books and reduce inflation. The MMD Government has agreed a number of measures with the World Bank and IMF centred upon the careful control of public spending. Key steps have included the introduction of cash budgeting to ensure the Government does not release funds it does not have; the placing of limits on the amount of money the Government borrows for public expenditure, known as the public sector borrowing requirement; and maintaining the amount of revenue the Government receives through taxation.



Despite some positive results of significance to the poor - the most notable of which is the control of hyper inflation¹⁴ - closing the budget gap has been accomplished mainly by severe cuts in Government expenditure rather than by raising revenue. Between 1991 and 1997, government expenditure fell from 40 per cent to 27 per cent of GDP.¹⁵ In real terms, it fell by almost a half from K1019 billion to K586 billion over the same period.¹⁶

It is apparent that budget cuts have had a devastating impact upon social spending as a component of overall Government expenditure. Since the MMD Government came to power in 1991, spending on the social sectors in absolute and real terms has plummeted as a result of the IMF/Bank-backed stabilisation program. Taking an average of expenditure in any one year, over the period 1981-85 almost two and a half times as much was spent on the social sectors in real terms than during the period 1991 to 1993¹⁷.

According to a joint UNDP and Government of Zambia report, and accounting for population growth, real per capita social spending in Zambia in 1991 was at a third of 1980 levels.¹⁸ The report does not provide figures for the MMD Government's own record on expenditure. This is rectified in the accompanying graph. It is apparent that the absolute amount of social spending at constant prices in any one year to 1998 has never bettered the 1991 level. On average over the period 1992 - 1998, the yearly social expenditure has been K26 billion less than the K138 billion spent in 1991. The protection of relative levels of social spending in the domestic budget written into loan agreements must always be considered in relation to this massive reduction in expenditure itself required by the Bank.



B. The adequacy of the steps taken for the progressive achievement of social rights

Introduction

The quantitative aspect to social service provision is, of course, of the utmost importance as social rights cannot be realised without the allocation of resources. However, there is also a significant qualitative aspect to social service delivery. The question remains as to whether the steps taken by the Zambian Government, which fall mostly in the policy sphere, have achieved the progressive realisation of social rights in the areas specified, notwithstanding real reductions in social expenditure. An account is given in a first subsection of the common elements of social reform in Zambia in the context of the overarching Public Sector Reform Programme. A second subsection maps the influence of the Bank on the social aspects of this reform through its adjustment lending. A final subsection seeks to highlight some of the preliminary concerns raised by the overall nature of social reform before considering the education, social welfare and health sectors in some depth. The principal obligations arising from the Covenant are summarised: this is the datum against which the Zambian Government's record on welfare, health and education must be assessed.

1. Common policy elements within the Public Sector Reform Programme

Before considering the health, social welfare and education sectors in their own right, it is pertinent to identify a number of common policy elements reflected in the Government's overall Public Sector Reform Programme (PSRP). Public services were acknowledged by the MMD administration as 'ineffective, inefficient, and generally unresponsive to the country's development needs.'¹⁹ The PSRP was therefore designed to tackle problems of inappropriate organisational structures, poor personnel management, and excessive centralisation of the service delivery system. A threefold strategy was adopted: first, the introduction of restructuring plans for each ministry; second, the development of improved procedures for personnel management, including performance related pay; and third, the decentralisation of social service provision and the strengthening of local government.²⁰ These objectives were to be pursued in the context of an ongoing review of long-term staffing levels and wages in order to restructure the public sector in line with Zambia's

financial means.²¹ Such action goes to the heart of reform: superimposed across public sector restructuring is the requirement to reduce expenditure which itself arises from the stabilisation programme. Savings have been achieved by the introduction of cash budgeting, a hiring freeze in the civil service, a reduction in staff levels through voluntary and compulsory redundancies, and by the control of wage increases.²² The role of successive Bank adjustment credits - ERC, PIRC I, and ESAC I and II - in driving through civil service reform has already been documented.²³ Please see Section 2(II) for a consideration of the scale and impact of mass public sector redundancies.

Changes in the social sector reflect this overarching agenda of public sector reform. Common elements are decentralisation, sector-wide coordination, cost-recovery, the promotion of private sector initiatives, and primary service provision. Beginning in 1994, the institutions responsible for health and education have been reorganised with an emphasis on the decentralisation of service delivery. Similarly, the implementation of social safety net measures have been devolved to community groups.²⁴ Sector investment programmes, by which both domestic and external resources are coordinated by the Government within a common framework, have been developed for health, education and water supply/sanitation.²⁵ Cost-sharing was introduced in the form of user fees for health care and parents must pay term fees and other indirect costs for education. The Government's rationale that cost recovery is 'only to augment the total quantity and quality of services, not to preclude access to those with few resources' will be tested later.²⁶ Deregulation of the education and health sectors has opened the way for private providers of these services. The final common element - an emphasis on basic services within each sector - is manifest in policies designed to promote primary education and cost-effective primary health care.²⁷

2. The role of the World Bank in social sector reform

Once more, the Government's implementation of broad social sector reform has been underpinned by Bank adjustment lending in ways which go beyond the protection of spending.²⁸ A principal component of ESAC I (FY 94) required the Government to strengthen and decentralise social service delivery and improve budget allocations to and within the social sectors.²⁹ Reform was to be achieved, *inter alia*, by decentralising budgetary and decision-making authority and by transferring certain social functions to NGOs and community groups. Budgets for health, education, water supply, and existing social safety nets were to be restructured alongside the revision of implementation policies in specific social sectors.³⁰ ERIP (FY 95) stipulated minimum spending targets for social services and required the adoption of legislation for a new basic social security pension scheme and independent social security institutions.³¹ A condition of second tranche release of ESAC II (FY 96) was the development of national policies on the provision of essential drugs, nutrition, and NGO participation in the delivery of social services.³² In its *Letter of Development Policy* appended to the credit, the Government agreed to introduce targeting guidelines and implement a policy to deliver help through the Public Welfare Assistance Scheme to enable very poor families to pay school and medical fees.³³ Under the PSREPC (FY 99), the Government has agreed to implement its national policy on nutrition. There is a renewed undertaking to initiate implementation of the revamped PWAS, although clearly this should already have occurred under ESAC II.³⁴

In line with the Government's emphasis on primary services, ESAC II, in addition to specifying overall levels of social spending, required the protection of expenditure on certain subcomponents including, *inter alia*, the supply of drugs, District Health Boards, two welfare schemes, the recurrent costs associated with primary schools, and water/sanitation operation and maintenance.³⁵ While social budget protection is normally expressed in percentage terms to allow the Government to vary absolute allocations depending on revenue, this key spending was fixed on account that the sums involved, at six per cent of total budget, were relatively small.³⁶ Under the PSREPC, the Government agreed to maintain non-personnel spending in priority areas concerned with social safety nets, welfare assistance, poverty alleviation, drought relief and water and sanitation.³⁷ However, protection appears to apply to relative rather than absolute allocations and fewer priority areas are monitored than before.³⁸

The effectiveness of these specific agreements on social reform, together with their suitability for poverty alleviation, will be examined alongside Government action in the subsections which follow.

3. Preliminary concerns and the yardstick of the Covenant

Before reviewing the social reforms outlined in more detail and considering their impact upon the enjoyment of social rights in each specific arena of education, social welfare and health, it is pertinent to recognise a number of preliminary concerns. First, it is questionable whether action to rationalise staffing levels and to impose tight budgetary controls is driven primarily by the desire to eliminate inefficiency or by the underlying need to reduce public expenditure at whatever social cost. A contradiction arises when agreements within Bank adjustment credits simultaneously require cuts in public expenditure while seeking improved social support: given the magnitude of the reduction in social sector

spending in real terms, it is simply not possible to square the circle and deliver improved services through restructuring alone. Second, it is difficult to resolve the introduction of cost-sharing with the rights of all Zambians, including the majority with little or no resources, to education and health care. Furthermore, the positive aspects of social sector reform must also be assessed in practice to determine whether decentralisation has yielded greater local level participation and improved accountability; whether resources have been concentrated on primary service delivery of most benefit to the poor; and whether sector investment programmes have resulted in the optimal coordination of scarce resources.

Above all else, the ultimate yardstick is the Covenant. On the one hand, all developing countries face difficulties in ensuring that, *inter alia*, the rights to health, education and social security are realised. Zambia is no exception to this. Hence the Committee, in its interpretation of the nature of State parties obligations under the Covenant, confirms, first, that the concept of progressive realisation is a recognition of the fact that the full realisation of all economic, social and cultural rights will generally not be achieved in a short period of time.³⁹ This clause is pragmatic and reflects real world conditions. Second, the Committee, in determining whether a State party has met its minimum core obligation to ensure the satisfaction of essential levels of each of the rights in the Covenant, must take into consideration resource constraints.⁴⁰

While it will be demonstrated that many Zambians are denied enjoyment of the rights to health, education of social security, this situation does not, therefore, necessarily constitute a clear-cut violation of the Covenant. To do so requires demonstrating how the Zambian Government has failed to fulfil a number of specific obligations.

On the other hand, while the Committee recognises that progressive achievement is a 'necessary flexibility device,' this does not imply that a recalcitrant State has discretion in determining when it is obliged to deliver a particular right nor can it invoke the clause on the availability of resources to obviate its obligation to fulfil, *inter alia*, rights to health, education or social security. It is the Committee, not a State party, which makes an assessment of compliance; and it does so according to a number of principles.

First, the clause *achieving progressively* obliges a State Party to move expeditiously and effectively towards the goal of full realisation.⁴¹ Maintaining the status quo in respect of the realisation of rights under the Covenant is untenable. To move away from that goal by the adoption of deliberately retrogressive measures can only be justified when there is a severe shortage of resources or when the totality of protection across all other rights in the Covenant improves as a result.⁴²

Second, a State is obliged to use its maximum available resources and it is the Committee which determines whether this requirement is met and whether retrogression is justified on this basis.⁴³ The Committee has interpreted the Covenant as establishing a minimum core obligation to ensure the satisfaction of minimum, essential levels of each of the rights it contains. Circumstances in which any significant number of people in a country are deprived of, *inter alia*, essential foodstuffs, essential primary health care, and the most basic education, constitute a prima facie failure on the part of Government to discharge its obligations under the Covenant.⁴⁴ The Zambian Government must demonstrate that every effort has been made to use all the resources at its disposal to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.⁴⁵

Furthermore, a third distinct undertaking in the Covenant is *to take steps*.⁴⁶ The overall goal of full realisation of the rights may be achieved progressively, but the active steps which are necessary to arrive at that goal must begin once the Covenant is ratified. The steps themselves must be deliberate, concrete, and targeted.⁴⁷ This refers not only to the adoption of laws but to *all appropriate means*. Laws must be capable of being applied in practice and a Government must also make use of policy measures to realise rights.⁴⁸ The final overarching undertaking obliges a State party to the Covenant to guarantee to exercise each right without *discrimination*.⁴⁹ This is of immediate effect.

In the substantive consideration of each of the social rights which follows, and in accordance with the specific obligations of the Zambian Government, an attempt is made: (i) to evidence the prima facie denial of minimum, essential levels of each of the rights in question whereupon the onus is placed on Zambia to justify the prevailing situation; (ii) to distil out evidence of stasis or retrogression; (iii) to subject the availability of resources to closer scrutiny in order to test the argument of constraint; and (iv) to analyse the use of policy measures as concrete and targeted steps towards the realisation of each right. This encompasses two aspects: the implementation of deliberately retrogressive policies; and the denial of specific rights through omission, that is, the absence of essential policy measures.

Notes

¹ ICESCR, respectively articles 12, 13 & 14, and 11.

² ICESCR, article 2. Each State party, including the Zambian Government, must ensure that the principle of *non-discrimination* is guaranteed; that rights are *achieved progressively*; and that it *takes steps* to see this is the case to *the maximum of its available resources*.

³ GC 3, para. 11.

⁴ PSHDZ, Table 6.1, p. 96.

⁵ In Ghana, social expenditure accounted for 46. per cent of total government expenditure. The comparable figure for Zambia was just 14.6 per cent. These figures are from PSHDZ, in which social expenditure is taken to cover education, health, food and social welfare programmes, housing, urban and regional development and community and social services. The apparent anomaly between the figures cited for Zambia in this report and later IMF figures upon which the graph in the text is based is largely explained by the fact that the latter records social expenditure in relation to public expenditure rather than overall government expenditure. In the IMF figures, social expenditure is taken to comprise broadly comparable categories of education, health, social welfare, housing/community services.

⁶ Social expenditure declined from 21.5 per cent of public expenditure in 1991 to just under 18 per cent in 1992.

⁷ PA, para. 4.68.

⁸ PIRC & ESAC PAR, paras. 2.20, 2.25 and 3.21.

⁹ Ibid., para. 4.10; also para. 3.21.

¹⁰ ERIP specified levels of social spending at 33 per cent of total non-interest expenditure spending in 1995. Non-interest spending is total government expenditure minus domestic and foreign debt service which are 'non-discretionary,' that is they must be paid. Because non-interest spending is lower than total government expenditure, the relative allocation to the social sectors required is increased. It was also a loan condition under ERIP that the share of non- personnel spending be maintained at more than 24 per cent of social sector spending. (See ERIP ICR, table 6). ESAC II included similar conditionality whereby the Government was to maintain the social sector budget at a minimum of 35 per cent of discretionary domestic expenditure in 1996. Discretionary expenditure is calculated by subtracting non-discretionary elements - principally domestic debt service, election costs and wage adjustments - from domestic revenue. It is therefore broadly in line with non-interest domestic spending. (See ESAC II R&R, Annex J, Social Sector Spending in 1996, pp. 73 - 74).

¹¹ ERIP ICR, para. 6.

¹² The Bank quotes allocations of over 36 per cent, presumably of discretionary spending, across both years. See PSREPC R&R, para. 50.

¹³ The social component of the discretionary domestic budget is set at 36 per cent. See PSREPC R&R, para. 51; also *idem*, para. 55 (f) and Letter of Development Policy, Annex A, Social spending in 1999, p.56.

¹⁴ The measures taken did bring inflation under control and this averted the catastrophe of a spiral of escalating prices. This is of obvious advantage to the poor as it stabilises the price of food and other essential goods and services. Clearly poor people are less able to protect themselves against rising costs than the better off who are likely to have savings. However, the annual rate of inflation between 1991 and 1996 never fell below 35 per cent. At the end of 1998, the figure was 26 per cent. Even at this level, the cost of living is outstripping any increase in household income for the poor.

¹⁵ See SCR (1999), Selected Issues and Statistical Appendix, table 11.

¹⁶ At 1994 constant prices.

¹⁷ Calculated from Ministry of Community Development and Social Services (1998), *National Poverty Reduction Strategy Framework* [draft report], Table 3.6.1, p.31.

¹⁸ PSHDZ, p.95.

¹⁹ PFP (1995 - 1998), para. 89.

²⁰ Ibid., para. 90.

²¹ Ibid., para. 91.

²² See, respectively, *ibid.*, paras. 48, 43, 46 and 89.

²³ See *intra*, Section 2(II).

²⁴ PFP (1995 - 1998), para. 133.

²⁵ Ibid., para. 135.

²⁶ Ibid., para. 137.

²⁷ Ibid., para. 134.

²⁸ In addition to the principal conditionality discussed here, agreements under PIRC I and II for the development of a social safety net for retrenched and redundancy packages for parastatal employees and civil servants are given due consideration in Section 3(III) and Section 2(II) respectively. Although it is implied that PIRC II sought the development of a social safety net for all those suffering from the adverse impact of economic reform, in fact the required action focused solely upon retrenched. See, PIRC & ESAC PAR, para. 2.7.

²⁹ PIRC & ESAC PAR, para.2.20.

³⁰ Two further elements listed under the rubric of social service restructuring are more obviously related to rationalisation of the public sector under the PSRP. They are (a) the revision of the package of severance benefits to permit efficient restructuring of employment within the public sector and (b) the introduction of performance related pay to retain skilled professionals. (PIRC & ESAC PAR, para. 2.25).

³¹ ERIP ICR, para. 9; also Part II, Statistical tables, tables 5 and 6.

³² ESAC II R&R, para. 51; also para. 57 (i).

³³ See ESAC II R&R, Annex J, Letter of Development Policy, para. 73; also ESAC II R&R, para. 52.

³⁴ PSREPC R&R, para. 49.

³⁵ See ESAC II R&R, Annex J, Sub-sectoral budget allocation, p. 75.

³⁶ See ESAC II R&R, Annex J, Social sector spending in 1996, p. 73.

³⁷ See PSREPC R&R, Letter of Development Policy, para. 42 and Annex A, Social spending in 1999, p.56.

³⁸ PSREPC R&R, para. 51.

³⁹ GC 3, para. 9, arising from the Committee's interpretation of article 2(1).

⁴⁰ Ibid., para. 10, arising from the Committee's interpretation of article 2(1).

⁴¹ Ibid., para. 9.

⁴² Ibid., para. 9.

⁴³ Ibid., para. 10.

⁴⁴ Ibid., para. 10.

⁴⁵ Ibid., para. 10.

⁴⁶ ICESCR, article 2(1).

⁴⁷ GC 3, para. 2, arising from the Committee's interpretation of article 2(1).

⁴⁸ States may exercise judgement in deciding what is an 'appropriate means,' but they will be required to justify their decision and the Committee will ultimately decide the question of what it deems is appropriate. Where detailed steps are specified in the Covenant itself, the State cannot exercise

discretion. For example, the right to education is, in part, to be realised through the means of compulsory and free primary education and all State parties are therefore obliged to see this is carried through. See *GC 3*, para. 4; ICESCR, article 14; also the interpretation of the obligations arising from article 14 in *GC 11*.

⁴⁹ ICESCR, article 2(2); also *GC 3*, para. 1. In addition, see Craven (1995), pp. 161 ff.