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Zambia: Violations of Economic, Social and Cultural Rights, Violence and the Protection Against Torture

Report on the Implementation of the Convention Against Torture by Zambia

Prepared by the World Organisation Against Torture (OMCT)

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1. Preliminary Observations

The submission of information specifically relating to economic, social and cultural rights and the socio-economic context to the Committee against Torture forms part of the Programme on Economic, Social and Cultural Rights of the World Organisation Against Torture (OMCT). This programme focuses on altering the socio-economic conditions that pave the way for the emergence of torture.¹ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) implicitly recognises that the prevention of torture involves other measures than solely legislative, administrative or judicial ones. Indeed, article 2 provides that »each State Party shall take effective legislative, administrative, judicial *or other measures* to prevent acts of torture in any territory under its jurisdiction«. The Committee Against Torture has itself recognised the relevance of the socio-economic context to the protection against torture.²

Zambia ratified the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in October 1998. Zambia is also party to other international human rights instruments with related provisions on torture and other cruel, inhuman or degrading treatment or punishment and economic, social and cultural rights: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

OMCT welcomes the fact that Zambia is also party to the Optional Protocol to the International Covenant on Civil and Political Rights providing for individual complaint procedures. However, OMCT notes that Zambia has not accepted the competence of the Committee against Torture and the Committee against Racial Discrimination to receive individual cases, as specified under article 14 of the CERD and article 22 of the CAT.

OMCT further welcomes the fact that Zambia has ratified ILO Conventions No. 87 and 98 on freedom of association and collective bargaining, ILO Conventions No. 29 and 105 on the elimination of forced and compulsory labour, ILO Conventions No. 100 and 111 on the elimination of discrimination in respect of employment and occupation, and ILO Convention No. 138 on the elimination of child labour.

Moreover, at the regional level, Zambia is also a party to the African Charter on Human and Peoples' Rights. The Charter entered into force in 1986 and contains provisions regarding civil and political rights as well as economic, social and cultural rights. The Charter prohibits torture and other inhumane treatment (art. 5). The Charter does not introduce new economic, social and cultural rights, but it tends to insist on the right of peoples to development and to dispose of their wealth and natural resources.³ The African Charter does not expressly mention trade union rights or the right to an adequate standard of living.

¹ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17; OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture*, 2001

² See part 5 for further developments; OMCT, *Torture and Violations of Economic, Social and Cultural Rights : Appraisal of the Link and Relevance to the Work of the Committee Against Torture*, 2001; U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f); U.N.Doc. CAT/C/XXV/Concl.3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e), 7(g); U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

³ The Charter provides for the right to free association (art. 10.1), the right to property (art. 14), the right to equitable and satisfactory working conditions (art. 15), the right to the best attainable mental and physical state of health (art. 16), the right to education (art. 17), the right to self-determination (art. 20), the right of peoples to dispose of their wealth and natural resources (art. 21), the right to economic, social and cultural development (art. 22). Banjul Charter on Human and Peoples' Rights.

As pointed out in the government report, international instruments ratified by Zambia are not self-executing at the domestic level and require enabling legislation to be enforceable, either through the regulations passed under existing legislation, or through the enactment of a new piece of legislation.⁴

Despite all these commitments, both at the international and regional levels, human rights continue to be violated in Zambia, including the right to be free from torture and ill treatment. Judicial, legal and administrative measures are necessary and fundamental to improve the situation in Zambia with regard to the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment. However, due to the socio-economic context prevalent throughout the country, OMCT believes that these measures will remain insufficient as long as this context, characterised by widespread poverty, economic hardship, socio-economic imbalances and violations of economic, social and cultural rights, is not addressed.

OMCT welcomes the first report of the Government of Zambia to the Committee against Torture (CAT/C/47Add.2), which gives a comprehensive account of the various laws and measures that have been enacted to combat torture, acknowledging its occurrence throughout the country and the related legal, judicial and administrative problems. In some parts of its report, the government refers indirectly to the socio-economic context with regard to the lack of financial resources and logistical support to the police, the bad condition of prison facilities due to lack of funds, and the inability of victims to bring their cases before the courts due to financial constraints.⁵ In this regard, OMCT notes that the lack of economic and financial resources cannot, under any circumstances, exempt a country from fulfilling its obligations under the CAT. However, OMCT believes that the relevance of the socio-economic context goes well beyond the situations mentioned in the State's report. OMCT will therefore address this issue by focusing on the current socio-economic situation in Zambia and its impact on the occurrence of torture and ill treatment.

2. General Observations

2.1. Background

The year 1991 marked in Zambia the peaceful transition from a one state party regime to a multi-party democracy. From its independence in 1964 until 1991, a single political party, the United National Independent Party (UNIP), governed Zambia. The November 1991 elections saw the victory of the Movement for Multi-Party Democracy (MMD) and the election of President Frederick J.T. Chiluba, a former trade unionist. President Chiluba was re-elected in the 1996 elections.

Despite the termination of the state of emergency and the creation of new institutions following the transition to multi-party democracy, including the establishment of the Human Rights Commission, the Independent Electoral Commission and the Anti-Corruption Commission, the new democratic system continues to suffer some of the problems that plagued former governments. The harassment of opposition parties during the 1996 presidential elections, as well as the reinstatement of the state of emergency in March 1993, are but some examples of the fragility of the democracy in Zambia today.⁶

Surrounded by countries where internal strife remains prevalent, Zambia is today the home to some 225,000 refugees, most of them being from Angola and the Democratic Republic of Congo (DRC).⁷ Moreover, the conflicts in Angola and the DRC have acted as a destabilising factor in Zambia.⁸

⁴ U.N. Doc. CAT/C/47/Add.2, para 8

⁵ *Ibid.*, paras 16, 100(d), 139, 169(d)

⁶ U.N. Doc. E/CN.4/Sub.2/1993/23, para

⁷ BBC, *Country Profile : Zambia*, www.bbc.co.uk

2.2. *The Socio-economic context: overview and main trends*

The transition to democracy in 1991 also marks the passage from a state-centred economy to a market economy, through the implementation of stringent reforms as part of Structural Adjustment Programmes (SAP) under the auspices of the World Bank and the International Monetary Fund (IMF).⁹

SAP were first introduced in Zambia from 1983 to 1985. However, the government denounced the SAP agreement in 1986 in the wake of food riots that took place in the Copperbelt at the end of that year.¹⁰ The SAP agreement was resumed in June 1989, but was interrupted again by the government as rioting broke out in Lusaka and in the Copperbelt towns following an increase by over 100% in the price of high-grade maize.¹¹

The relations with the IMF and the World Bank resumed following the victory of the MMD at the 1991 elections. According to the Institute of Development Studies, the reforms had become, at that time, politically and economically unavoidable.¹² These reforms aimed at stabilising the economy, providing an environment capable of enhancing productivity and creating employment, facilitating the emergence of a market economy and stimulating economic growth.¹³ Among other reforms, the SAP included the abolition of export and import controls (market liberalisation), the liberalisation of interest rates, the abolition of foreign exchange controls, the privatisation of state-owned companies, the liquidation of loss-making state-owned enterprises, the de-regulation of agricultural prices, the removal of subsidies on maize meal and fertilisers, the restructuring of the Civil Service, the introduction of user fees in the educational and health sectors, as well as the commercialisation of some governmental departments.¹⁴

According to Social Watch and IRIN, the reforms implemented since 1991 resulted, at least until 1997, in a significant amelioration of the macro-economic indicators: annual inflation dropped and remains relatively low, while the government fiscal deficit decreased following the implementation of tight monetary and fiscal policies.¹⁵ Moreover, positive developments, including the rehabilitation of infrastructure such as schools, hospitals and roads were also reported.¹⁶

However, the United Nations Development Programme (UNDP) underlines, in its Zambia Human Development Report 1999/2000, that while SAP and macroeconomic reforms have led to some stability, these remain very fragile.¹⁷ UNDP data released in the 2001 Human Development Report shows that the GDP per capita annual growth rate remained negative for the period from 1990 to 1999,

⁸ See IRIN, *Zambia-Angola: Zambia jails 12 Angolan soldiers for illegal entry*, August 13 2001, www.reliefweb.int/IRIN; IRIN, *Zambia: More suspected Angolan soldiers detained*, July 25 2001, www.reliefweb.int/IRIN; IRIN, *Zambia-Angola: Security fears among refugees*, August 10 2001, www.reliefweb.int/IRIN; Zambia, *Zambia: More suspected Angolan soldiers detained*, July 25 2001, www.reliefweb.int/IRIN

⁹ See AFRONET, *The 1997 Zambia Human Rights Report*, 1997

¹⁰ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*; Chigunta F., *Zambia: Intentions are not Enough*, in Social Watch 1999 Report, www.socialwatch.org

¹⁴ *Ibid.*; Zambia: Economic, Social and Cultural Context, www.unam.na

¹⁵ Chigunta F., *Zambia: Intentions are not Enough*, in Social Watch 1999 Report, www.socialwatch.org; IRIN, *Zambia: IRIN Focus on Economic Reforms*, 26 July 2001, www.reliefweb.int/IRIN; see also AFRONET, *The 1997 Zambia Human Rights Report*, 1997

¹⁶ Catholic Commission for Justice and Peace, *State of the Nation: Our Political and Socio-Economic Performances as a Nation Since 1991*, www.ccjp.org.zm

¹⁷ UNDP, *Zambia Human Development Report 1999/2000: Employment and Sustainable Livelihoods*, 2001, p. 3

at minus 2.4 percent.¹⁸ For the period running from 1975 to 1999, 1976 was the year in which Zambia experienced the highest value of its per capita GDP, meaning that after 1976 there has been an ongoing decline.¹⁹

Moreover, despite the macro-economic performances arising from the implementation of SAP, many Zambian human rights NGOs highlight the fact that the economic reforms have left most of the rural and urban population with precarious livelihoods and inadequate income to meet their basic needs.²⁰ To the knowledge of OMCT, the lot of ordinary Zambian has never been more worrying.²¹ In this regard, the Zambia Association for Research and Development (ZARD), a Zambian non-governmental organisation, reports that for the period going from 1975 to 1997, Zambia is the only country where the Human Development Index (HDI) declined by four and a half percent, a trend that continues until now.²²

According to the 2001 Human Development Report of the United Nations Development Programme (UNDP), 86 percent of the Zambian population currently lives under the National Poverty Line, while 63.7 percent lives on less than one dollar a day.²³ Women have been particularly affected by the sharp increase in poverty. Indeed, it is reported that of the 86 percent of the Zambian population living under the National Poverty Line, more than 50 percent are women and children.²⁴ Indeed, poverty is reported to have a greater impact on women due to negative social attitudes and inadequate governmental policies.²⁵ Inequalities in the distribution of income also remain widespread, as highlighted by the high value of the Gini index that reaches 52.6.²⁶ Accordingly, Zambia is one of the most unequal and poor countries in the world.²⁷

Moreover, the 1990s were marked by an overall and disturbing deterioration of social and development indicators, including increasing unemployment, a growth in infant mortality rates, and diminution of social sector spending. AFRONET reports that since 1992, public sector spending has been declining as a percentage of the GDP.²⁸

The degradation of social indicators reached such a point that in the early 1990s, the UN General Assembly classified Zambia within the group of the Least Developed Countries (LDCs).²⁹ According to the definition used by the Committee for Development Planning, countries belonging to the group of LDCs have an annual per capita income which does not exceed 100 USD (1968 value), where the literacy rate does not exceed 20 percent of the population of reading age, and where the share of manufacturing in total gross domestic product is 10 percent or less.³⁰

¹⁸ UNDP, *2001 Human Development Report*, 2001, p. 180

¹⁹ *Ibid.*

²⁰ Chigunta F., *Zambia: Intentions are not Enough*, in Social Watch 1999 Report, www.socialwatch.org

²¹ See IRIN, *Zambia: IRIN Focus on Economic Reforms*, 26 July 2001, www.reliefweb.int/IRIN

²² M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

²³ UNDP, *2001 Human Development Report*, 2001, p. 150

²⁴ Michelo Hansungule, *Zambia: Social and Economic Disparities in Zambia*, in 2001 Social Watch Report, www.socialwatch.org

²⁵ *Ibid.*

²⁶ The Gini Index measures inequality over the entire distribution of income consumption. A value of 0 represents perfect equality, and a value of 100 perfect inequality; Income distribution, in a neutral sense, is a measurement of the way in which income is distributed in a given society. However, the notion goes beyond purely monetary aspects and include issues of land distribution, other aspects of the legal structures and processes that determine ownership and control of productive resources, as well as the existence or non-existence of redistribute measures, in U.N. Doc. E/CN.4/Sub.2/1994/21, para 17;

²⁷ *Ibid.*, p. 184 ; Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000; Jesuit Centre for Theological Reflection, *Zambia's Current Socio-Economic Situation Up-Date*, March 2000

²⁸ AFRONET, *The 1997 Zambia Human Rights Report*, 1997

²⁹ Overseas Development Institute, *Poverty and European Aid in Zambia: A Study of Poverty Orientation of European Aid to Zambia*, Working Paper No. 138, September 2000

³⁰ OMCT, *The Least Developed Countries: Development and Human Rights*, 1990, pp 4-5

The 1990s also saw a significant shift in the geographical impact of poverty. While the deterioration of social indicators throughout the 1990s affected the whole population, it influenced the rural and urban areas differently.³¹ Whereas poverty continues to be prevalent in rural areas, the largest increase in poverty during the last decade has occurred in urban areas.³² According to the Institute of Development Studies, for the period from 1991 to 1996, the province of Lusaka, as well as the Central and Copperbelt provinces, which are the most urbanised areas of Zambia, were particularly affected.³³ As indicated by the Institute of Development Studies, the number of people living in poverty in Lusaka has doubled since 1991.³⁴ However, despite the narrowing gap between urban and rural areas, levels of poverty remain greater in rural areas, where about 58 percent of the total population of Zambia continues to live.³⁵ Indeed, according to governmental data from 1996 and 1998, rural poverty in some areas of the country is close to 90 percent.³⁶ Moreover, the Institute of Development Studies also reports that while rural areas have been less severely hit by the degradation of social standards, the level of rural inequality significantly increased between 1996 and 1998.³⁷

In terms of poverty and economic hardship by regions, it is reported that the incidence of poverty is greater in the Western regions of Zambia, while Northern provinces are the wealthiest.³⁸ While to the knowledge of OMCT no open discrimination takes place against individuals or groups, it is reported that an important part of the Zambian population fears that tribalism and ethnicity are slowly becoming more influential in the political and economic spheres.³⁹ Indeed, there seems to be a growing perception that key political and economic institutions are dominated by Northerners, who belong to the Bemba tribe and are largely Bemba speakers.⁴⁰ The Zambian President is himself a Bemba.⁴¹ While the MMD government is composed of people from various ethnic groups, it is reported that the real power, political and economic, rests with a few people, mainly from the Bemba group.⁴² Indeed, to the knowledge of OMCT, the authorities are not really supporting the diverse groups in Zambia, as those with no ties to power have suffered discrimination in the allocation of resources.⁴³ It is important to acknowledge that Zambia is one of the few countries in Southern Africa that has not experienced violent ethnic conflicts. However, the current trends, indicating inequitable distribution of resources between different ethnic groups, might well create tensions in Zambian society. The fact that this inequality in access to economic resources, as well as to political and economic decision-making is also replicated in terms of regions –the Bemba live in the Northern regions which are the richest ones- might also render these inequalities much more obvious in the near future. A study by the Sub-Commission on the Promotion and Protection of Human Rights recognises the impact that inequality in resource distribution can have on the enjoyment of all human rights, especially when the State is unable or unwilling to address them.⁴⁴ Indeed, inequitable distribution of

³¹ Overseas Development Institute, *Poverty and European Aid in Zambia: A Study of Poverty Orientation of European Aid to Zambia*, Working Paper No. 138, September 2000

³² Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Zambia : Economic, Social and Cultural Context, www.unam.na

³⁶ Central Statistical Office-Government of Zambia, *Living Conditions Monitoring Surveys*, cited in Jesuit Centre for Theological Reflection, *Zambia's Current Socio-Economic Situation Up-Date*, March 2000

³⁷ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

³⁸ The Post, *Rich Land and People With Far More Modest Goals*, August 21 2001, Lusaka ; Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

³⁹ Chigunta, F., *Zambia: Climax and Decline*, in Social Watch 1998 Report, www.socialwatch.org; Chigunta, F., *Zambia: Intentions are not Enough*, in Social Watch 1999 Report, www.socialwatch.org

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ U.N. Doc. E/CN.4/Sub.2/1994/21, *The Realization of Economic, Social and Cultural Rights: Preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 32

income,⁴⁵ land and other productive resources, as well as repeated violations of economic, social and cultural rights tend to exacerbate social, ethnic or communitarian tensions.⁴⁶ Conflicts are therefore likely to emerge under these socio-economic conditions, especially when the State is unable or unwilling to address them.⁴⁷ In this respect, torture can be seen as a manifestation of the aggravation of socio-political conflicts surrounding the distribution of rare resources and mobilizing social classes, social groups, political parties, ethnic groups or individuals.⁴⁸

While the detrimental impact of the implementation of the SAP on the people and their enjoyment of economic, social and cultural rights is undeniable, they do not bear the sole responsibility for the endemic poverty prevalent throughout the country. External shocks⁴⁹, a combination of inappropriate past policies, debt servicing, the disastrous impact of the HIV/AIDS pandemic, have also played a significant role in the current socio-economic context. However, these factors have not been as decisive as the detrimental impact of the implementation of the SAP on the people and their enjoyment of economic, social and cultural rights.⁵⁰ (See part 3.)

The servicing of foreign debt represents another important factor that has contributed to the disastrous socio-economic situation of Zambia.⁵¹ According to the Special Rapporteur on the effects of foreign debt and the Independent Expert on structural adjustment policies, Zambia is one of the countries where the debt burden has been a major contributor to the persistence of underdevelopment, destroying many of the social gains made during the 60's and 70's.⁵² According to data in the 2001 Human Development Report, the share of debt servicing as a percentage of the GDP has doubled in a decade, from 6.2 percent in 1990 to 13.9 in 1999.⁵³ Among other impacts, the repayment of the debt clearly diverts resources from investment in basic social services such as education and health care.⁵⁴

The HIV/AIDS pandemic also has a severe impact on Zambia's development prospects.⁵⁵ According to the Special Rapporteur on the effects of foreign debt and the Independent Expert on structural adjustment policies, increases in absenteeism and morbidity, while diminishing the productivity of labour, at the same time increase its cost.⁵⁶ Furthermore, HIV/AIDS is also reported to have a

⁴⁵ Income distribution, in a neutral sense, is a measurement of the way in which income is distributed in a given society. However, the notion goes beyond purely monetary aspects and include issues of land distribution, other aspects of the legal structures and processes that determine ownership and control of productive resources, as well as the existence or non-existence of redistributive measures, in U.N. Doc. E/CN.4/Sub.2/1994/21, para 17

⁴⁶ OMCT, *Torture and Violations of Economic, Social and Cultural Rights : Appraisal of the Link and Relevance to the Work of the Committee Against Torture*, 2001

⁴⁷ U.N. Doc. A/CONF.157/PC/60/Add.3, *Poverty, Marginalization, Violence and the Realization of Human Rights*, para 32; U.N. Doc. E/CN.4/Sub.2/1994/21, *The Realization of Economic, Social and Cultural Rights: Preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 42-44, 90; U.N. Doc. E/CN.4/Sub.2/1997/9, *The Realization of Economic, Social and Cultural Rights: the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution*, para 3.

⁴⁸ OMCT, *Manila 91 : International Symposium on Democracy, Development and Human Rights*, 1992, p. 17

⁴⁹ Such as the decline of copper prices in the 1980s and 1990s and prolonged drought

⁵⁰ AFRONET, *The 1997 Zambia Human Rights Report*, 1997

⁵¹ See U.N. Doc. E/CN.4/2000/51, Report of the Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights and of the Independent Expert on structural adjustment policies

⁵² *Ibid.*, paras 4, 16-36, 47-51; In 1998 the total external debt of Zambia stood at USD 6.5 billion. Of this, 46% is owned to the multilateral institutions such as the World Bank, the IMF and the African Development Bank

⁵³ UNDP, *2001 Human Development Report*, 2001, p. 193

⁵⁴ *Ibid.*, para 19

⁵⁵ U.N. Doc. E/CN.4/2000/51, Report of the Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights and the Independent Expert on structural adjustment policies paras 4, 16-36, 47-51

⁵⁶ *Ibid.*

devastating impact on productivity in the agricultural sector, as families are often forced to sell livestock and other essential assets in order to cover costs engendered by HIV/AIDS.⁵⁷

In 1998, the government introduced a National Poverty Reduction Plan (NPRP), whose efficiency in addressing the widespread economic hardship experienced by the majority of the population has been called into question.⁵⁸ Lack of governmental capital supply to the plan and the fact that Zambian private capital is quasi non-existent, means that it has had to rely on foreign donors.⁵⁹ Moreover, the absence of strong governmental redistributive policies, as well as a lack of political commitment to eradicate poverty, have seriously impaired and reduced the impact of this initiative. For instance, the Catholic Commission for Justice and Peace strongly criticised the government's 2000 budget, despite the inclusion of poverty reduction in its title.⁶⁰ Indeed, the Commission reports that no concrete steps in the budget, notably regarding the allocation of funds to social sectors and the setting of priorities, reflect the government's commitment.⁶¹

3. The Enjoyment of Economic, Social and Cultural Rights in Zambia

3.1. The Justiciability of Economic, Social and Cultural Rights

Economic, social and cultural rights appear in the Zambian Constitution, amended in 1996, under part IX on the «Directive Principles of State Policy and the Duties of a Citizen». Article 111 states that «the Directive Principles of State Policy (...) shall not be justiciable and shall not thereby (...), despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.⁶² Article 112 lists the Directives of State Policy, which include, *inter alia*, the creation of an economic environment encouraging individual initiative and self reliance among the people; the creation of conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment; the provision of clean and safe water, adequate medical and health facilities and decent shelter for all persons; the provision of a clean and healthy environment for all; the recognition of the right of every person to fair labour practices and to a safe, healthy environment.⁶³

The articles of the Zambian Constitution listed above clearly show that the current Zambian legal system fails to recognise that economic, social and cultural rights are in fact rights that can be justiciable.⁶⁴ The constraints of the legal system, which do not recognise the justiciability of economic, social and cultural rights, clearly hampers their full realisation as victims cannot obtain redress and compensation in case of violations of these rights. The Zambian authorities' failure to clearly recognise economic, social and cultural rights as human rights, in spite of the fact that their violation triggers the State's responsibility, is particularly worrying given the socio-economic context which is today prevalent throughout the country.

Finally, despite and in addition to the fact that the Directives fail to recognise the justiciability of economic, social and cultural rights, they also do not refer to education. Again, given the current lack

⁵⁷ *Ibid.*

⁵⁸ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

⁵⁹ *Ibid.*

⁶⁰ Catholic Commission for Justice and Peace, *Observations on Budget 2000*, SAP Monitor 23 Jan-Jun 2000, www.ccjp.org.zm

⁶¹ *Ibid.*

⁶² 1991 Constitution of Zambia as amended in 1996, Part IX, article 111 <http://zamlil.zamnet.zm>

⁶³ *Ibid.*, article 112

⁶⁴ See Simbulu, R., *Economic and Social Rights in Zambia: The Quest for Justiciability*, in the Human Rights Observer, Vol. 3, October 2000, www.oneworld.org/afronet/theobserver

of enjoyment of the right to education, and the overall condition of the educational sector, such an absence is equally worrying.

3.2. *The Right to work*

The right to work, as enshrined in article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes, inter alia, the enjoyment of just and favourable conditions of work, and remuneration. These shall, as a minimum, provide all workers with fair wages and equal remuneration for work of equal value, with a decent standard of living for themselves and their families and with safe and healthy working conditions.⁶⁵

During the last decade, the labour sector has faced serious set backs, and these are reflected in the deterioration of social indicators related to employment and labour. Increased levels of unemployment in both the formal and the informal sectors, as well as the decline of real wages prevented an important number of the population from enjoying the right to work. In 1998, the total labour force in Zambia was estimated to be around 4 million, of which 10 percent (472,000) was working in the formal sector, 50 percent (2 million) was working in precarious conditions in the informal sector, and 40 percent was unemployed.⁶⁶ According to a 1999 report of the Central Statistical Office (CSO) highlights that 66.2 percent of those classified as economically active are subsistence farmers who mainly work in rural areas.⁶⁷ In the urban area, 1999 CSO data shows that the informal sector absorbs around 44 percent of the workforce.⁶⁸ The breakdown of the Zambian labour force by occupation is as follows: 85 percent in the agricultural sector, 6 percent in industry and 9 percent in services. According to the Institute of Development Studies, employment in the formal manufacturing sector fell by over 40 percent between 1991 and 1998.⁶⁹ The same institution reports that real wages declined by over 10 percent for the period between 1995 and 1996 in both the private and public sectors.⁷⁰ Overall, the size of the employed labour force continued to shrink during the 1990s, and the few jobs that survived are reported to be characterised by insecurity and poor conditions of work.⁷¹

This situation has had a direct impact on the standard of living of numerous Zambian families, due to the workers' inability to provide for themselves and their families. The disastrous employment situation in Zambia, which deteriorated during the 1990s, has therefore broad consequences that have repercussions well beyond the labour market. In terms of development, poverty and enjoyment of economic, social and cultural rights, the negative effects are enormous.

Women are especially affected by these developments and, in particular, by the diminution of employment in the formal sector.⁷² Many women lost their employment in this sector during the restructuring, despite the fact that a minority were employed in this sector before 1991.⁷³ Indeed, women were very often the first to be lay-off because they are more concentrated in unskilled occupations or are mostly working in the tailoring and cloth-manufacturing sectors that were seriously hit by the competition brought by the economic liberalisation.⁷⁴

Moreover, women working in the informal sector have also been adversely affected by the economic restructuring, as increased unemployment shifted the work force towards this sector, pushing women

⁶⁵ International Covenant on Economic, Social and Cultural Rights, article 7

⁶⁶ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

⁶⁷ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

⁶⁸ *Ibid.*

⁶⁹ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

⁷⁰ *Ibid.*

⁷¹ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

⁷² The Post, *Liberalisation throws women onto the streets*, September 4 2001, Lusaka

⁷³ *Ibid.*

⁷⁴ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

towards more precarious and less-remunerated occupations.⁷⁵ For instance, many women are reported to have been pushed towards prostitution.⁷⁶ In general, high levels of illiteracy among women contribute to their difficulties in finding employment, in particular in the formal sector.⁷⁷ As a result, most workingwomen are engaged in the informal sector, working in small-scale farming activities in rural areas and as stonebreakers, vendors or traders in urban areas.⁷⁸ Overall, women are particularly affected by poverty and economic hardship, their situation showing a trend towards increased precariousness.⁷⁹

Young people who have finished school, college or university or who have dropped out of school are also particularly affected by these developments as they represent almost 69 percent of the unemployed.⁸⁰

In term of unemployment per regions, the Copperbelt and Lusaka provinces are the most affected with respectively 27 and 26 percent of unemployment.⁸¹ The Eastern provinces remains the less affected with 2 percent of employment, followed by the North-western Province (4%), the Western Province (6%), the Northern Province (6%), the Luapula Province (8%), the Southern Province (10%) and the Central Province (11%).⁸² These percentages show that unemployment levels are higher in urban areas than in rural ones.⁸³

The overall degradation of the employment situation in Zambia is accompanied by a serious deterioration of working conditions.⁸⁴ The include records of ill-treatments at work, harsh conditions of employment including extended hours of work without pauses and confinement of employees within the premises, with the interdiction to leave during the working hours. Women are particularly vulnerable to these developments, and many cases of sexual abuses at the workplace are being reported.⁸⁵ Women working in horticultural farms are also reported to face very poor and harsh conditions of work.⁸⁶

- It is reported that in February 2000, a female agricultural employee of a foreign investor in the Coperbelt was forced by her employer to apply lotion on his body after a bath, including his genitals.⁸⁷
- It is reported that the owner of a supermarket in Lusaka was systematically and on a daily basis searching women workers, alleging that they might hide some goods from the shop in their under wares.⁸⁸
- Working conditions in the bakery, restaurant and confectionary sectors are reported to be horrendous. Indeed, those working in bakeries are locked up inside their place of work at 6

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ The Post, *Liberalisation throws women onto the streets*, September 4 2001, Lusaka; Women Net Headlines, *Zambia: Skilled Women Better Placed to Fight Poverty*, June 8 2001, <http://headlines.igc.apc.org>

⁷⁸ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

⁷⁹ The Post, *Liberalisation throws women onto the streets*, September 4 2001, Lusaka

⁸⁰ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Zambia Association for Research and Development (ZARD), *World Trade Organisation: Which Way for Zambia?*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

p.m. and literally released at 7 a.m., without being allowed to leave the premises except for a visit to the toilets.⁸⁹ In most cases, workers are not allowed to join trade unions.⁹⁰

3.2.1. The impact of the economic restructuring on employment: privatisations, liquidations of local firms, closures of companies, and reforms of the civil service

AFRONET reports that the right to work has been seriously affected by the implementation of economic reforms since 1991.⁹¹ The privatisation of parastatal companies, in which the State previously held controlling shares and all statutory bodies, the liquidation and closure of existing companies due to their inability to compete in the emerging market economy, and the reforms of the Civil Service have steadily increased unemployment levels in the country.⁹²

Indeed, according to the Institute of Development Studies, AFRONET and ZARD, the privatisation of the parastatal sector has led to massive unemployment.⁹³ For instance, employment in this sector fell by one-third between 1992 and 1996.⁹⁴ As estimated by AFRONET, between September 1993 and June 1995, the parastatal sector lost about 40,900 employees.⁹⁵ In 1999, nearly 100,000 workers had lost their jobs, while the ILO reports that employment in the formal sector dropped from 556,000 in 1985 to 478,000 by 1999.⁹⁶ The increased unemployment in the formal sector pushed an important number of workers into the informal sector: between 1995 and 1998 informal sector employment is estimated to have grown by 15 percent in non-agricultural sectors and by 35 percent in agriculture.⁹⁷ The Institute of Development Studies further reports that these developments are directly responsible for the significant increase in poverty, particularly in areas such as Lusaka, the Copperbelt and the Central Province.⁹⁸

Workers in the mining sector and their families have been particularly hit by the restructuring. For instance, the city of Luanshya, whose inhabitants relied on the mining activities, has been reduced to a ghost town following the privatisation and subsequent closure of the mines in the area.⁹⁹ The impulse to privatise the parastatal sector came from its recognised economic inefficiency, as well as its large absorption of governmental budget.¹⁰⁰ The privatisation of the parastatal sector is one of the conditions set up by the World Bank and the IMF, which consider such reforms as important steps to facilitate economic growth and improve efficiency.¹⁰¹ The Zambian privatisation programme, reported to be one of the most far-reaching on the African continent, has been carried out by the Zambian Privatisation Agency (ZPA) since the promulgation of the Privatisation Act in 1992.¹⁰² By the beginning of the year 2001, Zambia had already privatised more than 90 percent of its state-

⁸⁹ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

⁹⁰ *Ibid.*

⁹¹ *Ibid.*; AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

⁹² IRIN, *Zambia: IRIN focus on economic reforms*, 26 July 2001, www.reliefweb.int/IRIN

⁹³ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001; Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000; AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

⁹⁴ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

⁹⁵ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

⁹⁶ The Post, *Liberalisation throws women onto the streets*, September 4 2001, Lusaka

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ The Post, *Privatisation of Ndola Lime-Editorial*, September 24 2001, Lusaka

¹⁰⁰ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

¹⁰¹ IRIN, *Zambia: Major utilities to be privatised by 2003*, 3 January 2001, www.reliefweb.int/IRIN

¹⁰² Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000; AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

controlled companies.¹⁰³ The programme is expected to privatise all state-owned companies identified by the ZPA by 2003.¹⁰⁴

The restructuring of the economy, with the opening of markets and the passage to a market economy led to the closure of several private companies during the 1990s, therefore significantly increasing the level of unemployment in Zambia.¹⁰⁵ For instance, the privatisation of the Lint Company of Zambia did not prevent the textile enterprise from being severely hit by foreign competition. Due to cheap textile imports, coupled with a surge in second-hand clothes from Europe, the company went into receivership in 1997.¹⁰⁶ In cases where companies' new owners agreed to keep the workforce as it was before the privatisation, the opening of the sector to competition often led them to lay off employees.¹⁰⁷

From January to October 1997, 96 companies collapsed, involving 1,482 severances.¹⁰⁸ During 1998, AFRONET reports that the Office of the Registrar of Companies and Business Names removed 193 companies from its companies register. This statistic does not include companies that were under receivership, liquidations or business names that ceased to operate.¹⁰⁹ Consequently, the number of companies, which had to lay-off workers for cessation of activities, might well be superior to the official number. Overall, employment in the formal manufacturing sector fell by over 40 percent between 1991 and 1998 following the implementation of reforms.¹¹⁰

Finally, the restructuring of the Civil Service also led to a diminution, albeit on a lesser scale, of public sector employment.¹¹¹ It is estimated that by the end of the reforms, about 97'000 civil servants will lose their jobs.¹¹²

3.2.2. Severance packages and social safety nets: delayed promises

Given that many laid-off workers either do not become reintegrated into the labour market or are pushed in to insecure and precarious jobs in the informal sector, the provision of adequate severance packages becomes crucial.

In several instances, the allocation of severance packages has been delayed or not delivered at all, due to long negotiations or government inability to uphold its commitments. In many instances, the government retired workers of liquidated or privatised companies without considering the means and ways to pay terminal benefits to the workers, in particular those working for insolvent companies like Zambia Airways (liquidated), Contract Haulage, United Bus Company of Zambia, etc.¹¹³ To the knowledge of OMCT, these workers are still waiting their retirement packages.¹¹⁴

¹⁰³ IRIN, *Zambia : World Bank asks government to honour agreement on privatisation*, 17 January 2001, www.reliefweb.int/IRIN

¹⁰⁴ IRIN, *Zambia: Major utilities to be privatised by 2003*, 3 January 2001, www.reliefweb.int/IRIN

¹⁰⁵ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998, Zambia: Economic, Social and Cultural Context, www.unam.org

¹⁰⁶ IRIN, *Zambia : IRIN focus on Economic Reforms*, 26 July 2001, www.reliefweb.int/IRIN

¹⁰⁷ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

¹⁰⁸ Labour Ministry Source, cited in AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁰⁹ *Ibid.*

¹¹⁰ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

¹¹¹ *Ibid.*; The Post, *Civil Servants are victims of social and economic dislocation, says Zimba*, September 26 2001

¹¹² M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001; Zambia : Economic, Social and Cultural Context, www.unam.org

¹¹³ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹¹⁴ *Ibid.*

For instance, the 1200 employees of the Lint Company (see 3.2.1) are still waiting for their redundancy packages promised by the government when the company closed in 1997.¹¹⁵ AFRONET also reports that many former employees of liquidated companies, such as the United Bus Company of Zambia (UBZ) and the Mansa Batteries Company have died in destitution because of the delays in payment.¹¹⁶ In Ndola, a worker who was retrenched from the Times of Zambia in 1999 told the Catholic Commission for Justice and Peace in December 1999 that he had not yet received his retrenchment package while he has five children, two dependants and a wife to look after.¹¹⁷ Indeed, a lot of workers of companies that have been liquidated have waited in vain for their packages.¹¹⁸

Retirees of the Civil Service also face similar situations and many of them are waiting for their benefits.¹¹⁹ As for October 2001, the Retiree's Welfare Bureau of Zambia had a list of 66 government retirees, including those from the Zambian army, police, Education Ministry and other departments who were waiting their benefits for more than two years.¹²⁰ Widows are represented among them and are waiting their deceased husband's retirement benefits.¹²¹ In this regard, Mrs Alice Nkokomalimba, a teacher at the Northmead School in Lusaka, was retired by the Ministry of Education on November 11th 1998 and died a year after without having received her retirement benefits.¹²² On the day of her death, Mrs. Nkokomalimba was allegedly mistreated by public officials at the pension board, where she came to enquire about benefits. The death, which is attributed to "respiratory distress, cerebrovascular accident and an uncontrolled blood pressure" is likely to have been caused by the stress arising from the ongoing denial of her retirement benefits, mistreatment by officials and the harsh living conditions brought by a lack of economic resources.

The Zambian social security system has been unable, so far, to address the desperate situation of the dismissed workers and their families. The Public Welfare Assistance Scheme (PWAS) of the Ministry of Community Development and Social Services represents the official safety net that was established to alleviate poverty among the most vulnerable groups of Zambian society.¹²³ However, to the knowledge of OMCT, the programme has failed to improve the conditions of the poor: its social security schemes are characterised by inadequate funding, delays in releasing budget funds, poor management and low public awareness about the schemes. From 1990 to 1992, only 15% of eligible beneficiaries actually received assistance from the PWAS.¹²⁴ The allocation in the 1998 budget for the social safety net amounted to 0.05 of the necessary requirements.¹²⁵ To the knowledge of OMCT, no significant improvement in the efficiency of the social security scheme as well as in the allocation of funds have been noted since this date. As a result, AFRONET reports that the extended family system has come under a lot of pressure as those in the need seek help from their working family members.¹²⁶

¹¹⁵ IRIN, *Zambia : IRIN focus on Economic Reforms*, 26 July 2001, www.reliefweb.int/IRIN

¹¹⁶ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

¹¹⁷ Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

¹¹⁸ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹¹⁹ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

3.2.3. Fair wages, minimum wages and a decent standard of living

Those workers who have not been hit by the massive lay-offs nevertheless face numerous difficulties, notably because of low wages, the freezing of wages in the public sector, as well as delays in receiving salaries.

The minimum wage in Zambia has been set up at 70.3 kwacha per hour, which represents a salary of 0.02 USD per hour. To the knowledge of OMCT, this income does not allow workers to provide a decent and adequate standard of living for themselves and their families. As a result, most workers earning no more than the minimum wage are forced to rely on other activities, such as subsistence farming, or on the extended family. In this respect, one can imagine the difficulties faced by workers in the informal sector, where minimum wage guarantees do not exist.

Overall, the Institute of Development Studies reports that as a result of the opening of the Zambian economy and the freezing of wages in the public sector, real wages in the private and public sectors have declined, adversely affecting the standards of living of the workers.¹²⁷

Finally, employees in the public sector also face severe conditions due to chronic delays in the payment of salaries.¹²⁸ For instance, teachers regularly experience delays in the payment of their wages.¹²⁹ Consequently, many teachers in urban areas offer private classes as a survival strategy, clearly creating deep imbalances with regard to access to education, and preventing poor children from keeping pace with those who have access to these private classes.¹³⁰ (For further details on the right to education, see part 3.4.) Moreover, when teachers and other civil service employees tried to protest against the delays, they were severely repressed by the authorities. (For more details and examples on this issue, see part 4.1.)

The situation of women is reported to be worst than the one of their men counterparts. Overall, men receive a much larger share of remuneration from waged and salaried employment than women.¹³¹ In the agricultural sector, despite the fact that women produce around 80 percent of farm crops, they do not, in most cases, have the right to spend the income arising from their activities.¹³² Indeed, the decisions regarding the spending of the money are, according to traditions, vested in their husbands.¹³³ This trend goes further, as even in the formal sector, women usually surrender their earnings to their husbands.¹³⁴

Such developments, in addition to the increased unemployment rate, directly contribute to the high level of poverty and often prevent those affected from enjoying other economic, social and cultural rights such as the right to education, the right to health, the right to adequate housing and the right to food.

3.3. The Right to Join and Form Trade Unions and the Right to Strike

The right of everyone to form and join trade unions, as well as the right to strike are enshrined in article 8 of the ICCPR. ILO Conventions No. 29 and 105 also guarantees freedom of association and collective bargaining.

¹²⁷ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

¹²⁸ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹²⁹ *Ibid.*

¹³⁰ The Catholic Commission for Justice and Peace, cited in AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

¹³¹ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

In Zambia, the 1993 Industrial and Labour Relations Act (IRLA), as amended in 1997, regulates the activities of trade unions as well as the right to strike. Article 5, Part II of the Act guarantees freedom of association, including the right to take part in the formation of a trade union; the right to be a member of a trade union; and the prohibition of penalisation, dismissal, discrimination or deterrence for participation in trade union activities.¹³⁵ The Act provides for legal remedies in case of penalisation, dismissal, discrimination or deterrence for trade unions activities. An employee who has reasonable cause to believe that he or she has been penalised or dismissed for engaging in union-related activities, after exhausting available administrative channels, can lay a complaint with the Industrial Relations Court.¹³⁶

Despite the legal recognition of the right to freedom of association, the State's brutality against workers' protests, as well as authorities' interference in union affairs remain frequent.¹³⁷ (See part 4.1. for further details on violent repression by the authorities)

The right to strike is also guaranteed under article 5 of Part II of the IRLA, unless the sector or work constitutes an «essential service».¹³⁸ In this case, the dispute shall be referred to a Court. While the right to strike is not expressly prohibited, Part IX of the Act, dealing with the settlement of collective disputes, by imposing long procedural constraints before workers can legally go on strike, tends to render this right completely inoperative and meaningless.¹³⁹ Furthermore, given its vague and broad definition, the term «essential services» can encompass every conceivable service, introducing therefore a *de facto* prohibition on the right to strike.¹⁴⁰

Indeed, article 76 of Part IX commends parties to a collective dispute to settle it through conciliation.¹⁴¹ If conciliation fails and the union leaders decide to go on strike, article 78 of the Act provides that this action must be agreed to by a simple majority decision of the employees present and voting.¹⁴² In case of approval, the strike can only begin after a period of 10 days.¹⁴³ Within this period, the Labour Minister may intervene and try to settle the dispute. In case of failure, the Minister can still apply to the Court «for a declaration that the continuance of the strike is not in the public interest».¹⁴⁴ Finally, the Public Order Act as well as the Preservation of Public Security Act also directly impede the exercise of the right to strike in Zambia, as they criminalize the counselling, encouragement, commanding of a strike in necessary or other services.¹⁴⁵

In many instances, worker's strikes have been repressed by the authorities and declared unpatriotic or contrary to the national interest. (See part 4.1.) More subtle forms of repression and interference such as threats of de-registration of trade unions involved in the strike and threats of dismissal of workers participating in the strike remain common.¹⁴⁶ For instance, article 7 of the IRLA on the registration of trade unions and consequences of non-registration provides for the dissolution of an unregistered trade union.¹⁴⁷

¹³⁵ Industrial and Labour Relations Act (No. 27 of 1993), as amended by the Industrial and Labour Relations (Amendment) Act, 1997 (No. 30 of 1997, Part II: Trade Unions, Article 5(1) (a), (b), (e), (g), <http://natlex.ilo.org>

¹³⁶ *Ibid.*, Part II: Trade Unions, Article 5 (2)

¹³⁷ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹³⁸ *Ibid.*, Part II: Trade Unions, Article 5 (1) (h)

¹³⁹ *Ibid.*, Part IX ; AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁴⁰ See AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁴¹ *Ibid.*, Part IX, Article 76

¹⁴² *Ibid.*, Part IX, Article 78 (3)

¹⁴³ *Ibid.*, Part IX, Article 78 (4)

¹⁴⁴ *Ibid.*, Part IX, Article 78 (6)

¹⁴⁵ See article 14 of the Public Order Act and Article 46 of the Preservation of Public Security Act, cited in AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁴⁶ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁴⁷ Industrial and Labour Relations Act (No. 27 of 1993), as amended by the Industrial and Labour Relations (Amendment) Act, 1997 (No. 30 of 1997, Part II: Trade Unions, Article 7

3.4. *The Right to Education*

The right to education is guaranteed by article 13 of the ICESCR, which includes free and compulsory primary education for all.

The status of the educational sector in Zambia, with regard to the criteria of accessibility, quality and availability, remains a factor of concern. Lack of funding and the introduction of users fees following the implementation of economic reforms have seriously impeded the realisation of the right to education during the last decade. According to the Jesuit Centre for Theological Reflection, based in Zambia, one-third of the primary school age group (from 7 to 13 years old) and 75 percent of the secondary school age group (from 13 to 18 years old) do not attend school.¹⁴⁸

The National Programme of Action for Children (NPA) has set major goals to be achieved by 2000, such as universal access to primary education and gender equity.¹⁴⁹ Despite the elaboration and implementation of the NPA, no national plan of action for universal free education, as recommended by the 1990 Dakar Conference, was formulated by the Zambian authorities.¹⁵⁰ Moreover, poor and inadequate funding to education seriously calls into question the government's commitment to reach these goals.¹⁵¹

According to the 2001 UNDP Human Development Report, public expenditure in the educational sector as a percentage of the GNP has decreased over the years, as it passed from 3.1 percent for the period running from 1985 to 1987 to 2.2 percent for the period 1995-1997.¹⁵² For the same periods, the sums allocated to primary and secondary education decreased, while those spent on tertiary education slightly increased.¹⁵³ In other words, Zambia is only allocating between 2 and 2.5 percent of its budget to education.¹⁵⁴ This lack of adequate government funding is reported by Zambian NGOs to be at the core of the problem.¹⁵⁵

As a result, educational standards have fallen drastically, educational infrastructure is in decay and equipment is lacking.¹⁵⁶ The situation in rural areas is reported to be particularly deplorable, as many schools are reported to be without teachers.¹⁵⁷ According to Afronet, out of 4,000 schools in the country, the majority are built of poles, mud and grass-thatched.¹⁵⁸ The learning environment is also reported to be unsatisfactory in most Zambian schools.¹⁵⁹ For instance, in urban areas, it is reported that double and triple sessions have been introduced due to limited facilities.¹⁶⁰ In rural areas, multi-grade sessions (several grades put in one class) were introduced due to lack of teachers and facilities.¹⁶¹

¹⁴⁸ Jesuit Centre for Theological Reflection, *Zambia's Current Socio-Economic Situation Up-Date*, March 2000

¹⁴⁹ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁵⁰ IRIN, *Zambia : Oxfam calls for increased funding for education*, 9 April 2001, www.reliefweb.int/IRIN

¹⁵¹ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁵² UNDP, *2001 Human Development Report*, 2001, p. 172

¹⁵³ *Ibid.*

¹⁵⁴ UNESCO, *World Education Report 1998*, cited in U.N. Doc. E/CN.4/1999/49, Preliminary Report of the Special Rapporteur on the Right to Education, Ms. Katarina Tomasevski, 13 January 1999; IRIN, *Zambia : Oxfam calls for increased funding for education*, 9 April 2001, www.reliefweb.int/IRIN

¹⁵⁵ AFRONET, 1999, cited by M. Patrick M. Sapallo, Zambia Association for Research and Development

¹⁵⁶ *Ibid.* ; AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁵⁷ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁵⁸ AFRONET, 1999, cited by M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

Moreover, the introduction of users fees, following the implementation of economic reforms, has put education out of reach for an important number of the Zambia population.¹⁶² The Overseas Development Institute reports that while educational costs represented 7 percent of households' non-food expenses in 1991, it increased to 16 percent in 1993.¹⁶³ As a consequence, many children continue to dropout of school as their relatives or guardians cannot afford to pay the tuition fees.¹⁶⁴

In terms of gender imbalances, it is reported that school enrolment is no longer biased against girls.¹⁶⁵ However, at all educational levels, girls have a higher drop out rate than boys, showing that the problem has not been resolved but slightly displaced.¹⁶⁶ Consequently, women continue to experience higher illiteracy rates than men, and this tends to penalise them in the labour market. (See part 2.2. and 3.1)

Finally, the high unemployment rate in the country is also reported to have contributed to the low value placed by some parents and guardians on education.¹⁶⁷ The perceived uselessness of education represents, therefore, an additional factor turning children away from school.

3.5. The Right to Adequate Housing

The right to adequate housing is guaranteed by article 11 of the ICCPR and forms part, with the right to adequate food and the right to adequate clothing, to the right to an adequate standard of living.

The housing situation in Zambia remains a factor for concern. The ongoing decline of public expenditure in the housing sector, inadequate governmental grants, massive lay-offs of workers (see part 3.2.), and the inadequacy of the *Presidential Housing Initiative (PHI)* in addressing the current challenges, have forced thousands of people to move into illegal settlements.¹⁶⁸

Zambia's housing policy is reported to have been poor since decentralization became the norm in the former government.¹⁶⁹ Indeed, the last significant exercise to build houses, both by quasi-government organizations, such as the National Housing Authority and the Councils, was in the early and mid-1970s.¹⁷⁰

In general, the government does not provide housing, although sitting tenants in most Council and Government houses have been sold the houses they have been occupying.¹⁷¹ However, due to poverty levels among the majority of those who have bought these houses, these have been resold to richer citizens who have put the same houses on exorbitant rents.¹⁷² The former owners have often opted to live in shanty townships.¹⁷³

¹⁶² M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹⁶³ Overseas Development Institute, *Poverty and European Aid in Zambia: A Study of the Poverty Orientation of European Aid to Zambia*, Working Paper No. 138, September 2000

¹⁶⁴ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

¹⁶⁵ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997; Women Net Headlines, *Zambia: Skilled Women Better Placed to Fight Poverty*, June 8 2001, <http://headlines.igp.apc.org>

¹⁶⁹ M. Patrick M. Sapallo, Zambia Association for Research and Development (ZARD), October 2001

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

Recently, the State House came up with an unofficial housing scheme called *the Preseidential Housing Initiative (PHI)* that has been building some houses in Lusaka and the Copperbelt Provinces.¹⁷⁴ However, these houses remain expensive and can only be afforded by a very limited portion of privileged individuals.¹⁷⁵

In urban areas, many people live in overcrowded, grimy squatter compounds with no access to safe drinking water, electricity, sanitation, proper roads and other facilities.¹⁷⁶ Moreover, these settlements are often located far away from schools and health centres, significantly restricting the inhabitants' access to education or health. For example, it is reported that in Lusaka, around 70 percent of the population live in unplanned settlements, where basic services are lacking and garbage is never collected.¹⁷⁷ In the Lusaka townships of Mandevu, Chaisa, Lilanda, Kamanga and Chiboyla, as well as in the Lusaka compound of Chingola, it is reported that over 200,000 people live in 1 square mile.¹⁷⁸ These settlements are experiencing security problems and a high rate of criminality.¹⁷⁹ Part 4.2. of the report will come back to this dimension.

3.6. The Right to Health

The right to health is enshrined in article 12 of the ICESCR.

Overall, the Zambian health sector has suffered from the deterioration in the economic situation and the implementation of economic reforms, which has involved cutbacks in public expenditure in the health sector and the introduction of users' fees. The rapid spread of the HIV/AIDS pandemic also represents a heavy burden for the whole health sector in Zambia.

The health care reforms, implemented since 1992, aimed at establishing a health care system guaranteeing equity of access to cost-effective quality health care. Decentralisation and the introduction of user-fees form the backbone of the reforms. In theory, vulnerable groups are exempted from paying user charges.¹⁸⁰

While some improvements in health institutions following the implementation of the reforms are reported, to the knowledge of OMCT no tangible benefits have reached the population.¹⁸¹ While public expenditure on health rose from 3.6 percent of the GDP in 1990 to 3.6 percent in 1998, funds allocated to the health sector remain insufficient.¹⁸² The reforms have also led to negative outcomes such as the diminution of health services in rural areas, the suppression of health services in remote areas and emphasis on curative over preventative care.¹⁸³ Consequently, and to the knowledge of OMCT, accessibility of health services, at least for the rural population, seriously deteriorated following the

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*; Simbulo, R., *Zambia: Climax and Decline*, in Social Watch 1998 Report, www.socialwatch.org; Women Net Headlines, *Zambia: Skilled Women Better Placed to Fight Poverty*, June 8 2001, <http://headlines.igp.apc.org>

¹⁷⁷ AFRONET, *The 1997 Zambia Human Rights Report: Economic, Social and Cultural Rights*, 1997

¹⁷⁸ Simbulo, R., *Zambia: Climax and Decline*, in Social Watch 1998 Report, www.socialwatch.org

¹⁷⁹ *Ibid.*

¹⁸⁰ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

¹⁸¹ AFRONET, *The 1997 Zambia Human Rights Report: Economic, Social and Cultural Rights*, 1997

¹⁸² Overseas Development Institute, *Poverty and European Aid in Zambia: A Study of the Poverty Orientation of European Aid to Zambia*, Working Paper No. 138, September 2000; UNDP, *2001 Human Development Report*, 2001, p. 197

¹⁸³ Overseas Development Institute, *Poverty and European Aid in Zambia: A Study of the Poverty Orientation of European Aid to Zambia*, Working Paper No. 138, September 2000

implementation of the reforms. Shortages of drugs, inadequate facilities and a lack of necessary medical equipment are the common lot of public health establishments due to the lack of funding.

For example, the Chilonga Mission Hospital in Mpika had to cut down the number of meals that patients receive per day due to erratic and inadequate governmental funding.¹⁸⁴ The director reports that instead of receiving 100 percent funding, the institution only gets between 20 and 30 percent.¹⁸⁵

In the year 2000, it was also reported that the junior medical doctors working in governmental institutions went on strike to protest against the catastrophic conditions of health facilities and their poor working conditions.¹⁸⁶ To the knowledge of OMCT, the doctors participating in the strike were all dismissed.¹⁸⁷

Moreover, the introduction of users fees has led to a drop in attendance at health institutions, as many people cannot simply afford the cost.¹⁸⁸ Instead of going to see a doctor and receiving treatment, many patients therefore remain at home, unattended.

The enormous health costs and the burden of HIV/AIDS on the whole health care system, as it absorbs a large amount of budget, has further contributed to the poor record of the health sector in Zambia.¹⁸⁹ In this regard, and due to the magnitude of the HIV/AIDS epidemic, Zambia is today facing a widespread health crisis. Indeed, an estimated 20 percent of Zambia's population of 10 million is currently HIV/AIDS positive, which makes Zambia one of the countries with the highest incidence of HIV/AIDS in the world.¹⁹⁰ Moreover, according to data available, some 500 new infections occur every day, while life expectancy has fallen to 37 years old.¹⁹¹ Overall, the HIV/AIDS pandemic is reported to be having a disproportionate impact on women.

3.7. The Right to Food

The right to food is guaranteed by article 11 of the ICCPR and forms part, with the right to adequate housing and the right to adequate clothing, of the right to an adequate standard of living.

Food insecurity in Zambia has been the lot of an important number of the population during the last decade. Indeed, it is reported that many families are unable to afford a nutritious diet on a year round basis.¹⁹² Currently, 24 percent of children under five are underweight, while 45 percent of the population is undernourished.¹⁹³ It is also reported that more than 86 percent of households cannot afford three meals per day.¹⁹⁴ Moreover, a survey conducted by the Catholic Commission for Justice

¹⁸⁴ The Post, *Chilonga Hospital Cuts Patients' Meals*, September 17 2001, Lusaka

¹⁸⁵ *Ibid.*

¹⁸⁶ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

¹⁸⁷ *Ibid.*

¹⁸⁸ AFRONET, *The 1998 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1998

¹⁸⁹ U.N. Doc. E/CN.4/2000/51, Report of the Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights and the Independent Expert on structural adjustment policies paras 4, 16-36, 47-51

¹⁹⁰ IRIN, *UNHCHR tackles HIV/AIDS in refugee camp*, 9 August 2001, www.reliefweb.int/IRIN

¹⁹¹ U.N. Doc. E/CN.4/2000/51, Report of the Special Rapporteur on the effects of foreign debt on the full enjoyment of economic, social and cultural rights and the Independent Expert on structural adjustment policies paras 4, 16-36, 47-51

¹⁹² AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

¹⁹³ UNDP, *2001 Human Development Report*, 2001, pp 150, 164

¹⁹⁴ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org; Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

and Peace, based in Zambia, reveals that families generally survive on 1 or 2 poor quality meals per day, which often lack important nutrients like proteins and carbohydrates.¹⁹⁵

Among other manifestations of food insecurity, the Catholic Commission for Justice and Peace reports an increase in food deficiency diseases like malnutrition and kwashiorkor, disruption of children's growth, increased migration from the countryside to urban areas and frequent family disputes.¹⁹⁶

The causes of food insecurity are multiple. These include massive unemployment that, along with deterioration in the standard of living and increased poverty, significantly reduces families' ability to buy food. (See parts 2.2. and 3.2.) The survey conducted by the Catholic Commission for Justice and Peace reveals that female heads of households, orphans, the unemployed, large families and low-income earners are particularly affected by food insecurity.¹⁹⁷

The reforms of the agricultural sector implemented since 1991 bear an important responsibility in the lack of enjoyment of the right to food. The reforms were prompted by the expensive cost of State regulation with the objective of fostering a more efficient allocation of agricultural resources and included, amongst other measures, the removal of maize pricing arrangements and the removal of agricultural and food subsidies.¹⁹⁸ These were fully implemented by 1995.¹⁹⁹ As a result, the liquidation of hundreds of thousands of subsistence farmers and small-scale farms has been reported.²⁰⁰ The end of subsidies farming inputs like fertilizer, seeds and agricultural machinery means that farmers have had to fund their own inputs, while access to credit remains quasi impossible for peasant farmers.²⁰¹ Moreover, following the liberalisation of the agricultural sectors, peasant farmers have also had to market and sell their products by themselves, while they often don't have the capacity to transport their products and to market them.²⁰²

Overall, the Institute of Development Studies reports that this policy has had a negative impact on farmers living in rural remote areas, as well as non-agricultural households living in urban areas due to the sharp increase in maize prices.²⁰³

Natural disasters such as floods also impact on the population's access to food. For instance, in July 2001, around 2 million Zambians faced starvation because floods washed their crops away at the beginning of the year.²⁰⁴

New coping strategies have emerged in response to food insecurity, including the reduction in the number or frequency of meals, reduced consumption of animal proteins, taking children out of school, contraction of debts, begging, prostitution and stealing.²⁰⁵ (See part 4.2 for further development on this last issue) The Catholic Commission for Justice and Peace also reports that some people do not have any coping strategies and end up dying of hunger.²⁰⁶

¹⁹⁵ Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

¹⁹⁶ *Ibid.*

¹⁹⁷ Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

¹⁹⁸ IRIN, *Zambia : IRIN focus on agricultural reforms*, 23 July 2001, www.reliefweb.int/IRIN

¹⁹⁹ *Ibid.*

²⁰⁰ Michelo Hangsungule, *Zambia: Social and Economic Disparities*, in Social Watch 2001 Report, www.socialwatch.org

²⁰¹ Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

²⁰² Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

²⁰³ Institute of Development Studies, *Poverty, Inequality and Growth in Zambia during the 1990s*, June 2000

²⁰⁴ IRIN, *Zambia: Food Shortages Loom Say Farmers*, July 27 2001, www.reliefweb.int/IRIN

²⁰⁵ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997; Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

²⁰⁶ Catholic Commission for Justice and Peace, *National Food Security Report*, www.ccjp.org.zm

4. The Socio-Economic Context and the Protection Against Torture

Torture is reported to be systematically practiced by the police, divided between regular and paramilitary units. Abuses are generally not investigated, which entertains a climate of impunity throughout the country, hampering further improvement in the human rights situation in Zambia.²⁰⁷

While torture and other forms of ill treatment affect the whole population, including suspects of common crimes and political detainees, poor people have, to the knowledge of OMCT, increasingly become victims of torture, extra-judicial killing and other ill treatment.²⁰⁸

The preceding part addressed the socio-economic context, in particular through the angle of economic, social and cultural rights, and suggested, in some instances, the possible links with the occurrence of torture and other forms of violence. The emergence of criminality and social protests due to widespread destitution and violations of economic, social and cultural rights have been addressed, pointing to the fact that these were accompanied, in many instances, by State repression. Indeed, torture, ill treatment, extra-judicial killing and excessive use of force by the police are justified on the grounds of combating criminality and responding to social unrest, which are considered as a threats to the national interest.

In this respect, it is interesting to recall the aim of the paramilitary police units as well as their mandate and training. Indeed, paramilitary units have been created to operate in disturbed areas and guard vital installations.²⁰⁹ Moreover, the specific paramilitary unit called the Mobile Unit, which operates in Kamfinsa, has been established to reinforce the normal police units during periods of tension that surpass the means of the regular police.²¹⁰ The Unit is also specifically trained in riot control.²¹¹

The number of cases of torture, extra-judicial killings and other forms of ill-treatment, as well as the impunity surrounding them, can be significantly diminished through the adoption of adequate legal, judicial and administrative measures, and a better control over the repressive apparatus. However, the disproportionate number of poor people among the victims of torture, as well as the dangerous dynamic currently in place in Zambia with regard to the authorities' handling of criminality and social protests show that the socio-economic context, and violations of economic, social and cultural rights need to be addressed. Indeed, as long as people have motives for asserting their economic, social and cultural rights, and are forced to engage in criminal activities as a means of providing for themselves and their families, it is more than likely that the cycle of State repression will continue.

Access to justice for poor people, as it often remains illusory, also highlights the relevance of considering the socio-economic context.²¹²

4.1. State Response to Social Unrest

As highlighted in the preceding parts (2.2. and 3), the poor socio-economic conditions prevalent in Zambia have pushed many people and groups of people to organise protests, in which socio-economic concerns were raised and articulated around demands for better respect for economic, social and

²⁰⁷ *Ibid.*

²⁰⁸ AFRONET, *The 1998 Zambia Human Rights Report :Torture*, 1998

²⁰⁹ Amnesty International, *Zambia: Applying the law fairly or fatally? Police violation of human rights in Zambia*, 1999

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² For further details, see OMCT, *Torture and Violations of Economic, Social and Cultural Rights: Appraisal of the link and its Relevance to the Work of the Committee Against Torture*, 2001, p. 15

cultural rights and labour rights. In most instances, to the knowledge of OMCT, these protests or demands have been met with State violence and repression.

The Special Rapporteur on the question of torture reports that on August 13th 1997, street vendors began a public protest, as their stalls had been burnt down by unknown individuals in the «Soweto Market» located in the downtown area of Lusaka.²¹³ The report states that «hundreds of heavy armed paramilitary police officers began to beat both rioters and uninvolved passers-by with batons and fired tear gas canisters at groups of people found in the downtown area». The report of the Special Rapporteur further highlights that the officers continued the assaults in Chiboyla, Misisi and John Howard Township near the «Soweto Market» upon anyone they found.²¹⁴ One vendor reportedly fell down while trying to run with her baby, and a police officer kicked her repeatedly to the extent that she could no longer walk.²¹⁵ The reports further point out that the police were so brutal that 2 rioters were beaten to death. To the knowledge of OMCT, no police officers were disciplined or prosecuted in connection with these actions.

Strikes of workers demanding respect for their labour and economic, social and cultural rights, and notably protesting against the governmental wage freeze, poor wages and delayed payment of salaries and redundancies, have frequently met with State repression and violence.

- AFRONET reports that SCAN workers in Kihve, who went on strike in January 1998, were met by the police who dispersed them on the ground that their protest constituted an unlawful assembly.²¹⁶
- AFRONET further reports that on May 9th 1998, the Zambian Congress of Trade Unions planned a one-day strike to protest against the governmental initiative to freeze wages.²¹⁷ In response, the authorities threatened to de-register all unions participating in the lockout, while the Labour Minister, Peter Machungwa, publicly menaced workers with dismissal if they obeyed their unions. On the day of the strike, riot police turned out.²¹⁸
- According to the AFRONET 1998 Annual Report on Zambia, in October 1998, around 6,000 workers of the Roan Antelope Mining Corporation (RAMCOZ) in Luanshya, went on strike demanding payment of housing allowances arrears.²¹⁹ It is reported that the strike turned violent and that battles between the workers and the police took place, leaving two people killed by the police and a burned car.²²⁰
- Council workers in Kasama were arrested on Thursday 13 September 2001 after they staged a peaceful protest against the management's deviation of K100 million, which was meant to cover eight months' salary arrears. The striking workers were detained for more than 2 hours.²²¹

Non-violent demonstrations by teachers protesting against their poor conditions of service, including delays in the payment of salaries were also met with State repression, including the use of tear gas and recourse to riot police.²²² For example, AFRONET reports that on October 15th 1998, around 500 striking teachers went to the headquarters of the Ministry of Education to demand a review of their

²¹³ U.N. Doc. E/CN.4/2000/9, Report of the Special Rapporteur on the Question of Torture, Sir Nigel Rodley, para 1194)

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ AFRONET, *The 1998 Zambia Human Rights Report :Economic, Social and Cultural Rights*, 1998

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ The Post, *Police arrest Kasama Council Workers*, September 17 2001, Lusaka

²²² AFRONET, *The 1998 Zambia Human Rights Report :Economic, Social and Cultural Rights*, 1998

conditions of service. Riot police came to disperse the teachers, using tear gas. Following this action, the police refused to apologise on the ground that it had to use force due to the fact that the teachers did not obtain permission from the police prior to holding the demonstration.²²³

Finally, opposition to Structural Adjustment Programmes (SAP) and economic reforms, due to their negative impact on living standards (see part. 2.2. and 3) has also been met with State violence and repression. On April 26th 2000, armed riot police in Lusaka dispersed anti-IMF demonstrators, after they established a picket in front of the hotel where the IMF and Zambian officials were holding a meeting.²²⁴ The demonstrators, organised by Zambian women's rights groups, opposed World Bank and IMF policies and accused them of «bringing misery to poor countries».²²⁵

4.2. Social Destitution, Criminality and State Repression

The precedent parts (2.2. and 3) showed that stealing and common criminality have emerged as coping strategies in response to food insecurity, declining living standards, unemployment and inability to provide for one self and family.

The Zambian authorities, confronted with high levels of criminality and demands for strong intervention, have adopted repressive measures, which include the use of torture, summary executions and other forms of cruel, inhuman or degrading treatment or punishment perpetrated either by the regular police forces or by the paramilitary police. The authorities have publicly acknowledged the adoption of such drastic measures. On November 28th 1998, the Home Affairs Minister at that time, Katele Kalumba, declared that the crime situation in the country required the use of force by the police as criminals «were armed to the teeth not with toy guns but with automatic weapons.»²²⁶ Previously, the authorities had already publicly encouraged the regular and paramilitary police units to «shoot the armed robbers» and sustained a «policy of shoot to kill» of those suspected of being armed robbers».²²⁷ Indeed, in the name of combating criminality, an increasing number of persons have been victims of torture, ill treatment and extra-judicial executions. In this regard, AFRONET reports that the extra-judicial killing of suspects by the police has become a common feature in Zambia.²²⁸ Moreover, George Kunda, the president of the Law Association of Zambia, told Amnesty International in April 1998 that criminal suspects in rural areas are commonly tortured.²²⁹ Another lawyer also reported to Amnesty International that the police ill-treat or torture up to 95 percent of robbery suspects, in complete impunity.²³⁰ Overall, criminal suspects, when not extra-judicially killed, are often arbitrarily arrested on the basis of flimsy evidence.

For example, three school teachers from Kasisi Secondary School on the outskirts of Lusaka, who had travelled to the capital to get their pay, were killed in on Friday September 7th 2001 by a lone police officer guarding a house of a prominent government official.²³¹ The three were allegedly travelling to a

²²³ *Ibid.*

²²⁴ One World News Service, *IMF faces new round of protest in Lusaka*, 27 April 2000, www.oneworld.org/news/reports/zambia.html

²²⁵ *Ibid.*

²²⁶ cited in AFRONET, *The 1998 Zambia Human Rights Report: Torture*, 1998

²²⁷ Amnesty International, *Zambia: Applying the law fairly or fatally? Police violation of human rights in Zambia*, 1999

²²⁸ AFRONET, November 17th 1998, www.oneworld.org/afronet/press

²²⁹ Amnesty International, *Zambia: Applying the law fairly or fatally? Police violation of human rights in Zambia*, 1999

²³⁰ *Ibid.*

²³¹ Information provided by M. Partick M. Sapallo, ZARD; The Post, *Police «Mistake» Teachers for Bandits*, September 14 2001, Lusaka; The Post, *Police Spokesman Should Tell the Truth-Editorial*, September 14 2001, Lusaka

friend's home from a bar when they met the police officer.²³² The police reported that the teachers were armed bandits, but they have failed to show proof to that effect to date.²³³ The police spokesman, in explaining the extra-judicial killing, argued that «a thief can be anything because we have seen people with permanent jobs involved into something else».²³⁴ Rather than being an isolated incident, this case shows a recurrent pattern of police killing of criminal suspects.

The occurrence of violence is also highlighted by State operations aimed at clearing the streets of potential criminal elements. Here again, violence and repression are used on a large scale and are perpetrated, most of the time, in total impunity. To the knowledge of OMCT, these actions often involve cases of torture and other cruel, inhuman or degrading treatment or punishment.

For instance, on September 13th 2001, police officers in Livingstone launched an operation to get rid of street vendors and moneychangers. The operation irritated residents after the police started confiscating foreign goods and arresting moneychangers at the town centre area. The residents retaliated by throwing stones at police officers, while several shops had their windows broken.²³⁵

Recourse to criminality goes, as highlighted above, hand in hand with deprivation, widespread poverty and denials of economic, social and cultural rights. On this basis, and given the dynamics underpinning the authorities' response, it is unlikely that a single legal, judicial and administrative answer, as necessary as this might be, can put an end to the torture, extra-judicial killings and other forms of ill-treatment, as well as the frequent impunity surrounding these acts.

4.2.1. The specific case of street children

Children working or living on the streets, often perceived as a menace and as potential criminal elements by the authorities, are also particularly vulnerable to police brutality. Indeed, AFRONET reports that children living and working on the street live in constant danger and face regular police harassment, threats of violence, abuses and ill treatment.²³⁶

In the city of Lusaka alone, the number of street children has doubled since 1991 to 75,000.²³⁷ This significant increase is partly due to the socio-economic context described above (see parts 2.2. and 3), characterised by deprivation, widespread poverty and denials of economic, social and cultural rights, along with the impact of HIV/AIDS.

Regarding the impact of the HIV/AIDS pandemic, whose incidence in Zambia is one of the highest in Africa (see part 3.6), around 520,000 children became HIV/AIDS orphans in 1994.²³⁸ In 1999, there were already 650,000 orphans.²³⁹ This number is expected to rise to 895'000 by 2009 and to 974,000 by 2014.²⁴⁰

HIV/AIDS is not the sole cause of the increased number of street children. Indeed, around 75,000 children living on the streets in Lusaka are not HIV/AIDS orphans.²⁴¹ Problems of poverty, economic

²³² Information provided by M. Partick M. Sapallo, ZARD

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ The Post, *Livingstone Vendors Riot*, September 14 2001, Lusaka

²³⁶ AFRONET, *The 1997 Zambia Human Rights Report : Economic, Social and Cultural Rights*, 1997

²³⁷ IRIN, *Zambia : Poverty and AIDS Forces Children Onto Street*, July 17th 2001, www.reliefweb.int/IRIN

²³⁸ Zambian Ministry of Health, in IRIN, *Zambia : Poverty and AIDS Forces Children Onto Street*, July 17th 2001, www.reliefweb.int/IRIN

²³⁹ United Nations Economic Commission for Africa: Sub regional Development Centre for Southern Africa (ECA/SRDC-SA), *Social Situation: Health*, www.uneca.org/eca_programmes/srdc/sa/publications

²⁴⁰ Zambian Ministry of Health, in IRIN, *Zambia : Poverty and AIDS Forces Children Onto Street*, July 17th 2001, www.reliefweb.int/IRIN

²⁴¹ IRIN, *Zambia : Poverty and AIDS Forces Children Onto Street*, July 17th 2001, www.reliefweb.int/IRIN

hardship, destitution and food insecurity bear part of responsibility. Finally, the Foundation Hope, providing food, shelter and schooling to an estimated 5,000 children, also identified abuses within the family as a factor pushing children into the street.²⁴² In this regard, many Zambian NGOs have made the link between increased economic hardship (see part 2.2 and 3), the dislocation of the family unit, and increased violence within the family.

4.3. Poverty and Access to Justice: the question of impunity and proper restitution to the victims

Indigent victims of torture and other cruel, inhuman or degrading treatment rarely have the means to lodge complaints. In this regard, poverty acts as a direct barrier to justice, fostering a climate of impunity that hampers further improvement of the situation with regard to an effective protection against torture.

Indeed, the absence or inadequacy of legal defence for indigent people, high official and unofficial legal costs, and a lack of awareness of one's rights may act as impediments to access to justice, in both criminal and civil cases. Consequently, torture victims, due to their socio-economic situation, may be reluctant to lodge a complaint, notably because they cannot afford the legal costs involved, both the official ones and those due to widespread corruption. As a result, no investigations are carried out, those responsible are not identified and prosecuted, and the victims and their families are not compensated. Such a situation in which the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment are reluctant to lodge a complaint can create a climate of impunity, which hampers further improvement in the human rights situation of a given country. In this regard, poverty acts as a deterrent in the same way as threats made against the victims or the absence of adequate legislation. Consequently, even if an appropriate legal framework to address torture is in place, impunity can remain widespread due to socio-economic factors.

While the Government's legal aid office is responsible for providing legal aid for indigent detainees or defendants in criminal cases, in practice, few get assistance. AFRONET reports that the right to access to a lawyer «has been systematically eroded» by the lack of an efficient governmental legal aid scheme.²⁴³ The Zambian government itself, in its Report to the Committee Against Torture, acknowledges that most people cannot afford to bring their cases before the courts and that lack of awareness on the part of the citizenry on available complaints and remedies means that numerous cases go without redress.²⁴⁴ Such a situation is particularly worrying given the increasing number of poor people among the victims of torture, ill-treatment and summary executions. (See parts 4.1 and 4.2)

Due to the inadequacy of governmental guarantees of free legal aid in criminal cases, civil society organisations have set up structures aimed at guaranteeing access to justice for poor defendants. For instance, the Legal Resource Foundation has opened an advice centre in Chipata aimed at assisting people seeking legal aid for free.²⁴⁵

²⁴² *Ibid.*

²⁴³ AFRONET, *The 1998 Zambia Human Rights Report: Torture*, 1998

²⁴⁴ U.N. Doc. CAT/C/47/Add.2, 26 December 2000, para 139

²⁴⁵ Legal Resource Foundation, *The LRF News*, Number 29, June 2001, www.lrf.org

5. Conclusions and Recommendations

The number of cases of torture, extra-judicial killings and other forms of ill-treatment, as well as the impunity surrounding them, can be significantly diminished through the adoption of adequate legal, judicial and administrative measures, and better control over the repressive apparatus. However, the disproportionate number of poor people among the victims of torture, as well as the dangerous dynamics currently in place in Zambia with regard to the authorities' handling of criminality and social protest show that the socio-economic context, and violations of economic, social and cultural rights need to be addressed. Indeed, given the widespread and severe poverty, socio-economic imbalances and destitution prevailing in Zambia, it is very unlikely, as pointed out by the UN Sub-Commission for the Promotion and Protection of Human Rights, that legal, judicial and administrative measures alone can decrease the toll of the violence and repression that include the violent repression, including torture and ill-treatment, of social protests, the stringent measures used by the police to address widespread and petty criminality, including abuse and violence against street children.

The report showed that increasing and appalling levels of poverty, high unemployment, an overall trend towards greater precariousness of working conditions, restricted access to education and health for a large proportion of the population, growing food insecurity and poor housing characterise the current socio-economic situation of Zambia. The implementation of Structural Adjustment Policies, along with debt servicing and the HIV/AIDS pandemic play a significant role in the current socio-economic context. Women are reported to be particularly affected by these developments. Overall, the response of the State, in terms of social spending, political will or ability to address these challenges has been inadequate. Moreover, two important channels that are essential to guarantee improvement of the socio-economic situation, the justiciability of economic, social and cultural rights as well as trade unionism, are blocked or at least seriously restricted.

The relevance of the socio-economic context and the need to adopt measures beyond purely legal, judicial and administrative means are also revealed by the restricted access to justice for indigent people.

As mentioned, article 2 of the CAT contemplates the possibility of adopting measures beyond the declared legislative, administrative and judicial ones: "each State Party shall take effective legislative, administrative, judicial *or other measures* to prevent acts of torture in any territory under its jurisdiction".

The Committee Against Torture itself recognised the relevance of the socio-economic context to the protection against torture.²⁴⁶ Indeed, in its concluding observations on Cameroon, the Committee recognised that the economic situation constituted a factor impeding the application of the CAT.²⁴⁷ In its concluding observations on Canada, the Committee recognised that the development of a national strategy and other measures to address the historical social and economic disadvantages experienced by the indigenous population constitute a positive aspect with regard to the implementation of the CAT.²⁴⁸ Similarly, in its concluding observations on Australia, the CAT also welcomed the measures taken by the State party to address the historical and economic underpinning of the disadvantage experienced by the indigenous population.²⁴⁹ Moreover, in its recommendations to Australia, the

²⁴⁶ See part 5 for further developments; U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f); U.N.Doc. CAT/C/XXV/Concl..3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e), 7(g); U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

²⁴⁷ U.N. Doc. CAT/C/XXV/Concl.5, *Concluding Observations of the Committee Against Torture: Cameroon*, para 5

²⁴⁸ U.N. Doc. CAT/C/XXV/Concl.4., *Concluding Observations of the Committee Against Torture: Canada*, para 4(f)

²⁴⁹ U.N. Doc. CAT/C/XXV/Concl..3, *Concluding Observations of the Committee Against Torture: Australia*, paras 5(e)

Committee recommended that “the State party continues its efforts to address the socio-economic disadvantage that *inter alia* lead indigenous Australians to come disproportionately in contact with the criminal justice system”.²⁵⁰ In the cases of Canada and Australia, the positive relationship underlined by the Committee between economic and social disadvantages and the implementation of the CAT highlight the fact that poverty and violations of economic, social and cultural rights do have an impact on protection against torture.

Indeed, a comprehensive and holistic approach to protection against torture, as it is clearly required for Zambia, needs to integrate specific socio-economic measures and policies, along with the more traditional means applied to prevent the occurrence of torture and other forms of cruel, inhuman or degrading treatment or punishment.

The report described that social protests in Zambia have emerged due to the overall degradation of social indicators, increased poverty and widespread violations of economic, social and cultural rights including the right to work, health, food, education and housing, as well as the right to freedom of association and the right to strike. These protests, as they challenge the current socio-economic context and governmental policies, have encountered violent repression. Moreover, common criminality has emerged, for some, as a coping strategy in response to food insecurity, declining living standards, unemployment and inability to provide for one’s self and one’s family. In response, the Zambian authorities, have adopted repressive measures, which include the use of torture, summary executions and other forms of cruel, inhuman or degrading treatment or punishment perpetrated either by the regular police forces or by the paramilitary police. The problem of street children and the violence they face is also indissociable from the socio-economic context, along with the dislocation of the family unit and the impact of the HIV/AIDS pandemic.

Abuses by the paramilitary police units and by the regular police in the repression of social protests, against street children and in the fight against criminality clearly indicates that, among other measures, immediate steps have to be taken to demonstrate that police abuses will not be tolerated, to increase the accountability of paramilitary police units.

However, given the dynamics underpinning the authorities’ response and the gravity of the Zambian socio-economic context, it is unlikely that such measures will be sufficient to reduce the toll of violence. In such cases, the right not to be subjected to torture and the right to education, to food, to health and to adequate housing are inseparable. The violation of the last four is closely linked to the first. Moreover, as an increasing number of the victims of torture and ill treatment are poor, the impact of poverty on access to justice also needs to be addressed if the impunity rate prevailing in the country, in particular with regard to police abuse, is to decrease.

The Zambian population has the right to be protected against torture and other forms of cruel, inhuman or degrading treatment or punishment under all circumstances. In this respect, socio-economic hardship and the socio-economic context can in no way be used as an excuse for the occurrence of torture or to the State’s inability to offer proper protection against those acts. However, as the report highlighted, it would be unrealistic to deny the importance of the socio-economic context in the emergence of torture and other forms of cruel, inhuman and degrading treatment or punishment. Consequently, besides its responsibility to punish those responsible of torture, compensate the victims, and take all necessary measures to prevent the occurrence of torture, the State is also responsible – in terms of violations of economic, social and cultural rights- for the structural disorder that leads to such dramatic events.²⁵¹

In this respect, OMCT would recommend to the State party, according to article 2 of the CAT, to:

²⁵⁰ *Ibid.*, para 7(g)

²⁵¹ Sottas, E., *NGOs and Human Rights: For Coherent Strategies*, OMCT, November 2000

- take immediate steps to guarantee, through legal, judicial and administrative measures the justiciability of economic, social and cultural rights in accordance with its obligations under the International Covenant on Economic, Social and Cultural Rights;
- take immediate measures to remove the legal and factual obstacle to the work of trade unions;
- take immediate measures to remove the legal and factual obstacle to the right to strike;
- adopt a comprehensive approach to the problem of violence against street children and children working in the street, including measures aimed at improving the socio-economic context;
- adopt a comprehensive approach to the issue of criminality and repression of social protest, including measures to address the socio-economic structure in which criminality and social protest emerge;
- ensure access to justice for indigent victims and defendants through the establishment of a comprehensive system of free legal aid;
- remove or amend all procedures that impede access to justice for indigent persons or establish a *de facto* discrimination against them;
- train its police personnel in dealing specifically with the poor;
- take immediate and adequate measures to improve the socio-economic situation throughout the country.