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## مجلس حقوق الإنسان

الدورة الرابعة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير الخبرة المستقلة المعنية بمسألة حقوق الإنسان والفقير المدقع ماغدالينا سيولفيدا كارمونا\*

إضافة

### البعثة التي قامت بها إلى زامبيا\*\*

موجز

بناءً على دعوة من الحكومة، قامت الخبرة المستقلة المعنية بمسألة حقوق الإنسان والفقير المدقع، ماغدالينا سيولفيدا كارمونا، ببعثة إلى زامبيا في الفترة من ٢٠ إلى ٢٨ آب/أغسطس ٢٠٠٩. وخلال الزيارة، قامت الخبرة بجمع معلومات مباشرة عن حالة حقوق الإنسان للسكان الذين يعيشون في فقر مدقع وعن السياسات الاجتماعية القائمة، وبخاصة السياسات المتعلقة بالحماية الاجتماعية. وأولت الخبرة اهتماماً خاصاً بمبادرات التحويلات النقدية.

ولاحظت الخبرة أن زامبيا قد أخذت على نفسها التزاماً واضحاً بالقضاء على الفقر، وذلك باعترافها بالمعاهدات الدولية لحقوق الإنسان وبإعادة تأكيد هذه الالتزامات

\* تأخر تقديم هذا التقرير.

\*\* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيعمم باللغة التي ورد بها فقط.

في أنشطة التخطيط التي اضطلعت بها مؤخراً. ومع ذلك، يجب عمل المزيد من أجل ترجمة هذه الالتزامات والخطة إلى واقع ملموس. ورغم النمو الاقتصادي المسجل في السنوات الأخيرة، فإن الملايين من الزامبيين لا يزالون يعيشون حالة فقر مدقع. وتشير الخبرة بوجه خاص إلى أن جماعات معرضة للتمييز لأسباب عدة، كالنساء والأطفال والمسنين والأشخاص المصابين بفيروس نقص المناعة البشرية/الإيدز والمهاجرين وملتزمسي اللجوء واللاجئين، تواجه صعوبات إضافية في سعيها إلى التخلص من حالة الفقر المدقع. وتؤكد الخبرة على ضرورة تحسين الإطار القانوني للبلد في سياق الاستعراض الجاري للدستور.

وتشدد الخبرة المستقلة على أهمية زيادة دعم تدابير الحماية الاجتماعية من خلال زيادة الموارد المالية العامة وتحسين التنسيق بين مختلف المبادرات المتعلقة بالحماية الاجتماعية التي يجري تنفيذها في البلد. ويركز التقرير بالخصوص على مجموعة من الخطط التوجيهية المتعلقة بالتحويلات النقدية للأغراض الاجتماعية التي يجري تنفيذها في البلد، ويقدم توصيات بتعزيز الامتثال لقواعد حقوق الإنسان. وتعرب الخبرة عن أملها في أن تزيد الحكومة من دعمها لهذه الخطط بغية تحويل المشاريع التوجيهية القائمة التي تتسم بتغطية محدودة جداً إلى سياسات عامة تتسم بالاستقرار والتمويل الجيد ويمكن أن تشكل الأساس لنظام وطني للحماية الاجتماعية.

وتقر الخبرة بالآثار الإضافية الناجمة عن الأزمات المالية العالمية الأخيرة وعن تغير المناخ على وضع الفقراء، وتعيد تأكيد أهمية الاستثمار في الحماية الاجتماعية بغية تجنب توسع رقعة الفقر وتعمق حجم المشكلة في البلد. وتدعو إلى تعزيز آليات المساءلة، ولا سيما من أجل مكافحة الفساد في زامبيا. وتحث الحكومة على كفالة مشاركة منظمات المجتمع المدني والمجتمعات المحلية في وضع السياسات العامة وعلى إزالة العقبات التي تحول دون مشاركتها الفعالة. وإذ تضع الخبرة المستقلة في اعتبارها شح الموارد، فإنها تطلب إلى المجتمع الدولي أن يواصل تقديم الدعم إلى زامبيا، وتعزيز التنسيق بين جميع الممثلين القطريين وضمن استدامة الدعم المقدم لأغراض الحماية الاجتماعية في المدى الطويل والقدرة على التنبؤ به.

## Annex

### Report of independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona

#### Mission to Zambia (20 to 28 August 2009)

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## I. Introduction

1. In this report, the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, documents the findings of her mission to Zambia from 20 to 28 August 2009. During this visit, the expert collected first-hand information that provided an overview of the human rights situation of people living in extreme poverty and allowed for the analysis of key social policies, especially those related to social protection. The expert paid particular attention to cash transfer initiatives, the focus of her most recent annual report (A/HRC/11/9).

2. The expert met with various Government figures, including the Vice-President and Minister of Justice, the Minister of Community Development and Social Services, the Minister of Education, the Minister of Labour and Social Security, the Deputy Minister of Finance and National Planning, the Permanent Secretary of the Gender in Development Division, the Chair of the National Constitutional Conference, the Attorney General, the Permanent Secretary of the Provincial Authority of the Eastern Province, the Director-General of the National HIV/AIDS/STI/TB Council and the Director of the Human Rights Commission.

3. Furthermore, she held meetings with representatives of international organizations, donor agencies and the Special Envoy of the Secretary-General for HIV/AIDS in Africa. She also met with a number of civil society organizations working in Zambia.

4. Meetings with the residents of the community of Kalumbi in Katete, the Mchini and Umodzi compounds in Chipata, as well as the Chazanga and George compounds in Lusaka, brought in additional perspectives on extreme poverty in Zambia. Lastly, the expert met urban refugees living in Lusaka and migrants living in Chirundu.

5. The expert thanks the Government of Zambia for its invitation and for the support provided to her mission. She also extends her thanks to the United Nations country team, in particular, the Office of the Resident Coordinator which assisted with preparations for the visit. Lastly, she expresses her gratitude to all those who met with her.

## II. The legal framework and accountability mechanisms

6. The Constitution of the Republic of Zambia was adopted in 1991 and amended in 1996. Since 2007, the National Constitutional Conference has been charged with examining, debating and adopting proposals to further modify the Constitution. The expert met with the Chair of the Conference and was briefed about the ongoing review process.

7. Civil and political human rights standards are provided for in part III of the Constitution entitled “Protection of the fundamental rights and freedoms of the individual” (hereinafter “the Bill of Rights”). Economic, social and cultural rights are not included in the country’s Bill of Rights. These are only addressed in a list of principles of State policy (art. 112) which are expressly identified as non-justiciable (art. 111). These principles include the provision of conditions under which all citizens may secure adequate means of livelihood (art. 112 (c)); clean and safe water, adequate medical and health facilities and decent shelter for all persons (art. 112 (d)); social benefits and amenities to persons with disabilities, the aged or otherwise disadvantaged persons (art. 112 (f)); and a clean and healthy environment for all (art. 112 (h)). A critical review of the current Zambian Constitution and drafts produced by the National Constitutional Council reveal an evident need to improve the Zambian Bill of Rights by incorporating economic, social and cultural rights on an equal basis with civil and political rights.

8. The expert was informed that one version of the Draft Constitution<sup>1</sup> includes a revised Bill of Rights that incorporates economic, social and cultural rights on an equal basis with civil and political rights. She strongly encourages all relevant stakeholders to push the National Constitutional Council to include economic, social and cultural rights in the Constitution, thereby recognizing the interrelatedness, indivisibility and interdependence of all human rights. Doing so would greatly strengthen the legal framework of Zambia and reinforce the country's compliance with its obligations under the international human rights treaties to which it is a party.

9. While Zambia has ratified several international and regional human rights treaties,<sup>2</sup> their provisions remain to be fully incorporated into domestic law. The expert also considers that incorporation could be addressed by the constitutional reform, which could include a provision in the Constitution allowing for the immediate application of human rights treaties.

10. Beyond recommending the amendment of the Constitution and the subsequent harmonization of national legislation, the expert also stresses the need for Zambia to further consolidate its commitment to human rights by ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention against Torture. She also calls on Zambia to sign and ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

11. In accordance with the Zambian Constitution, an independent Human Rights Commission was established in 1997. The Commission is mandated to investigate complaints of human rights abuses and can assist in the rehabilitation of victims of violations. While the Commission benefits from a fairly broad mandate, the expert is concerned that its capacity and effectiveness is limited by a lack of funds and enforcement powers, as well as hesitancy in addressing abuses that are politically sensitive and follow up on initial recommendations when these have been rejected by the Government.<sup>3</sup> She hopes greater efforts will be made in the near future to address these challenges, many of which were already highlighted in the universal periodic review for Zambia in 2008 (A/HRC/8/43). Other important mechanisms that promote the accountability of State authorities also require support, such as the Commission for Investigations (Ombudsman) and the Police Public Complaints Authority which investigates abuse of power by the police.

12. Zambia has an active civil society that provides strong support to poverty reduction efforts, frequently working in partnership with the Government. During the course of the visit, the country adopted the Non-Governmental Organizations Act to establish a

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<sup>1</sup> Available from [http://www.parliament.gov.zm/index.php?option=com\\_content&task=view&id=56&Itemid=34](http://www.parliament.gov.zm/index.php?option=com_content&task=view&id=56&Itemid=34).

<sup>2</sup> Zambia is a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Zambia is also a party to the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The country also signed the Protocol on the Statute of the African Court of Justice and Human Rights.

<sup>3</sup> See also A/HRC/WG.6/2/ZMB/2, para. 3.

regulatory framework for the activities of civil society entities. The expert expresses concern that this Act imposes excessive restrictions on NGOs and may severely limit their work. Independent NGOs are essential not only for democratic processes but also for accountability purposes and the effective implementation of social policies. The Act may also undermine the constitutional right to freedom of association (art. 11 (b)). In particular, provisions related to the mandatory registration process and the powers of the NGO Registration Board (whose membership is dominated by Government appointees) to approve the area of work carried out by NGOs, including their thematic and geographic areas, are a cause for concern. The expert calls on the Government to further evaluate possible impacts of this Act, and to consider revising it in line with constitutional and international human rights standards.

### III. The situation of people living in extreme poverty

13. Zambia is a country rich in natural resources, and has experienced significant economic growth in the last decade. Despite Government pledges to promote sustainable development, growth is not reaching the most vulnerable and extreme poverty persists in many regions of the country. Poverty in Zambia is estimated at an average of 64 per cent of the population, with the majority of the population — 51 per cent — living in extreme poverty.<sup>4</sup>

14. According to the 2008 Millennium Development Goals (MDG) Progress Report, extreme poverty slowly decreased from 58 per cent in 1991 to 51 per cent in 2006.<sup>5</sup> However, the pace of progress is not sufficient to ensure the fulfilment of goal 1 — halving poverty by 2015 — which would mean reducing it to 29 per cent by 2015. According to the 2009 human poverty index, Zambia ranks 110 among the 135 countries for which the index has been calculated. Stronger support for social policies, in particular social protection, is needed for the State to comply with the Millennium Development Goals and improve human development.

15. During her visits to different communities in urban and rural areas, the expert witnessed the struggle for survival of people living in extremely poor conditions. Various interlocutors described the harshness of their living conditions characterized by limited access to health care, drinking water and sanitation, education, adequate food and housing. She also noted that, while extreme poverty is widespread in most parts of Zambia, there is a clear gap between the standards of living of urban and rural populations. This observation is upheld by statistics that show that 80 per cent of the Zambian population in rural areas is considered to be living in poverty, compared to 30 per cent of the total urban population.<sup>6</sup> Limited access to basic services, such as drinking water and sanitation facilities, and insecurity of land tenure for poor people living in rural areas are central sources of concern.<sup>7</sup>

16. Historical biases favouring public expenditure in urban areas have been presented as a possible explanation for the large rural-urban digression. Further reasons lie in the structure of the Zambian economy. Subsistence agriculture, which by its very nature is based in rural areas, employs the largest proportion of the country's workers. Wages are

<sup>4</sup> Information from the Central Statistical Office, 2007.

<sup>5</sup> United Nations Development Programme, *Zambia Millennium Development Goals: Progress Report 2008* (Lusaka, 2008), pp. 1–2.

<sup>6</sup> International Labour Organization, *Zambia: Social Protection Expenditure and Performance Review and Social Budget* (Geneva, 2008), p. 39.

<sup>7</sup> *Ibid.*, p. 46; also Economic Commission for Africa, document ECA/SA/EGM.Land/2003/2, p. 6.

low in this sector, while urban citizens have slightly better opportunities.<sup>8</sup> Reports signalling higher levels of urban rather than rural unemployment merely reflect the fact that much of the latter population group is engaged in the undocumented, informal sector.

17. In looking at the distinctions between urban and rural areas the following groups are identified as being particularly vulnerable to extreme poverty: women, children, older persons, persons living with HIV/AIDS, migrants, asylum-seekers and refugees.

## A. Women

18. Despite the constitutional provision prohibiting discrimination (art. 23), gender discrimination in Zambia is still pervasive. It limits women's opportunities to access land, education, credit and other productive assets and creates a power imbalance that prevents women and girls from taking full control of their lives. Thus, women are overrepresented among the extremely poor;<sup>9</sup> they are more likely to be unemployed;<sup>10</sup> they are less literate, drop out of school more often<sup>11</sup> and are more likely to live with HIV/AIDS than men.<sup>12</sup> At the same time, they are underrepresented in political and decision-making bodies.

19. Zambia must honour its obligations under the Convention on the Elimination of All Forms of Discrimination against Women by taking immediate actions to eliminate situations that increase women's vulnerability. In particular, it must urgently address widows' insecurity of tenure and vulnerability to gender-based violence.

20. Despite the Intestate Succession Act (1996) prohibiting the eviction of a surviving spouse from a matrimonial home and protecting women's access to inheritance, reports and testimonies<sup>13</sup> indicate that "property grabbing" — the seizure of a widow's property, land and house by the deceased husband's family — is prevalent. This practice of forcing women out of places where they may have lived for years leaves widows destitute and violates several rights, such as the right to property and adequate housing. In line with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, the Government must take all appropriate measures to eradicate this practice. To do so, it must improve the existing law and ensure its implementation in rural areas. It should also provide capacity-building and training to women and public authorities, particularly in rural areas.

21. Widespread violence against women is also one of many realities exacerbating women's difficult position in society. Forty-seven per cent of women over the age of 15 have experienced physical violence and, in almost two thirds of cases, the perpetrator was their partner.<sup>14</sup> The expert welcomed the efforts of the Gender in Development Division to address violence against women and the establishment of victim support units within the Zambia Police Service, but worries that these initiatives may have limited scope. In particular,

<sup>8</sup> Economist Intelligence Unit (EIU), 2008, *Country Profile 2008 – Zambia*, p. 11.

<sup>9</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 56.

<sup>10</sup> Zambia, Central Statistics Office, *Zambia Demographic and Health Survey* (Lusaka, 2007), p. 40.

<sup>11</sup> Ministry of Finance and National Planning, *Zambia Millennium Development Goals Progress Report 2008* (Lusaka, 2008), pp. 5–10.

<sup>12</sup> *Zambia Demographic and Health Survey*, p. 228.

<sup>13</sup> See e.g., "Human Rights and Cultural Practices in the Eastern Province", Eastern Province Woman Development Association (EPWDA), and Human Rights Watch, *Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia* (2007). The Independent Expert met with a group of women in Mchini and Umodzi compounds in Chipata that provided further testimonies of the occurrence of this practice.

<sup>14</sup> *Zambia Demographic and Health Survey*, p. 276.

she is concerned that progress on the gender-based violence bill, which still contains several human rights concerns, has stagnated. Thus, the expert calls for the urgent adoption of a comprehensive act on gender-based violence in line with international human rights standards.

## B. Children

22. Despite Zambia ratifying the Convention on the Rights of the Child in 1991, measures to ensure children's rights remain insufficient. Moreover, almost half of the Zambian population living in extreme poverty are children.<sup>15</sup>

23. Such a high poverty rate amongst children is coupled with an orphan crisis in Zambia. Almost 20 per cent of all children in Zambia are either orphans or have lost one parent.<sup>16</sup> Most children lose their parents to HIV/AIDS.<sup>17</sup> Children without both parents are more likely to experience poverty than non-orphaned children, and orphans experience the highest poverty rates.<sup>18</sup>

24. As a result of poverty, malnutrition is widespread among children: according to the Government, 14.6 per cent of children under 5 years of age were underweight in 2007.<sup>19</sup> Child labour is also common, an estimated 47 per cent of children between 7–14 years old were economically active in 2005,<sup>20</sup> with most of them unable to attend school.

25. The official registration of children is still far from systematic and this creates further challenges as regards their well-being. In Zambia, only 14 per cent of the children under the age of 5 have birth certificates. Undocumented children have less access to public services. Moreover, their right to an identity under the Convention on the Rights of the Child is violated. Undocumented children are also likely to be ignored by statistics that guide public policies.

26. Children must be at the centre of any poverty reduction strategy. During her visit, the expert was informed of the Government plan to scale up and expand social cash transfer schemes through the establishment of a child grant. This element is analysed further below.

## C. Older persons

27. Older persons constitute a particularly vulnerable group in the Zambian population. In the poorest decile of the surveyed Zambian population, 25 per cent of households are headed by persons aged over 60 years of age.<sup>21</sup> At the same time, multigenerational households including elderly persons and children are more likely to be poor than those with just adults.<sup>22</sup> The lack of nationwide social security and assistance and the increasing caregiving burden in families affected by HIV/AIDS are negatively affecting the well-being of older persons. Indeed, following the death of a family member due to HIV/AIDS,

<sup>15</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 56.

<sup>16</sup> *Ibid.*, p. 56.

<sup>17</sup> Irish Aid, *Country Strategy Paper: Zambia 2007–2010* (Dublin, Limerick and Lusaka, Department of Foreign Affairs, 2008), p. 5.

<sup>18</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 56.

<sup>19</sup> *Zambia Millennium Development Goals Progress Report 2008*, p. 3.

<sup>20</sup> Understanding Children's Work, *Understanding children's work in Zambia*, Country Report Series (Rome, 2009), p. i.

<sup>21</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 56.

<sup>22</sup> *Ibid.*, p. 52.



older persons are often left without a source of indirect income and with the added responsibility of caring for orphaned grandchildren.

28. Some social protection initiatives (such as the Katete cash transfer scheme addressed below) have been designed in recognition of the particular vulnerability of older persons and have worked to assist them. This type of non-contributory social pension plays a crucial role ensuring a minimum level of consumption for older persons who are not in a position to continue working, improving access to health services and possibly also improving their social standing in the community. As evidence shows, this type of scheme also benefits younger generations by permitting the purchase of additional food and payment of education for children.<sup>23</sup> Nonetheless, the existing coverage of social pensions in Zambia is still too limited in scope and insufficient to address the needs of older persons and their dependants.

#### **D. Persons living with HIV/AIDS**

29. Even if some progress has been made, HIV is still very prevalent. In 2007, 14.3 per cent of Zambian adults, aged 15–49 years, were infected with HIV. Women are more likely to be HIV-positive than men (16.1 per cent female; 12.3 per cent male),<sup>24</sup> and infection rates are twice as high in urban areas as in rural areas (urban, 20 per cent; rural, 10 per cent). While this may suggest a negative linkage between poverty and HIV/AIDS prevalence, one plausible explanation is the higher survival rate among the rich. Poverty reduces access to information and access to antiretroviral drugs, creating significant economic burdens for those affected. In addition, HIV/AIDS is eroding human capacity. For example, Zambia lost two thirds of its trained teachers to HIV/AIDS.<sup>25</sup>

30. The links between poverty and HIV/AIDS are twofold. On the one hand, HIV/AIDS can aggravate situations of poverty as those infected may be less able to earn the means for an adequate standard of living. Such inability can present itself both in the form of physical capabilities and social discrimination. Living in extreme poverty also often means having less access to information and for those infected, difficult access to treatment. The provision of free treatment in Zambia started with external support in 2004 only and the coverage is not yet fully satisfactory. Additional measures need to be taken to expand access to free treatment.

31. As family units are weakened, and too often subjected to discrimination, traditional social security systems break down. The burden very often falls more heavily on women, who are at the least the caregiver and, increasingly, the head of the household, especially in rural areas where poverty and food insecurity are most evident.

#### **E. Persons with disabilities**

32. Persons with disabilities are disproportionately represented in the poorest income decile.<sup>26</sup> Limited access to social security, higher exposure to unsafe sources of drinking water, less access to health care and higher susceptibility to chronic illnesses are further

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<sup>23</sup> Knox, C., 2009, *A social pension in Zambia – Perceptions of the cash transfer pilot in Katete*, HelpAge International, London, p. 6.

<sup>24</sup> *Zambia Demographic and Health Survey*, p. 228.

<sup>25</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 33.

<sup>26</sup> *Ibid.*, p. 56.

factors of vulnerability.<sup>27</sup> Levels of formal protection by social security coverage are extremely low in Zambia.<sup>28</sup> Disability pensions may be paid only when the disability results from a workplace accident and when employees are covered by the National Pensions Scheme, which automatically excludes the majority.

33. The expert acknowledges the adoption of specific legislation with regard to disability, such as the Persons with Disabilities Act (1996) that prohibits discrimination on the ground of disability and establishes the Zambia Agency for Persons with Disabilities. She welcomes the commitments made in the Fifth National Development Plan and the adoption of a national policy on disability by the Ministry of Community Development and Social Services. However, she is concerned that the legislation is poorly enforced and violations are frequently not identified as such, primarily due to stakeholders' ignorance of the provisions of the Disability Act. In addition, the realization of a national policy on disability would require an implementation plan, which is still to be prepared. The Government should also implement the action plan established for the African Decade of Persons with Disabilities.

34. In accordance with human rights norms, the Government must actively promote a more inclusive society by combating any prejudices or misconceptions against persons with disabilities and by creating an enabling environment for their full participation, equality of opportunities and access to productive work. The Government must progressively take measures to ensure accessibility to public services by persons with disabilities, in particular in rural areas. The Government must also ensure a disability perspective in all public policies and the effective implementation of the existing laws and policies providing for equal employment opportunities.

## **F. Asylum-seekers and refugees**

35. Zambia has shown great hospitality to refugees. It currently hosts some 80,000 refugees primarily from Angola, Burundi, the Democratic Republic of Congo, Rwanda, Somalia and Uganda who reside in four camps and in Lusaka. Nonetheless, owing to the high levels of poverty in the country, refugees have found themselves in a critical situation.

36. The expert met with a group of refugees from various backgrounds living in Lusaka. Reports and their testimonies indicate difficult conditions of living resulting from limited access to work. Because of the impediments to legal work, many resort to informal markets where they are exposed to exploitative working conditions. At the same time, social discrimination makes it difficult for refugees and asylum-seekers to access health facilities and the educational system. All these factors make them tremendously vulnerable to extreme poverty.

37. The expert welcomes the fact that the Government intends to adopt the new Refugee Act to replace the Refugee Control Act (1970). She is concerned that existing legislation is not in line with international human rights standards. From a human rights perspective, it is crucial that any new act not only ensures the right to work and freedom of movement for refugees and asylum-seekers, but also explicitly provides for the principle of non-refoulement and local integration.

<sup>27</sup> Ibid., p. 56.

<sup>28</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, pp. 63–64.

38. The expert notes that, in accordance with international human rights obligations, in particular the Covenant on Economic, Social and Cultural Rights, the Government of Zambia must guarantee refugees and asylum-seekers their rights to seek work, access to health care and education, and freedom of movement. She calls on the Government to comply with international human rights obligations and withdraw its reservations to the Convention relating to the Status of Refugees of 1951 in relation to the right to employment, education, free movement and travel documents of refugees.

39. The Government should also take all necessary steps to ensure and facilitate durable solutions for refugees who decide to stay in the country because they have a well-established connection thereto or owing to other factors prohibiting their return to their country of origin.

## **G. Migrant workers**

40. Zambia experiences internal migration related to work in mining and agriculture, and receives migrants from neighbouring countries. The recent crises in Zimbabwe led to an influx of undocumented migrants to the country. The expert visited the border town of Chirundu, where she met Zimbabweans living in the town street market, without shelter or access to such basic services as access to safe drinking water and sanitation. She was also informed of tensions between migrants and the local community that have partially dissipated with the abatement in the influx of migrants.

41. The expert welcomes the establishment of a partnership with the International Organization for Migration to address the situation of migrants. As part of this partnership, a support centre was built in Chirundu providing water and sanitation and offering counselling services. Despite the improvement in the access to water and sanitation through the centre, it appears that facilities were unavailable during weekends and inadequate infrastructure prevented a regular supply of water.

42. Besides experiencing extreme poverty, migrants reported experiences of violence and exploitation resulting from their irregular status. Some reported being harassed by authorities to pay bribes to avoid deportation. Women also reported sexual violence and abuse. Others reported that, when deported, migrants have been left in the middle of a remote national park, which straddles the border, with no protection from the wildlife there. This greatly threatens their physical safety and integrity.

43. The expert stresses that the Government must increase its support to migrants and take additional measures to ensure better protection from violence and exploitation. In particular, the Government must enhance the capacity of and train immigration and police officers and other Government officials working with migrants, and establish mechanisms to ensure accountability in cases of abuse.

## **IV. Social protection**

44. Poverty reduction policies in Zambia are guided by the country's Fifth National Development Plan 2007–2010. The plan was preceded by the Poverty Reduction Strategy Paper, which ended in 2004, and the Transitional National Development Plan, which ended in 2005.<sup>29</sup> The plan aims to achieve "broad-based wealth and job creation through

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<sup>29</sup> ILO, *Zambia: Decent Work Country Programme* (Lusaka, 2007), p. 12.

citizenry participation and technological advancement”.<sup>30</sup> At the time of the visit, a sixth National Development Plan (2011–2015) was being prepared.

45. The Fifth National Development Plan outlines a number of initiatives to stimulate various economic activities, ensure macroeconomic stability and improve infrastructure. The expert welcomes the fact that the plan includes a section focusing on social protection, acknowledging that investment in economic growth is insufficient to address the pressing needs of a large population living in extreme poverty. Social protection is specifically recognized as a way to achieve, *inter alia*, economic growth, access to social services, income equity and fulfilment of human rights. In this sense, the plan rightly emphasizes the need to enhance investment in social protection to avoid the risks posed by rising inequalities.

46. Although welcoming the planning effort and the emphasis on social protection, the independent expert notes with concern that most initiatives have yet to move from policy formulation to implementation. Moreover, the social sector is worryingly underfunded. Because of scarce resources and limited administrative capabilities, the plan deliberately targets social protection efforts for only the poorest 20 per cent of the population.<sup>31</sup> In 2009, the Government of Zambia allocated 2.5 per cent of its total budget to social protection, namely 374.2 billion kwacha. This is a little over half the amount allocated in 2008, which was K 577.7 billion, representing 4.2 per cent of the total budget.<sup>32</sup> Such a decrease in resources allocated to social protection suggests that political plans are not matched by actual willingness to put the necessary funds in areas essential to poverty reduction. The reduction in the budget may represent a retrogressive measure contravening the obligation of progressively realizing economic, social and cultural rights as established by the Covenant on Economic, Social and Cultural Rights. It is difficult to imagine that an extensive array of much-needed new programmes can be implemented if the respective budget allocation is decreased rather than increased.

47. The expert recalls the importance of translating international human rights obligations on the realization of the rights to social security and an adequate standard of living into practice by substantially increasing public funding to this crucial area. Even if international support is clearly necessary due to the scarcity of resources, a reliable and stable social protection system with nationwide coverage cannot be consolidated without the long-term commitment of public funding.

48. Considering the focus of her mandate, the expert focuses her analysis on social assistance measures providing in kind and cash benefits. Four specific social assistance measures of the broad range implemented in the country are discussed here, while the subsequent section includes a more detailed analysis of the social cash transfers schemes.

## 1. Public Welfare Assistance Scheme

49. The Public Welfare Assistance Scheme is funded from public resources and is reportedly implemented throughout the country, providing assistance in the form of food, shelter, education, health, warm clothing and travel allowances. The scheme expressly targets only 10 per cent of the most destitute of households. However, reduced funding makes it impossible for the programme to adequately respond to the needs of its target

<sup>30</sup> Zambia, Fifth National Development Plan 2006–2010, p. i.

<sup>31</sup> *Ibid.*, p. 210.

<sup>32</sup> Budget Address by Minister of Finance and National Planning, 25 January 2008 (p. 13) and 30 January 2009 (p. 9).

group. The programme is also reported to suffer from weak administrative capacity and poor implementation at local levels.<sup>33</sup>

## **2. Food Security Pack**

50. The Food Security Pack was first implemented during the agricultural season of 2000/2001. It covers the country's 72 agricultural districts and offers small-scale farmers both material and technical assistance. The pack encourages farmers to reduce their reliance on maize in favour of a balanced mix of grains. It has been praised for its explicit aim of tackling the causes of vulnerability and not just the symptoms, and for achieving some, albeit small, increases in food production.

## **3. School Feeding Programme**

51. Zambia has implemented the School Feeding Programme since 2003. Sponsored by the World Food Programme, the programme addresses the nutritional needs of school-aged children with the aim of improving their well-being, increasing enrolment and attendance rates, and enhancing their overall school performance. A significant drawback of the programme has been identified in the selection of families eligible for take-home rations. Some vulnerable families have not been targeted and community relations have also been strained. Furthermore, the programme relies on local volunteers to prepare and distribute the school meals. This is hardly a long-term solution, especially when the additional burden is placed on teachers.<sup>34</sup>

## **4. Food voucher scheme**

52. To address the impact of the crises, in February 2009 the Government and the World Food Programme jointly launched a food voucher scheme. It was initiated in and around Lusaka, and similar initiatives are also under development in Ndola, Livingstone and Mongu. The scheme targets households with malnourished children and is implemented with the local support of existing public health facilities, which register and monitor recipients getting the voucher. A vulnerability assessment was conducted to determine which households qualify for the food vouchers. Recipients must visit the health centre where child health is assessed in order to collect their vouchers, which can be utilized in selected local shops distributing food rations.

53. The expert visited a health clinic implementing the food voucher schemes in George Compound in peri-urban Lusaka and followed the experience of recipients first in the clinic and finally collecting food with vouchers. The efforts made to integrate health and nutritional assistance into this programme are positive, but the sustainability and long-term impact of the programme and the lack of coordination between this scheme and other social protection initiatives implemented in the country remain a concern.

54. While the expert welcomes the implementation of these measures as a crucial tool for reducing the impact of poverty, programme coverage is very limited. There is no doubt that these programmes have a very positive impact at the district level at which they are implemented, but they must be scaled up to reach the majority of the extremely poor population. This will require a significant increase in resource allocation and strengthening of institutional capacity.

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<sup>33</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, p. 106.

<sup>34</sup> *Ibid.*, p. 108.

55. Moreover, the high number of pilots or externally funded initiatives contributes to further fragmentation. Coordination among the various stakeholders implementing and sponsoring all social assistance programmes is essential to ensuring a long-term strategy, clarity regarding the responsibilities of all actors involved and accountability. It is also crucial to ensure long-term involvement of State authorities at all stages of the social programmes. In the case of Zambia, steps to improve coordination were taken during the preparation of a social protection strategy within the Fifth National Development Plan and the creation of the Sector Advisory Group. Yet, the expert notes a need to further improve coordination among all initiatives in place.

56. Lack of coordination is aggravated by limited communication on initiatives in place. Surveys and the independent expert's observations in Chipata, Katete and Lusaka have shown that, despite efforts by the Government, beneficiaries are still frequently unaware of which agency, whether governmental or non-governmental, is administering the programme from which they or their community are benefiting. Human rights obligations require that information on the various social programmes must be physically accessible, culturally appropriate and specifically designed to reach particularly vulnerable or excluded groups. Outreach must also incorporate measures to remove administrative barriers that may have a disproportionate impact on the extremely poor, such as requiring identification documents for registration when such documents are costly or difficult to acquire.

57. The lack of accurate data collection poses another important challenge for the consolidation of social protection initiatives in Zambia. The failure to monitor the outcomes of aid delivery and to keep updated records of social indicators in general means that it is difficult to identify lessons learned.<sup>35</sup> In this sense, the independent expert highlights the need not only to increase coordination between different programmes, but also to harmonize and improve the data collection systems guiding the implementation of these initiatives.

## V. Social cash transfer schemes

58. As part of her analysis on cash transfer initiatives initiated in 2009, the independent expert paid specific attention to the social cash transfers schemes (SCTSs) implemented in Zambia.

59. At the time of the visit, Zambia had five pilot schemes. These pilots had two initial objectives: reducing extreme poverty, hunger and starvation in 10 per cent of the most destitute and incapacitated households (households without regular flow of income or valuable assets and households, either with no member fit for work or whose members cannot take care of dependents) and raising information on the feasibility, costs and benefits of a SCTS.

60. The first pilot SCTS began in 2003 in the Kalomo district of the southern province. The same model was later replicated in Monze with the introduction of conditionalities for health and education. In the Kanungula district, another pilot has focused since 2005 on investigating the practicality and possible impact of cash transfers in a district with a small and low-density population. Another pilot has been in place in the Chipata district since 2006 to test the effectiveness of transfers in urban scenarios and included additional components to increase funding support for households with school-going children. Finally, the pilot in Katete consists of a universal pension scheme pilot programme

<sup>35</sup> *Zambia: Social Protection Expenditure and Performance Review and Social Budget*, pp. 106–107.

targeting all people over 60 years of age. The independent expert met with those responsible for the funding, design and implementation of all pilots and visited the experiences of Katete and Chipata.

61. The Ministry of Community Development and Social Services decided to expand SCTS by extending the coverage within existing districts, rolling out to 10 additional districts and providing a child grant in 5 of these new districts. The pilot in Katete (providing non-contributory pensions to persons in old age) would be now absorbed by the Ministry of Labour, which would also study its replication. The scaling up of these schemes must take into account the country's human rights obligations. In this regard, the independent expert presents her findings on the human rights impact of the existing programmes and her preliminary recommendations on a human rights approach to a child grant scheme.

#### **A. Right to an adequate standard of living and the right to social security**

62. Evaluations of SCTSs indicate that these pilot projects have a positive impact in the enjoyment of the right to an adequate standard of living of the beneficiaries. Some studies also show improvements in the beneficiaries' health, nutritional standards and schooling. Studies further indicate that transfers had a positive impact on the local economy owing to an increase in consumption levels.

63. The expert was told of the positive impact of transfers in her meetings with beneficiaries of both the Katete and Chipata pilots. Even if the amounts transferred are not sufficient to meet the minimum essential needs of the beneficiary households,<sup>36</sup> recipients in both provinces informed the independent expert of the vital importance of transfers in improving their living conditions.

64. SCTSs are important tools that can assist Zambia in fulfilling its human rights obligations. Nonetheless, they should be seen as only one component of a much broader social protection programme identified in the Fifth National Development Plan. As such, they must be integrated within other social protection strategies including the provision of basic services, such as education and health care, most of which are still absent in several parts of the country. Under the Covenant on Economic, Social and Cultural Rights, Zambia is obliged to ensure a minimum essential level of enjoyment of all economic, social and cultural rights, including the right to an adequate standard of living and the right to social security.

#### **B. Limited coverage of pilots and the consolidation of the schemes**

65. The pilot SCTS could form the basis of a national social protection system. However, the existing schemes reach a very small portion of the population in a geographically limited area. It is clear that the pilots generate expectations within and outside the targeted communities and the lack of clarity of the steps to be taken to expand the programme increases doubts and pressure on authorities. Local authorities reported being pressured by members of surrounding communities to be included in the programme. Beneficiaries of both the Chipata and Katete programmes were uncertain about the continuity of the programme. The independent expert considers that these high

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<sup>36</sup> On average, transfers are between K 50,000 and K 60,000 per month (around US\$ 10 per month).

levels of uncertainty may even defeat the purpose of ensuring some level of income security to household recipients.

66. Moreover, if the SCTSs fulfil such an important role in the discharge of State responsibilities vis-à-vis the realization of rights of a limited portion of the Zambian population, the independent expert considers that their expansion and sustainability must be ensured. An adequate legal and institutional framework must regulate these schemes and secure their funding.

67. The independent expert welcomes the Government's intention to scale up these initiatives and calls on it to ensure public funding. However, at the time of the preparation of this report, all initiatives are still essentially funded from external sources, indicating how support at the national level is still weak and unstable.

68. SCTSs may play a central role in the expansion of social protection and the effective alleviation of extreme poverty. However, these programmes must be seen as one component of a broader social protection system and they must be grounded in the notion of a right to social security. These successful pilot experiences in Zambia require much more State ownership to create the necessary roots to keep them active and sustainable over a longer term.

69. The Social Protection Sector Advisory Group and the Ministry of Community Development and Social Services should take a more active coordinating role. Moreover, the Government of Zambia must progressively increase its funding for the programmes and ensure the institutional capacity to implement them.

### **C. Targeting mechanisms and the principle of non-discrimination**

70. From a human rights perspective, reaching the most vulnerable and marginalized is a primary concern. In the case of Zambia, the variety of SCTSs reflects an important attempt to design mechanisms to target the most vulnerable with the scarce resources available. With the exception of the Katete scheme, which offers universal coverage to those above the age of 60, the selection of beneficiaries is done by the community welfare assistance committees.

71. As already highlighted in previous reports, the expert calls on the authorities implementing the programme to continue to ensure that targeting processes on eligibility criteria are fair, effective and transparent, and that they safeguard against discrimination. In the case of community targeting, the independent expert was impressed by the level of preparation and commitment of committee members at local levels, and had meetings with both volunteers and paid staff. However, she noted the need to increase the support provided to volunteers and progressively multiply paid staff at local levels. Volunteers take on excessive burdens in fulfilling their duties and this might affect their capacity to fulfil those duties in a fair and consistent manner, particularly considering that most volunteers also live in poverty. Moreover, the scheme must provide adequate training to committee members to ensure that eligibility criteria are applied fairly and that targeting does not lead to stigmatization or further social exclusion of any individual or group in the community.

72. Considering the widespread poverty in Zambia and the administrative costs and exclusions errors associated with complex targeting methods, the independent expert considers that the age-based criteria used in the Katete scheme are particularly relevant. The universal categorical targeting mechanism is the simplest and most cost-effective mechanism to implement. It is also the most transparent and one that avoids stigmatization. For these reasons, it is clearly in line with human rights norms, in particular the principle of non-discrimination. However, the implementation of the old-age pension



scheme in Katete is not free from technical challenges that must be addressed. For example, beneficiaries of the old-age pension in Katete reported that persons in the community who meet the age requirement are still not receiving assistance. The Government must ensure that those who reach the age of 60 are swiftly registered. The Government must ensure without delay the capacity of the Ministry of Labour, if it is decided that the Ministry will take over these schemes.

73. Existing evaluations of SCTSs detected that focusing only on 10 per cent of the most destitute households still excludes other households facing extreme poverty.<sup>37</sup> The Government must devise a plan to progressively provide coverage to all those in need.

#### **D. Effective and meaningful participation of beneficiaries**

74. The use of local volunteers (i.e., in community welfare assistance committees) is designed to reduce administrative costs and ensure better access to communities. Additionally, the involvement of community committees makes eligibility criteria more accessible to potential beneficiaries and stimulates local participation. However, there are risks of local elites manipulating the programme and excluding socially marginalized groups if the selection is not well monitored. The independent expert not only calls for strengthening the capacity of local staff implementing the programmes, but also for ensuring channels for recipients to participate and present their views about the initiatives.

75. The establishment of participatory channels must take into account local power structures and ensure the inclusion of particularly vulnerable groups. The result of meaningful participatory processes should lead to the elimination of asymmetries of power between those receiving benefits and those distributing them, enhancing the capacities of beneficiaries to resist potential political manipulation.

#### **E. Accountability, complaints mechanisms and access to information**

76. Another relevant step in consolidating the pilot programmes as part of public policies would be to include complaints mechanisms accessible at local level. Presently, the main channel of communication between potential recipients and the programme is through the community welfare assistance committee members; as mentioned above these are regarded as effective, but other channels must exist to offer alternatives for recipients or potential recipients to pose complaints.

77. The lack of accountability mechanisms and information about the schemes may be one of the factors why beneficiaries of the programmes interviewed tended not to understand the programme in term of entitlements/rights. Without a human rights approach, SCTSs are likely to be viewed as instruments of clientelism that can be manipulated by political actors.

78. From a human rights perspective, it is vital to establish mechanisms to monitor the administration of SCTSs and to collect and process complaints. These mechanisms must be established at the local level, easily accessible to all and independent. Complaints mechanisms are essential to review at least three key elements: (1) the qualifications required to receive the benefits; (2) the implementation of the programme (e.g., to report

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<sup>37</sup> Mark Davies, "DFID Social Transfers Evaluation: Summary Report", Working Paper, No. 31 (London and Glasgow, Department for International Development (DFID), 2009), p. 7.

instances of demands of inappropriate work, political support, demands for money, threats and sexual harassment); and (3) the supervision of payment procedures.

79. These mechanisms will not only enhance protection for the beneficiaries but also contribute to improving the efficiency of the scheme. In order to reduce power imbalances, complaints mechanisms should provide guarantees of anonymity and permit both individual and collective complaints. Complaints mechanisms must be sufficiently resourced, accessible (physically and without any hidden cost), culturally appropriate and gender sensitive. This requires that the State and civil society organizations engage in a comprehensive rights education at the district level.

80. The Government must ensure that schemes have built-in mechanisms for the disclosure of information about the programmes' design and functioning. This information should be available free of charge and in accessible format. Information on the results of monitoring and evaluations of the schemes should also be made widely available by the Ministry of Community Development and Social Services.

81. The Government must also provide accessible information on the plan to scale up SCTSs and ensure its dissemination. It should also consult with civil society organizations and with rural communities about the plan. The scaling-up process must be implemented in total transparency.

## **F. Child grants and human rights**

82. While the expert welcomes the plan to establish a child grant in five new districts, she stresses that the scheme must be designed, implemented and monitored in compliance with human rights obligations, in particular the principle of best interest of the child and that of gender equality.

83. In the design of the scheme, children must not merely be seen as a target population but as the subjects of rights, and any evaluation of the scheme must be adequately child-focused. In addition, child protection mechanisms efforts must be incorporated into the scheme. For example, the scheme can be specifically designed to combat child labour, and policymakers can use the interaction with programme beneficiaries to raise awareness about child protection.

84. Special attention should be paid to particularly vulnerable groups of children, such as orphans, street children, children with disabilities and child-headed households, which are detached from adult-headed households. They must not be excluded from the scheme.

83. Given the links between women's empowerment and children's well-being, the incorporation of a strong gender approach and the aim to strengthen women's empowerment through the design of the programme is very important. Child vulnerabilities are profoundly influenced by intra-household dynamics, in particular the balance of power between men and women in relation to decision-making control over resources and time use. Therefore, the person who receives the cash benefit within the household may have a crucial impact on children's well-being.

86. The improvement of net income to a household with children may only have very limited effects if the social services offered to these same children remain inadequate to meet their basic needs. For the scheme to be effective, significant investment in the provision of basic services such as safe drinking water and sanitation, education and health care must be put in place. Therefore, a child grant should be accompanied with investments and budgetary allocation at the district level to ensure access to good-quality services and programmes to support parents and communities in caring for and protecting children — and in particular girls — from violence and neglect.

## VI. The impact of the global financial crisis and climate change

87. Zambia has not been spared from the impacts of the global food and financial crises, with the mining industry being the hardest hit. In early 2009, several copper mines had to be closed due to a downturn in the demand for copper. This naturally brought layoffs with it, which creates a precarious situation for a country already experiencing high unemployment, albeit undocumented, and lacking social protection for workers. During the period of November 2008 to March 2009, over 10,000 mine workers were dismissed as their workplace downsized.<sup>38</sup> Not only are mining workers excluded from membership of the National Pensions Scheme Authority and hence receive no pension payments upon retirement, the Government also fails to fully protect their labour rights.

88. The independent expert welcomes the fact that the Government took some measures to deal with the impacts of the financial crisis and that the early impact on the mining sector was partially reversed in the course of 2009. Yet, the response, which included the adoption of prudent macroeconomic policies, has not been comprehensively implemented nor has it been executed with sufficient urgency.<sup>39</sup> The independent expert also calls on the Government to take significant measures to cover to the maximum extent possible the loss of tax revenues in the mining industry.

89. The effects of the crisis should encourage the Government to enhance social protection measures as part of a comprehensive response to the crisis. Social protection initiatives will prevent people falling further into poverty.

90. The impacts of climate change are also felt in Zambia, including more frequent and intensified extreme weather events, such as floods and droughts, and new epidemic outbreaks. These events have a disproportionate impact on the poorest segment of the population. In 2008, the agricultural sector experienced negative growth owing to heavy rains that resulted in flooding and destroyed crops.<sup>40</sup> In the last two decades, Zambia has also experienced some of its worst droughts.<sup>41</sup> With the gradual erosion of rivers, the fishing industry in Zambia has also suffered and, again, climate change is believed to be the primary cause. The feared consequences of these and similar incidents range from food insecurity and the loss of means for sustainable livelihoods, to the proliferation of diseases, diminished access to water and the degradation of biodiversity.<sup>42</sup>

91. Environmental degradation will not only affect Zambia's economic growth but also significantly and adversely impact the vulnerable groups previously identified. While the independent expert welcomes the adoption in 2009 of the National Adaptation Programme of Action, she calls on the Government to pay particular attention to the impact of climate change on the poorest sectors of society and provide social protection measures that help alleviate the impact in the poorest sectors. She further recalls the obligation of the Government to ensure that the actions taken to adapt to climate change do not result in the violation of other human rights or deepen the conditions of poverty in which many Zambians live. She urges the international community to provide Zambia with the necessary funds to support adaptation measures.

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<sup>38</sup> Manenga Ndulo and others, "Paper 10: Zambia", Global Financial Crisis Discussion Series (London, Overseas Development Institute, 2009), p. 23.

<sup>39</sup> *Ibid.*, p. 23

<sup>40</sup> S. Musokotwane, Budget Address by the Minister of Finance and National Planning, 30 January 2009, p. 3.

<sup>41</sup> Centre for Environmental Economics and Policy in Africa, 2006, *The economic impacts of climate change on agriculture in Zambia*, Policy Note No. 27 (2006), p. 3.

<sup>42</sup> UNDP, 2008, *UNDP Zambia Annual Report 2008*, p. 17.

## VII. The impact of corruption

92. The Government rightly acknowledged that corruption is an impediment to good governance in its National Policy Anti-Corruption Policy.<sup>43</sup> The prevalence of corruption clearly poses a severe challenge to poverty reduction efforts and the enjoyment of human rights in Zambia. When resources are scarce, corruption can seriously undermine the capacity of the Government to fulfil its responsibilities, disproportionately affecting the poor and those who are more dependent on Government assistance.

93. The attempt to hold high-level authorities accountable for recent corruption scandals raised hopes about the commitment of the Government to fight corruption. Efforts made to combat corruption, in particular by the Office of the Auditor-General, at the time of the visit demonstrate some positive steps.

94. However, progress in the fight against corruption is slowed by political obstacles. In particular, the decision of the Government to dismantle the Task Force on Corruption established by the late President Levy Mwanawasa to investigate corruption during the administration of former President Frederick Chiluba is a serious cause of concern. While it might be appropriate to give the task to the Anti-Corruption Commission, the Commission will need adequate financial, human and technical resources to be able to address high-profile corruption cases. The Anti-Corruption Commission seems insufficiently strong to prosecute politically sensitive cases, since its own statute establishes, for example, that the Commission presents recommendations to the “appropriate authority” (the executive power), instead of presenting independent reports to the legislator.<sup>44</sup>

95. The independent expert urges all State institutions to ensure transparency and accountability in the country, and calls for the urgent adoption of an anti-corruption statute (which must include protection of whistleblowers) and an asset declaration act. She also calls for personal security and freedom of expression for anti-corruption advocates.

96. The independent expert endorses the 2008 recommendations of the Zambian Human Rights Commission, which call for the adoption of an access to information act and immediate actions to ensure the independence of the judiciary. The Government must take all measures to ensure that no one is above the law in corruption cases.

## VIII. The need for international assistance and cooperation

97. Taking into consideration the scarcity of national resources, the role of donors is crucial to enabling Zambia to reduce its level of poverty and achieve growth with equity. Unsurprisingly, official development assistance is one of the most important inflows of external resources into the country. The Government budget depends on 60 per cent donor support.<sup>45</sup> Most official development assistance is targeted to health, education and governance sectors. So far, donors seem to be honouring their pledges.<sup>46</sup>

98. While welcoming the substantial efforts of the international community to provide financial and technical assistance to Zambia, in line with their international human rights obligations, in particular articles 2, paragraph 1, and 11 of the Covenant on Economic,

<sup>43</sup> Zambia, National Anti-Corruption Policy (Lusaka, 2009), p. i.

<sup>44</sup> Para. 10 (1) of the Anti-Corruption Commission Act, No. 42 of 1996.

<sup>45</sup> Paper No. 10 – Zambia, p. 17.

<sup>46</sup> *Ibid.*, p. 18.

Social and Cultural Rights and article 4 of the Convention on the Rights of the Child, the independent expert calls on the international community to ensure predictability and consistency and to implement and guarantee a long-term strategy.

99. As mentioned above, most social protection initiatives heavily rely on international assistance, thus bilateral donors play a crucial role in the consolidation of the social protection system in the country. Efforts have been made both at national and community level to improve coordination and ensure the predictability and stability of the aid flows. However, it appears that there is as much room for coordination within the Government to be improved, as there is for the international community.

100. Despite the creation of a working group in the area of social protection involving various donors, knowledge of current and previous initiatives was patchy among those who met the independent expert. For example, a donor agency that until recently was the major funder of one of the cash transfer pilots schemes demonstrated limited knowledge about the current status of programmes and the lessons learned by its implementation.

101. The apparent proliferation of pilot experiences supported by various external partners reveals a short-sighted perspective in some of the support offered to the country. This fragmented approach may hamper the establishment of a sustainable social protection system which requires long-term support and a coherent strategy with a broader coverage.

102. When providing assistance for social protection schemes, donors must ensure that their initiatives are well-coordinated, foster a more comprehensive coverage, reduce duplication, lower administrative costs and promote genuine dialogue with the beneficiaries. She also underscores that international aid must build political support and country ownership. In particular, donors should strengthen support to the Ministry of Community Development and Social Services for the implementation of a human rights-based social protection strategy in the country. She also calls on donors to continue to support non-governmental organizations promoting social protection and accountability.

## **IX. Concluding observations and final recommendations**

**103. Zambia has voluntarily assumed several commitments to eliminate poverty by, inter alia, recognizing international human rights treaties and continuing with its commendable domestic planning initiatives. Yet, the application of these commitments is, at present, insufficient to meet the challenges faced by the country. The economic progress of recent years has not translated into an improvement of the living conditions of those living in extreme poverty. Although resources are scarce, commitments must be urgently translated into action. The millions of Zambians living in deplorable conditions, with very limited enjoyment of their rights, must be placed at the centre of State policies.**

**104. Today the country has a variety of opportunities for consolidating important improvements that would pave the way for more inclusive development in the future. In particular, the ongoing constitutional review process, the preparation of the Sixth National Development Plan and the current expansion and scaling-up process of the social cash transfers schemes offer crucial opportunities to place the elimination of extreme poverty and the enhancement of human rights enjoyment of the poorest populations at the top of the political agenda. Zambia must ensure that the poorest are no longer left behind and are protected against new challenges such as the global economic crisis and the impact of climate change.**

**105. In this regard, the independent expert would like to highlight the following recommendations made in the report.**

**1. To improve the national legal framework**

106. The Government must use the opportunity of the Constitution review process to improve the **Zambian Bill of Rights** by placing economic, social and cultural rights on an equal basis with civil and political rights. The Constitution should also ensure that international human rights treaties are automatically incorporated into domestic law.

107. The Government must strengthen its commitment to the protection of human rights through the ratification and immediate implementation of major human rights treaties, in particular the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, and the **Optional Protocol to the Convention on the Rights of Persons with Disabilities**, the **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women** and the **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**. It should also withdraw the reservations to the **Convention of 1951 relating to the Status of Refugees**.

**2. To consolidate the social protection system**

108. **Social protection programmes** must cover the entire country and be given stronger political support. Commitments to poverty reduction must be translated into adequate budgetary allocations. The Government must avoid any retrogression with regard to levels of the realization of economic, social and cultural rights, in particular the right to social security and an adequate standard of living. While recognizing the scarcity of resources and the importance of international cooperation, public spending on the provision of social services and social protection must be maintained and enhanced. The implementation of the **Sixth National Development Plan** must be accompanied by an increase in public spending and Government ownership.

109. The Government must strengthen the capacity of the **Ministry of Community Development and Social Services** as the leading agency in the establishment of a solid social protection system. The Ministry must increase coordination amongst existing initiatives, ensuring national coverage and access by all without discrimination of any kind.

110. The positive experience with social cash transfers schemes must be recognized and strongly supported by the authorities. These initiatives play an important role in assisting the Government to comply with human rights obligations imposed by the right to an adequate standard of living and the right to social security.

**3. To combat discriminatory practices**

111. The Government must take all appropriate measures to modify social and cultural patterns that reinforce discriminatory practices against groups that are particularly vulnerable to poverty such as women, children, older persons, persons with disabilities, persons living with HIV/AIDS, migrants, asylum-seekers and refugees.

**4. To fight against corruption and enhance accountability**

112. The Government must ensure the full investigation of corruption cases, and that those responsible are held accountable for their actions. The Government must increase its support to the anti-corruption mechanisms by ensuring their total

independence and must strengthen the Anti-Corruption Commission by amending its statute so it reports to the Parliament. It must also adopt legal instruments protecting whistleblowers, as well as an asset declaration act for authorities. Measures must also be taken to ensure the harmonization of existing anti-corruption legal instruments with the recently adopted National Anti-Corruption Policy. The Government must also ensure freedom of expression, personal security of anti-corruption advocates and a free and independent media, in order to maintain an enabling environment for civil society involvement in anti-corruption efforts.

113. The Government must strengthen the National Human Rights Commission by providing it with the necessary financial resources to perform its duties. It must also ensure its independence and comply with its recommendations.

**5. To ensure participation**

114. The Government must continue to work in close partnership with civil society organizations and ensure public participation in the design, implementation and evaluation of public policies. In this sense, it should consider revising the recently adopted Non-Governmental Organizations Act to avoid excessive restrictions to the work of civil society entities and to allow civil society organizations the necessary space to play their important role of ensuring public accountability.

**6. To strengthen international cooperation**

115. The international community must uphold and enhance its commitments to assist Zambia, in particular taking into consideration the recent food, energy and financial crises. Donors must ensure predictability, strengthen coordination and promote long-term sustainability of initiatives in the area of social protection.

116. Zambia needs to safeguard its gains from debt relief by ensuring that it takes its human rights obligations into account when contracting new loans.

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