Obligatory Essay

On

Socio-economic Rights in Zambia: Perspectives and Prospects.

by

Kwibisa Lydia Mulele
Computer No: 98329316

Submitted to the University of Zambia in partial fulfilment of the
requirement of the Bachelor of Laws (LLB) Degree Programme.

School of Law,
University of Zambia,
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SCHOOL OF LAW

I recommend that the Obligatory essay prepared under my supervision by

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Entitled: *Socio-economic Rights in Zambia: Perspectives and Prospects*

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing Obligatory essays.

Prof/ Dr/ Mr/ Ms .................................
(Supervisor)

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Date
DEDICATION

To my children, Lushomo and Sepo, who, despite their tender age, understood that mummy was busy with schoolwork, and to my niece Muke – let this be an inspiration to them for greater academic achievement.

To my husband, ‘B’, for the unfaltering support and encouragement.

To my friends Jane, Arida and Dorica, for lightening the burden of schoolwork and making my stay at the University enjoyable.
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FOREWORD

Although the Universal Declaration of Human Rights (UDHR) proclaims the rights found in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR) with equal emphasis, the two sets of rights have not been accorded equal status. Civil and Political rights have become more predominant than Socio-economic rights. While the former enjoy high esteem and legal backing, the latter are often neglected and most of the time just left in the preambles of many a constitution as Directive Principles of State Policy that only serve as a guide in the development and implementation of polices of the state and have no enforcement power.

In Zambia, socio-economic rights are provided for in Part IX of the Constitution. They include the right to health, right to work, right to adequate housing and right to education. It is generally accepted that these rights require a lot of resources, which resources are usually not available. Due to this perceived resource constraint, these rights are therefore, not justiciable. Accordingly, article 111 of the Constitution provides for the non-justiciability of these rights. In addition, desirable though they are, socio-economic rights are not perceived to be as important as civil and political rights because they belong to the second generation group of rights.
Such perspectives on socio-economic rights have caused this sector to be ignored as all attention is directed at civil and political rights. The result has been untold misery for the people; homelessness, illiteracy, ill health and poverty. In view of this, should civil and political rights continue to take precedence over socio-economic rights? Is it enough to simply guarantee rights and freedoms without putting corresponding socio-economic measures in place? Should the Constitution be amended to include socio-economic rights as part of the Bill of Rights? Will justiciability of socio-economic rights affect the legitimacy of the Constitution? How should the issue of resources be handled?

This work addresses these and other related issues to try and justify why it is extremely important that a change of perspective be adopted if people are to live in dignity.
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Acronyms

CAT  Convention Against Torture and Inhuman and Degrading Treatment
CEDAW  Convention on the Elimination of Discrimination Against Women
CERD  Convention on the Elimination of Racial Discrimination
CRC  Convention on the Rights of the Child
FODEP  Foundation for Democratic Process
ICCPR  International Convention on Civil and Political Rights
ICESCR  International Convention on Economic, Social and Cultural Rights
JCTR  Jesuit Centre for Theological Reflection
NGO  Non Governmental Organisation
PHI  Presidential Housing Initiative
SAP  Structural Adjustment Programme
UDHR  Universal Declaration of Human Rights
UNZA  University of Zambia
UTH  University Teaching Hospital
ZANACO  Zambia National Commercial Bank
ZCCM  Zambia Consolidated Copper Mines
ZAMTEL  Zambia Telecommunications Corporation
ZESCO  Zambia Electricity Supply Corporation
Statutes


The Public Order Act, Cap 104 of the Laws of Zambia.

The Education Act, Cap 134 of the Laws of Zambia.

The Land Acquisition Act, Cap 198 of the Laws of Zambia.

The Food Reserve Agency Act, Cap 225 of the Laws of Zambia.

The Employment Act, Cap 268 of the Laws of Zambia.

The Public Health Act, Cap 295 of the Laws of Zambia.

The National Housing Authority Act, Cap 426 of the Laws of Zambia.

The Housing (Statutory and Improvement Areas) Act, Cap 441 of the Laws of Zambia
Cases


CHAPTER ONE

1.0. BACKGROUND

Although the Universal Declaration of Human Rights (UDHR)\(^1\) proclaims the rights found in both the International Covenant on Civil and Political Rights (ICCPR)\(^2\) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^3\) with equal emphasis, the two sets of rights have not been accorded equal status. Civil and Political rights have become more predominant than Socio-economic rights. While the former enjoy high esteem and legal backing, the latter are often neglected and most of the time just left in the preambles of many a Constitution\(^4\). Usually they are just Directive Principles of State Policy that serve as a guide in the development and implementation of policies of the state and have no enforcement power. This is due to the fact that desirable though they are, socio-economic rights are usually not perceived to be as essential as Civil and Political rights.\(^5\) But was this the idea envisaged by the United Nations when it adopted the two covenants on 16\(^{th}\) December 1966? Definitely not!

This chapter gives some background information on the adoption of the two covenants of 1966. It begins by explaining the factors that led to the situation where two covenants were adopted instead of one covenant as envisaged by the United Nations. Against this

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\(^1\) Adopted and proclaimed by G.A. Res. 217 A (iii) of 10\(^{th}\) December 1948.
\(^2\) Adopted 16\(^{th}\) December 1966, entered into force 23\(^{rd}\) March 1976.
\(^3\) Adopted 16\(^{th}\) December 1966, entered into force 3\(^{rd}\) January 1976.
\(^4\) Examples include Zambia and India.
background, it discusses the nature of the subject matter of the research and statement of
the problem. Finally, it indicates what each later chapter deals with.

1.1. REASONS FOR ADOPTING TWO COVENANTS INSTEAD OF ONE

The UDHR was not a legally binding document because it was adopted as a resolution of
the General Assembly. Therefore, in order to give legal effect to the rights declared in the
UDHR, the United Nations decided to come up with a treaty that would elaborate the
provisions of the UDHR and create legal obligations for the states that ratified or acceded
to it.

Initially, the intention was to draft only a single covenant largely based on civil rights and
freedoms. However, there were calls especially from the socialist bloc to have economic,
social, and cultural rights included as well. This stimulated the hotly debated issue of
whether to have a single covenant or two separate ones. Separate covenants, it was
argued by one group, would bring about a division between the two sets of rights,
whereas a single covenant would emphasize the interdependent and indivisible nature of
all the rights. The other group felt that the fundamental nature of the two sets of rights
was totally different and so were the obligations of the states, this therefore, called for
two separate documents.⁶

The impact of the cold war greatly exacerbated the disagreement. Ideological differences
and antithetical political backgrounds between the liberal western states and the socialist

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countries heavily influenced the decisions of the drafting committee in coming up with two separate covenants. Their entirely different conceptions of such fundamental human rights principles as ‘freedom’ and ‘democracy’ presented some of the most serious disagreements. “A telling example is the Western slogan that human rights begin at the Police Station and the Eastern bloc slogan that human rights begin after breakfast.”⁷ This clearly shows how each group perceives human rights and their subsequent reactions to human rights issues. Western states, on the one hand, emphasized the importance of civil and political rights as the only genuine rights. On the other hand, the Socialist countries strongly objected to this and stressed the primacy of socio-economic rights instead.

Finally, in 1952, it was decided by the General Assembly that the two covenants, which would together constitute an integral whole, would be drawn up. This step was taken in order to emphasise the unity of purpose of the two covenants.⁸ Furthermore, the covenants were to contain certain provisions in common.⁹ “They were to be submitted to the General Assembly simultaneously so that they could be adopted together and opened for signature at the same time.”¹⁰ Therefore, on 16th December 1966, the two covenants were adopted by the General Assembly of the United Nations.

In the light of the foregoing explanation, it is clear that the adoption of two separate covenants was as a result philosophical differences between the Western and Socialist blocs. It did not in any way suggest differences in status for the rights contained in each

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⁷ Anyangwe, C., supra note 6 at 94.
⁸ Ibid, at 97.
⁹ For example common paragraph 3 of the Preambles of the ICCPR and ICESCR.
¹⁰ Anyangwe, supra note 6 at 97.
covenant. It neither suggested any ranking order for the rights nor did it classify one set of rights as superior to the other. On the contrary, as Mary Robinson, then UN High Commissioner for Human Rights observed, the UDHR "proclaims the fundamental freedoms .... just as firmly and with equal emphasis as it does the economic, social and cultural rights."11 This is because the two sets of rights are linked and cannot be divorced one from the other. The full realization of one set of rights is impossible without the enjoyment of the other. Therefore, one needs both sets of rights in order to lead a happy and dignified life.

1.2. NATURE OF SUBJECT MATTER OF THE RESEARCH

In view of the preceding observations, it is, therefore, sad to note that over the years, civil and political rights have been accorded higher status than economic and social rights in many countries including Zambia. This protection of only one set of rights has had negative effects on the dignity and worth of persons. The dignity of all human beings is proclaimed in article 25 of the UDHR and article 12 of the ICESCR. The UDHR proclaims everyone’s right to a standard of living adequate for his health and well-being. Among the things needed here are food, clothing, housing and medical care. However, this has just remained an empty declaratory statement given the immense suffering of people especially in developing countries like Zambia.

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Infant mortality rate is high and preventable diseases continue to take the lives of tens of thousands of children. For instance, in Zambia, there are about 110 childhood deaths per 1,000 deliveries and most of these deaths are caused by preventable infectious diseases such as diarrhoea, acute respiratory illness, malaria, and malnutrition. In addition, many adults remain illiterate, while the number of children of school going age not in school continues to grow and the dilapidated school infrastructure gets worse. Poverty manifests itself in the 'barely dressed' masses living in poorly constructed shacks where sanitation is poor and hunger reigns supreme. About 73% of the Zambian population is poor.

The major factor responsible for this is the fact that socio-economic rights are not justiciable in Zambia as provided for under Article 111 of the Constitution as amended in 1996. Besides, despite the fact that Zambia has ratified or acceded to many international human rights instruments that recognise social economic rights, it has not made these rights part of its domestic law and so has succeeded in keeping the obligation to strictly provide these services at bay. Zambia follows a dualist system in terms of incorporating International human rights law into domestic law. The effect of this is that despite ratifying or acceding to these international instruments, there is a requirement to first make these international instruments part of the domestic law by enacting domestic legislation before they can be enforced. The suffering that has resulted because of this

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13 According to the Zambia DHS EdData Survey 2002, P. 47 - 19% males and 38% females are illiterate.
kind of arrangement clearly flies in the teeth of the cherished ideals of human rights and fundamental freedoms.

This work, therefore, seeks to thoroughly examine the enjoyment of socio-economic rights in Zambia or lack thereof and to see the perception that people have and what prospects there are for the future.

1.3. LAYOUT OF CHAPTERS

In line with this, chapter two will bring out the link between the two sets of rights to show their interdependent and indivisible nature. The third chapter will bring to the fore the consequences of protecting only one set of rights to the exclusion of the other. Chapter four will examine the question of lack of resources and the nature of states' parties obligations. Chapter five will focus on the protection of socio-economic rights in the 1996 South African Constitution and subsequent Constitutional Court cases in order to determine the viability of the whole exercise. The question of justiciability of socio-economic rights will also be discussed here. The last chapter, chapter 6, will give a summary, conclusion, and recommendations.
CHAPTER TWO

2.0. THE INTERDEPENDENT AND INDIVISIBLE NATURE OF THE TWO SETS OF RIGHTS

"We don’t want bread without freedom. We don’t want freedom without bread. We want bread and freedom!"

— Albie Sachs

2.1. INTRODUCTION

There are different perceptions on the enjoyment of human rights. The early African Political leaders, for instance, believed in what was called ‘African Socialism,’ whose view was that development was more important than human rights (civil and political rights). What this implied was that the enjoyment of civil and political rights should be suspended till there was economic development. Contemporary practice reveals a tendency of putting socio-economic rights in preambles of Constitutions. This is in an obvious effort to avoid the enforceability of these rights. Both ‘African Socialism’ and current practice have some inclination towards one set of rights and not the other, implying that that particular set of rights is more important than the other.

However, Kofi Annan, the UN Secretary General,\(^2\) observes that, “one cannot pick and choose among human rights, ignoring some while insisting on others.” The following analysis, therefore, which embraces a holistic concept of human rights, brings out the link between the two sets of rights by comparing two corresponding rights from each set. This is in order to justify why rights from both sets should be enjoyed at the same time for them to be meaningful.

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The interdependent and indivisible nature of human rights could not have been better expressed than by one of the favourite battle cries of South African human rights activist Albie Sachs during the Liberation Struggle “... we don’t want bread without freedom, we don’t want freedom without bread, we want bread and freedom!”\(^3\) Indeed, one cannot be asked to choose between ‘food’ and ‘freedom’ as one needs both in order to lead a dignified life. This is so because basic human needs by their very nature, require that all human rights be recognized in toto and the implementation thereof should not be as a matter of arbitrary choice.

All human rights form a mutually dependent whole and, therefore, have meaning only when taken together. For instance, it is of little use to have freedom of movement, freedom of speech, freedom of assembly and freedom of this, that and the other, if one does not have food, clothing, shelter and is of ill-health\(^4\). In such a case, all this so-called ‘freedom’ equals to nothing as one cannot possibly eat or wear ‘freedom’ and freedom per se cannot provide decent housing, education, or medical care. On the other hand, what would it profit a person if they had plenty to eat and wear and lived in a mansion but had no freedom? No freedom to express their views, or to assemble or move as they wished? Having food without freedom would result in ‘having well-fed slaves’\(^5\) and not free human beings.

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\(^3\) Supra note 1 at 1.


2.2. THE LINK BETWEEN FREEDOM OF EXPRESSION AND RIGHT TO EDUCATION

"Freedom of speech and expression," as Julius Ihonubere rightly points out, "means nothing to a largely illiterate and ignorant society ..."\(^6\) The sure way to cure illiteracy and ignorance is by education. This then calls for good education policies and physical infrastructure to ensure that as many people as possible get some formal education. The Zambian policy on education is theoretically impressive but practically the situation leaves much to be desired. It acknowledges every person's right to education, and has beautiful commitments regarding the quality of education, accessibility and achievement of goals.\(^7\) These well-articulated policies mean completely nothing given the numerous problems that the education sector is facing. Inadequate and heavily dilapidated school buildings, understaffing,\(^8\) inadequate budgetary allocation,\(^9\) over enrolment in the few schools available, poor conditions of service for teachers resulting in constant strikes and illegal stay aways and many other factors have all contributed to the falling standards of education in Zambia.

The result is high illiteracy levels and corresponding low literacy and numeracy levels especially among children. An educational survey conducted by the Central Statistical Office in 2002 found that 88.8% of children aged 7 and 8 could not read at all. For the age group 9 to 10, 73.9% could also not read.\(^10\) The report further reveals that literacy levels are lower in rural (92.4%) as compared to the urban areas (63.5%).\(^11\) As regards numeracy levels, 59.6% of the 7 to 8 age group and 35.4% of the 9 to 10 age group did not have the basic numeracy

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\(^7\) See National Policy on Education: 'Educating Our Future,' May 1996. Pp (ix) and 2-5

\(^8\) See Pupil/Teacher Ratio - Appendix 1.

\(^9\) For instance, in 2000, the Education Sector was allocated 382,825,762,927 and in 2003, it got 841,494,060,927 (Source: Estimates of Revenue and Expenditure 2000 and 2003).

\(^10\) See Zambia DHS EdData Survey 2002; Education Data for Decision Making. P. 47.

\(^11\) Ibid.
skills and failed to add up numbers.¹² Children in urban areas are twice as likely to have basic numeracy skills (77%) as children in rural areas (38%).¹³ Illiteracy among men aged 15-59 and women of the same age group is 19% and 40% respectively. High illiteracy levels can have a negative impact on people’s lives. People who are educated are enlightened and will have a better perception of issues; as a result, they are able to enjoy their rights. A case in point is where Post editor Fred Mmembe and two other journalists were sent to prison by Parliament. It is evident in this case that the plaintiffs were able to successfully challenge the decision of Parliament to have them imprisoned because they had knowledge and therefore power. Ultimately, they were able to claim their freedom of expression guaranteed in article 20 of the Constitution. Had a similar thing happened to some illiterate persons, their freedom of expression would have been denied. The case of *Christine Mulundika & 7 others V The People*¹⁴ involving unlawful assembly, is another illustration of the power of knowledge and its liberating effects. Section 5 of the Public Order Act¹⁵ was successfully challenged as being unconstitutional because the people were enlightened.

It is true that not everyone can be educated to the level of understanding issues as in the examples given, but at least even the very basic education would make a difference. Therefore, access to education is very vital. The realization of free and compulsory primary education must be top of the education agenda. This can only be achieved if more attention is paid to the state of the schools, conditions of service for teachers and other related issues.

The fact that education, as seen in the cases cited, enables people to fully enjoy their rights and freedoms, clearly brings out the interrelated nature of the rights. The right to education

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¹² Ibid at 51.
¹³ Ibid.
¹⁵ Cap 104 of the Laws of Zambia.
(article 13 of the International Covenant on Civil and Political Rights) is here seen to have a great bearing on freedom of expression and assembly (articles 10 and 21 of the Constitution of Zambia). Similarly, even if people are educated and can express their views but have no freedom to do so, the education is meaningless in this context because it cannot be used to achieve the desired result. Examples of this kind of scenario abound in many dictatorial regimes. One such is the case of the Nigerian Human Rights Activist Ken Saro-wiwa whose death was as a result of trying to put across his views on human rights abuses.

2.3. LINK BETWEEN RIGHT TO LIFE AND RIGHT TO HEALTH

In the Zambian Constitution, the right to life is protected under article 12 of the Bill of Rights thus:

“A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.”

The narrow approach taken with regard to the meaning of the right to life greatly weakens this provision. The right to life under the Bill of Rights simply means that a person should not be killed by the state without the due process of the law. This, notwithstanding, there are many ways in which a person may unintentionally be killed by the action of the state or lack thereof. This becomes evident when one considers the extended meaning of the right to life.

The Human Rights Committee of the ICCPR observes that:

“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures .... and that it would be desirable for states to adopt all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

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16 Cap 1 of the Laws of Zambia, Article 12.
Access to medical care and food, to ensure minimum health and nutritional standards, is of paramount importance in this regard. The enjoyment of the right to life, therefore, presupposes serious investment in health and sanitation in terms of money, human resources, and related issues. Unfortunately, this is lacking in the Zambian Health Sector. Many Clinics and Rural Health Centres are in a state of disrepair. Besides, they are understaffed. A case in point is the Lusaka District Health Management Board staffing levels. Out of the required 90 Registered Midwives, the district only has 67, in the Medical Officers category, there are 17 out of the required 31, and there is only 1 Technician out of the required 9 Technicians. Of the required 1,777 health workers, Lusaka District only has 1,444, giving a shortage of 333 workers.\textsuperscript{18} Usually, clinics are also understocked with drugs. For instance, in the year 2000, the availability of essential drugs such as chloroquine and septrin in health centres countrywide was 56\% for the whole year. This means 44\% of the year was without drugs.\textsuperscript{19} Shortage of drugs, especially in the mid 90’s, made hospitals and clinics notorious for prescriptions. A situation where patients had to buy their own drugs became the order of the day despite their paying high user fees. The goal of the Health Reforms which is “to provide a health care system that guarantees equity of access to cost effective quality health care as close to the family as possible”\textsuperscript{20} was as empty a statement as the hospitals from which patients retuned empty-handed due to shortage of drugs.

The shortage of drugs which initially only affected non-critical health provision soon extended to essential drugs and then to medical and surgical supplies. Eventually the situation worsened to a point where even emergency health services had to be suspended in some instances. “The Anaesthesia Section of UTH had serious problems of oxygen,

\textsuperscript{\ref{18}} See Staffing levels for Lusaka District Health Centres as at 01/10/2001 - Appendix 2.
\textsuperscript{\ref{19}} See The National Health Information System Drug Analysis - Appendix 3.
\textsuperscript{\ref{20}} National Health Policies and Strategies (Health Reforms 1991) p. 7.
neostigmine, marcaine and other anaesthetic materials and had to suspend operations from 11th November – to early December, 1999.\textsuperscript{21} This dismal situation and poor conditions of service eventually led to a Doctors’ strike in early December 1999. Many of them were later dismissed and this compounded the problem of understaffing.

This story tells of how neglected the health sector is in Zambia. Ultimately, the patients suffer the consequences of government’s poor implementation of policies. Tens of thousands of Zambian citizens lost their lives in this way despite their right to life being protected in the Constitution. The lesson that this scenario teaches us is that simply guaranteeing the right to life without putting in place corresponding measures to enhance the enjoyment of the right is useless. Once again, the interdependent nature of the two sets of rights is clearly seen here. The right to life can only have meaning if people have equitable access to adequate medical care and sanitation, besides the protection from arbitrary killing by the state. If the right to health continues to be neglected as it has been in the past, people will continue to die due to lack of drugs and from epidemic and endemic diseases like cholera and Malaria respectively just as they would die under the execution of a court sentence.

2.4. LINK BETWEEN RIGHT TO HOUSING AND PROTECTION FROM TORTURE, INHUMAN AND DEGRADING PUNISHMENT OR LIKE TREATMENT

Article 15 of the Constitution guarantees protection from torture, inhuman and degrading punishment or like treatment. The Constitution does not however, give instances in which this may happen. Nonetheless, since Zambia is a party to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)\textsuperscript{22}, the meaning of this

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article can be got from there. Article 1 of the CAT defines torture and the definition includes all forms of severe pain and suffering, whether physical or mental. An act of torture under the convention must include the following elements:

- Intentionally inflicted severe pain or suffering.
- For a specified purpose – for instance to obtain information.
- Inflicted by or at the instigation of the authorities or with their consent or acquiescence.

It is clear that the Convention gives a restrictive meaning to the word ‘torture’. The definition excludes pain and suffering arising from different circumstances as not being torture within the meaning of the Convention. Such pain or suffering may therefore be categorized as ‘other forms of cruel, inhuman and degrading treatment.’ There are many cases in Zambia that fall in this category. Although causing severe pain and suffering may not qualify so much as to be classified as ‘cruel or inhuman treatment’ they definitely do qualify, and rightly so, to be classified as degrading treatment. This degrading treatment is multi-faceted. It may manifest itself in lack of accommodation, poor working conditions, lack of food, lack of social security, and many other inadequacies. The Zambian experience, for instance, has shown how much pain and suffering has been caused by lack of social security.  

With regard to the Housing problem, the crisis at the University Teaching Hospital (UTH) is but one of the many experiences that has really degraded people in general and professionals in particular. More than 30 doctors live in the Intern’s Block consisting of 30 tiny single rooms with 4 common toilets and bathroom. Some of these doctors have wives and children.  

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23 Pensioners wait for years on end before they can get their benefits, in the process, some have been turned into beggars.

24 See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1999, Ch. 1, p. 21.
these are faced with evictions every so often due to failure by their employer to pay rentals.

The results of this are summarized very well by one of the doctors:

"The truth of the matter is that we have witnessed the erosion of our dignity. Instead of attending to patients, long hours are spent by doctors running up and down to secure funds from the Ministry of Health Headquarters once evicted. The patient care has therefore, in no doubt been adversely affected."25

The Police Service has also had its fair share of the housing problem. In May 2003, Government announced its intention to stop the recruitment of police officers at Lilayi Police Training School due to lack of houses for the officers upon graduation. This is a pointer of how desperate the situation is. Many police officers are accommodated in Shanty Compounds where rentals are low. This arrangement has its own problems, one of which is the high risk to which these officers are put because shanty compounds have high crime rates. The paradox is that the officers are expected to curb crime in these same areas and they have received many hostilities from members of their communities.

The general public, too, has not been spared in the housing problem. An estimated 70% of the Zambian Urban population live in unplanned settlements.26 Being unplanned settlements, these areas are subject to demolitions any time, as has countless times happened. The demolition of Ng’ombe and Kalikiliki compounds in January, 2003 are but a few examples. Both the event of demolition and the aftermath are very dehumanizing. People are forced out of the already poor shacks to worse off makeshift structures. Consequently, they are exposed to the elements of weather like rain, wind and the sun. They have to look up to well wishers for food handouts and other help. This compounds their problem even further. The effects of homelessness are so degrading indeed.

25 Ibid.
26 See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1998, Ch. 5, p. 82.
In view of these revelations, the guarantee of the protection from degrading treatment has very little meaning given the immense pain, suffering and degrading circumstances caused by homelessness and its associated problems. The enjoyment of these rights as pointed out earlier presupposes the existence of certain basic things. The housing polices must be implemented rationally to ensure adequate housing for all, so that people are not subjected to degrading treatment caused by inadequate housing.

2.5. LINK BETWEEN RIGHT TO PERSONAL LIBERTY AND RIGHT TO FOOD

The protection of the right to personal liberty is provided for in article 13 of the Constitution of Zambia. However, it is arguable that there are many social circumstances, which may deprive a person of his personal liberty other than those enumerated. These include, inter alia, lack of food, having no money for school fees and health provision.

The vanity of such protection of freedoms was very well expressed by the late Julius Nyerere,

“... what freedom has a subsistence farmer? He scratches a bare living from the soil, his children work at his side without schooling, medical care or even good feeding. Certainly he has the freedom ... but this is meaningless.”

Indeed, the empty nature of this kind of freedom has been experienced in Zambia in many ways such as homelessness, ill health, poverty and hunger. Food shortages have been experienced several times. The causes of food insecurity are many and varied. They include inflation, which causes high food prices, low incomes compared to the high cost of living, poor crop yields, poor economic policies like Structural Adjustment Programme (SAP),

28 See JCTR Basic Needs Basket – Appendix 4
liberalization and privatization, leading to unemployment. The combined effect of all these is poverty, and the results of poverty are high infant mortality rates and high incidence of malnutrition in both children and adults as many people resort to having one meal per day because they cannot afford the usual three meals. Under such poverty conditions, life becomes so hard and in the quest for survival, people resort to engaging in many vices like prostitution, theft, and other criminal activities. Others resort to begging on the streets and scavenging. All this has greatly eroded the dignity of the people and such people can definitely not enjoy the right to personal liberty guaranteed in the Constitution. So, liberty is meaningless for people wallowing in poverty.

2.6. CONCLUSION
The foregoing illustrations have clearly brought out the link between Civil and Political Rights and Economic and Social Rights. They have shown that the enjoyment of one set of rights depends on the enjoyment of the other. Therefore, to be meaningful, both sets of rights should be enjoyed at the same time. This can only be achieved by taking certain necessary measures especially with regard to socio-economic rights like, building of more schools and clinics and other related issues instead of simply protecting the rights and freedoms in the Constitution.
CHAPTER THREE

3.0. CONSEQUENCES OF PROTECTING ONLY ONE SET OF RIGHTS

3.1. INTRODUCTION

It is a well-known fact that social amenities such as schools and hospitals play a vital role in bettering the standard of life of people. Lack of these amenities creates a vacuum in life which human nature demands that it be filled in order for life to be whole. In order to achieve this, people can use all possible means, some of which impact negatively on the country’s affairs. In the light of this, it is important that both Civil and Political rights and Economic, Social and Cultural rights are protected. This chapter brings to the fore the consequences of protecting only one set of rights to the exclusion of the other. The first part discusses the results of such an action, which make life incomplete. They include illiteracy, homelessness, high mortality rates, unemployment and poverty with all its associated social vices. The latter part of the chapter demonstrates how lack of social amenities consequently affects the legitimacy of the constitution because people feel that it does not provide for their basic needs.

3.2. ENRICHMENT OF THE QUALITY OF PEOPLE’S LIFE

The preamble to the Universal Declaration of Human Rights\(^1\) states in the second paragraph that:

Whereas the peoples of the United Nations have ... reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human person ... and have determined to promote social progress and better standards of life in larger freedom.

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It can be inferred from this commitment that the underlying concern in the promotion of human rights is two-fold: firstly, the upholding of the dignity and worth of the members of society, and secondly, the enrichment of the quality of life for those people. In view of this, it can be argued that the value of life is the ‘sine qua non’ for all human rights. Therefore, it is every government’s duty to create an enabling environment for the enrichment of its citizen’s quality of life. Zambian President Levy Mwanawasa alluded to this during the burial of one of his Cabinet Ministers\(^2\) when he said, “he [the late] subscribed to the principle that governments should exist first and foremost to work towards the improvement of the lives of its people.”\(^3\)

Improving the quality of life of people will definitely not be achieved only by the protection of civil and political rights or giving people their freedoms! Tremendous human suffering leading to the erosion of human dignity has been witnessed in many parts of the world despite the fact that the people’s civil and political rights are protected under various constitutions.

As Nelson Mandela rightly observes,

“...The very right to be human is denied everyday to hundreds of millions of people as a result of poverty and the unavailability of basic necessities such as food, jobs, shelter, education, health care and a healthy environment.”\(^4\)

This statement truly reflects the situation, as it exists in Zambia currently. The rights provided for in the ICESCR still remain a pipedream for the majority of the Zambian people because there is no constitutional means to compel the state to act and provide these facilities. Socio-economic rights in Zambia are not justiciable. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health provided for in article 12 of the

\(^{2}\) Late Home Affairs Minister and Keminbe Member of Parliament, Lackson Mapushi.


ICESCR is a fallacy. Access to health services is very poor, especially in remote areas due to long distances and poor road network. Besides, most of the Health Centres are seriously understaffed and usually experience shortage of drugs. The situation is exacerbated by the fact that the few health providers available are highly demotivated by poor conditions of service. The combined effect of all these factors is generally poor health services in the country. This, in turn, leads to continued ill-health for the people leaving them highly vulnerable to simple preventable and treatable diseases like Malaria and Cholera.

Equally fallacious is the right of everyone to education as provided for under article 13 of the ICESCR and that Primary education shall be compulsory and available free to all provided for in article 13(a). The poverty situation prevailing in the country, where 73% of the population is poor, has forced most of the children of school-going age on to the streets asking for alms instead of being in school. In one instance, pupils at Chief Ufwenuka’s area in Monze District abandoned classes to go and scavenge for food at a nearby hospital. Others, especially girls, abandon school and engage in early marriages in the hope of having financial benefits from their spouses. A school census on Reasons for Dropping Out conducted by the Ministry of Education in 2000, indicates that 4,061 females leave school for marriage. In addition to this gloomy picture, most school infrastructure is highly dilapidated and, access is poor due to long distances. For instance, in the year 2002 about 27% of children did not attend school because the school was too far away. In rural areas for instance, 6.9% of the primary schools are more than six kilometres to the nearest residential

7 Zambia put a reservation on article 13 in relation to compulsory and free primary education.
9 See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1998, Ch. 5 at 81.
area. Like hospitals and clinics, schools too, are understaffed. The poor conditions of service have had a double impact: firstly, it has forced many teachers out of the country in search of greener pastures, and secondly, for those that have remained, it has successfully acted as a catalyst for the frequent strikes and work stoppages. The result of all this is poor quality of education and high levels of illiteracy.

Article 6 of the ICESCR recognizes the right of everyone to the opportunity to gain his living by work, and the states parties have undertaken a commitment to safeguard this right to work. Among the steps provided for under article 6(2) that a state should take to achieve the full realization of this right is putting in place programmes and policies that enhance economic and social development.

The Zambian government introduced liberalized economic policies in the early 90’s. Along with liberalization came privatization of state-owned and parastatal companies. This in turn led to wholesale retrenchments of employees across the country to downsize the workforce. Approximately 7,034 jobs were lost due to privatization policy. As at 31st May 2002 ZPA had privatised 257 companies and out of these, 19 companies have since closed. A total of 37 companies including Zambia Airways, Mansa Batteries and Eagle Travel closed before the privatisation exercise. They could not compete with cheap subsidized goods from outside. The few companies that managed to survive have had to effect redundancies of the employees in order to cope with the situation. As a result of this situation, unemployment

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12 Ibid.
13 See Pupil/Teacher Ratio - Appendix 1.
14 See ZPA leaflet – FACTS, ASSESSMENT AND LESSONS ON PRIVATION IN ZAMBIA. p. 4.
15 See ZPA Questions and Answers Pamphlet ‘Privatisation in Zambia: All You Need to Know’ p. 2.
16 Supra note 11 at 1.
17 Ibid at 4.
18 See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1997, Ch. 4, Pp 36-37.
levels in the country soared and the ugly face of poverty got a foothold. About 73% of the population in Zambia is poor. In rural areas 71% of the people live in extreme poverty, twice as many as in urban areas, which has 36%. Broadly defined, poverty 'is the lack of basic capabilities to live in dignity.' In this regard, poverty is therefore, a denial of human rights, as it constitutes sustained deprivation of resources and capabilities necessary to lead a decent life.

Under the liberalised economic policies, most retrenchees failed to cope with the changed circumstances and many of them were turned into destitutes. Many former employees of the United Bus Company of Zambia (UBZ), Contract Haulage, Mansa Batteries, and Zambia Airways have been reported to have died in destitution due to delayed payments." In the face of such suffering and misery, people resort to all sorts of survival strategies, ranging from reducing the number of meals per day, to street vending, unleashing their children on to the streets to beg or children going to scavenge on their own. Others take to more desperate actions and engage in such social vices as prostitution, thieving, and robbery.

The right to adequate housing is derived from the right of everyone to an adequate standard of living ... including adequate food, clothing and housing, provided for in article 11 of the ICESCR. Like other rights in the Covenant, this right too is still far-fetched. The Committee on Economic Social and Cultural Rights sets very high standards for this right. They include not only a roof over one's head but also 'adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate

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19 "The Path Away From Poverty" supra note 8 at 3.
21 See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 1997, Ch. 4, Pp. 36-37.
22 Ibid at 37.
location with regard to work and basic facilities ... all at a reasonable cost. These high standards make this right even more removed from reality for the Zambian citizen. Unfortunately, even the minimum housing standards of 'just a roof over one's head' has not been achieved in many instances. This has affected both those in formal and informal employment. Reports of professionals lacking decent accommodation are a clear testimony of this. A case in point is the University Teaching Hospital accommodation crisis discussed in chapter two. It is a well-known fact that most civil servants like teachers and Law enforcement officers like Police Officers have been forced to stay in shanty compounds due to lack of decent and affordable accommodation. The situation is even worse in squatter compounds.

"In Lusaka's Mandevu, Chaisa, Lilanda, Kamanga and Chibolya townships ... and Chingola's Kapisha compound, over 200,000 people live in one square mile, in perhaps the worst living conditions in Sub-Saharan Africa ... there is not enough physical space for everyone to lie down at the same time. They sleep in turns."  

The government's obligation to continuously upgrade the living conditions as required by article 11 of the ICESCR is just on paper. In Zambia, issues concerning continuous upgrading of living conditions are provided for under the Housing (Statutory and Improvement Areas) Act. The essence of the Act is to give security of tenure to former squatters. Under section 37 of the Act, the Minister can legalize what is illegal by way of statutory instrument, thereby changing a once-upon-a-time squatter compound into an Improvement Area. However, the Minister cannot exercise this power without certain basic amenities like piped water, schools

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26 Cap.441 of Laws of Zambia.
27 As was the case for areas like Mtendere, Kalingalinga and Kanyama.
and clinics first being put in place. As a consequence, very few areas have practically benefited from this law.

The introduction of the Presidential Housing Initiative in 1998 with similar objectives to those of the Housing (Statutory and Improvement Areas) Act has not made any meaningful contribution. This is mainly due to misapplication of funds resulting in only a few housing units being constructed. Besides, the prices of the completed houses were so dear that many civil servants, who were the intended beneficiaries, failed to buy them. Out of the completed units, 229 were offered for sale out of which only forty-one public workers benefited, representing 17% of the total houses offered for sale.\textsuperscript{28} So the problem of homelessness and suffering continues. The quality of people’s lives also continues to be lowered and human dignity tremendously eroded.

3.3. SHOULD CIVIL AND POLITICAL RIGHTS CONTINUE TO TAKE PRIORITY OVER SOCIO-ECONOMIC RIGHTS?

In the light of all these problems caused by the non-justiciable nature of socio-economic rights in Zambia, the most important question that seriously needs to be addressed, is whether or not socio-economic rights should be made justiciable just like civil and political rights. A similar issue was extensively debated in the constitutional debates prior to the enactment of the 1996 Constitution of South Africa. The argument mainly centred around the effect, which the inclusion of socio-economic rights in the constitution as justiciable rights would have on the legitimacy of the constitution. The proponents for the justiciability of socio-economic rights argued that if socio-economic rights were not given meaningful protection by the constitution, the legitimacy of the constitution would suffer because people would be bound

\textsuperscript{28} See Report of the Public Accounts Committee on the Report of the Auditor-General on the Activities of the Presidential Housing Initiative at 42.
to say it does not deal with their most fundamental needs.\textsuperscript{29} The argument on the other side was that since rights impose corresponding duties, the constitution would lose its credibility if it told people they have the rights in respect of which the state cannot deliver due to lack of resources. They believed such a situation would be equally erosive of the legitimacy of the constitution.\textsuperscript{30}

“The legitimacy of the constitution,” as Nwabueze points out, “is concerned with how to make it command the loyalty, obedience and confidence of the people.”\textsuperscript{31} Therefore, constitutional legitimacy hinges on its moral authority. A constitution should be generally understood by the people and be acceptable to them so that they can identify themselves with it. This can be achieved by making the process of constitution-making popular. Public interest should be generated and as many people as possible should have a stake in it. This involvement will produce a feeling of attachment to the constitution and it will be accepted as the property of the people whose needs it addresses and whose affairs it is going to govern. Then, it will win the people’s confidence thereby making them responsible in observing its rules.\textsuperscript{32} In the absence of this, “... the constitution would always remain a remote artificial object with no more real existence than the paper on which it is written,”\textsuperscript{33} and the popular phrase in most constitutions, ‘we the people ... do hereby give to ourselves this constitution’, will be no more than a mere incantation. Constitutions should, therefore, not be viewed narrowly from the classical perspective of clothing the various organs of government with power and defining the parameters of such power, but also with addressing the socio-

\textsuperscript{30} Ibid.
\textsuperscript{31} NWABUEZE, O., (1997) CONSTITUTIONALISM IN THE EMERGENT STATES at 24.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
economic problems in the country. The Zambian Constitution of 1991 lamentably failed in this area; it is silent on the economy and social problems. This failure, coupled with the non-justiciability of socio-economic rights, lead to a serious problem in the social-economic sector, such as inadequate housing, health and educational facilities, poor conditions of service, high prices of food stuffs and low incomes.

3.4. CONSEQUENCES

The consequences of such a situation as experienced in Zambia are usually very bad. When levels of discontent can no longer be contained, people resort to all sorts of action to try and compel the government to act. Workers may withdraw labour; others engage in corruption, the unemployed turn to robbery, while some may go for looting and food riots and many other vices. Many such experiences have been witnessed in Zambia on several occasions. Many a time, civil servants, especially teachers, have resorted to strike action to try and compel the government to give them better conditions of service to enable them lead decent and dignified lives. There have been a lot of fragmented cases of strike action by public service workers over the years. However, if there has been a time that strike action has been such an issue, that time is now. The year 2003 has seen the most united and longest strike action ever, stretching over a period of four consecutive months in some areas particularly in the teaching fraternity. The teachers’ demands are for improved conditions of service and payment of Housing Allowance.

Other public service workers also have similar demands. This has lead to a situation where the workers are either on strike or threatening to do so. News on strike action is now almost

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on a daily basis.\textsuperscript{35} The result of the numerous strikes has been disastrous. For instance, the strike by Judicial workers which lasted for three weeks\textsuperscript{36} left the Courts paralysed as cases could not be heard. All the Courts from the Local Court up to the Supreme Court were affected.\textsuperscript{37} The strike by UNZA Lecturers early in the year 2003 led to the premature closure of the University for the first semester of the 2003 Academic year. In the health sector, a spot check at one of the hospitals revealed that most patients had been prematurely discharged\textsuperscript{38}. Indeed, ‘strikes are crippling Government’s wings’\textsuperscript{39} as President Levy Mwanawasa once lamented.

The withdrawal of labour is not the only method that is used to compel government to act. In very severe and desperate situations, resort may be had to unorthodox methods such as looting and food riots and the results are equally disastrous. A case in point is when in June 1990, the government announced an increase in the price of mealie meal by 100%. Food riots and looting broke out on 26 June in Lusaka, spreading to other major towns. When the situation was finally brought under control, over twenty people were dead, killed by security

forces. The University of Zambia was closed and thirty students were arrested for their alleged involvement in the riots.\textsuperscript{40}

Sometimes people resort to corrupt practices. Various forms of corruption like bribery and nepotism are used especially in government by civil servants and law enforcement agents. In this arrangement, things are not done on merit but people have to ‘buy their way’ on nearly everything, be it admittance to college, getting a job, passing through a road block and so on. That there is rampant corruption in Zambia is manifest by it being rated the World’s 9\textsuperscript{th} most Corrupt Country\textsuperscript{41} on the Corruption Perception Index prepared by Transparency International.

Clearly, the cause of all these food riots, corrupt practices, demonstrations, and strikes is the non-availability of basic necessities of life. For instance, “the upheaval of the period 1989-91” as Sangwa correctly observes, “was not for Civil and political rights only, but for the need to address the question of hunger and improvement of the people’s welfare.”\textsuperscript{42} It is evident therefore, that in this day and era, and in countries faced with ill health, poverty and illiteracy, a government that continues to adopt a laissez-faire attitude towards socio-economic rights does so at its own peril as this may lead to its downfall. “The major cause of the collapse of constitutional governments in many parts of the new emergent states is the general lack of respect for the constitution among the populace and even the politicians themselves.”\textsuperscript{43} The Zambian experience of June 30, 1990 when a few soldiers staged an unsuccessful coup d’etat following the confusion that ensued during the food riots, attests to this observation.

\textsuperscript{40} See Sangwa – supra note 34 at 331.
\textsuperscript{41} See Zambia is the World’s 9\textsuperscript{th} Corrupt Country. THE POST, Friday, 29\textsuperscript{th} June 2003.
\textsuperscript{42} Sangwa supra note 34 at 348.
\textsuperscript{43} NWABUEZE supra note 27 at 26.
3.5. CONCLUSION

From the foregoing analysis, the following points come to the fore; for people to live their lives in dignity, they need civil and political rights as much as they need socio-economic rights. Much of the suffering such as ill health, illiteracy, unemployment and homelessness is as a result of lack of adequate protection of socio-economic rights. This suffering usually sparks off discontent among the citizenry leading to strikes, demonstrations, looting and rioting. Such actions are erosive of the legitimacy of the constitution as they indicate a lack of confidence in the constitution, it is viewed as not providing for the people's social needs. It is, therefore, incumbent on governments to adequately protect these rights in order to fulfill their obligation as required by the ICESCR and also to enrich the quality of life of the people so that they lead dignified lives as envisaged by the UDHR.
CHAPTER FOUR

4.0. THE QUESTION OF RESOURCES AND THE NATURE OF STATE’S PARTY OBLIGATIONS

4.1. INTRODUCTION

Many states parties to the International Covenant on Economic and Social Rights (ICESCR) use the claim of ‘inadequate resources’ as a justification for non-delivery on the rights provided under the Covenant. In addition, states have used the phrase ‘progressive realization’ in article 2(1) of the ICESCR to argue that while they must deliver on the specific rights, this obligation is not immediate; it is at an unspecified future date. States have, therefore, adopted a laissez-faire attitude towards socio-economic rights and consequently, the quality of people’s lives has not improved.

This chapter analyses the issue of resources and the nature of obligations placed on states parties to the ICESCR. The first part examines how Zambia has fared as regards the issue of ‘maximum use of available resources.’ In this regard, it makes reference to some relevant documents analyzing government’s revenue and expenditure such as the Auditor-General’s Report, the Estimates of Revenue and Expenditure, particularly allocations to the Ministry of Education and Health, records from the Zambia Privatization Agency Account, Auditor-General’s Report on the Operations of the Presidential Housing Initiative and revelations by Zambian President Levy Mwanawasa of the Zamtrop Account,\(^1\) exposing a network of corrupt practices and abuse of office by the Chiluba\(^2\) administration.

\(^1\) The Zambia Security Intelligence Service (ZSIS) US Dollar Account held at the Zambia National Commercial Bank Branch in London.

\(^2\) President Mwanawasa’s predecessor.
it seeks to demonstrate that most of these funds were misappropriated and misapplied. Had they been used properly, they would have contributed, albeit to a small extent, to resolving part of the crisis in the socio-economic sector. The last part discusses the nature of states parties obligations and the question of \textit{progressive realization}' of socio-economic rights.

4.2. \textit{"... TO THE MAXIMUM OF AVAILABLE RESOURCES ..."}

Article 2(i) of the ICESCR provides as follows:

Each state party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The phrase \textit{‘ ... to the maximum of its available resources ...’} is imperative in nature and, therefore, by implication, means priority attention should be given to the realization of the rights in the covenant. In view of this, it is submitted that resource constraints notwithstanding, it is of paramount importance for a state to utilize the resources that are available effectively and efficiently. It is unfortunate to note, however, that the Zambian government has not fared very well in this area as evidenced by the following reports:


\textbf{Overview of Internal Control System}

The report made mention of serious weaknesses in the management and Internal Control Systems. These included inter alia:
• Misapplication and misappropriation of funds and poor record keeping.

• Failure to issue accounting guidelines, for instance on the use of election funds and census exercise and failure to submit expenditure returns.

• General disregard for financial regulations and accounting procedure; for instance, large sums of public funds and government revenue were expended without authority of parliament. There were instances where government was committed to huge expenditure without any budget provision having been made in the Estimates of Revenue and Expenditure for the year.³

• Disregard for established tender procedures in the procurement of goods and services. For instance, payments were made for goods not delivered and/or services not rendered. In some cases, authority of the Zambia National Tender Board was sought in retrospect, contrary to tender regulations.⁴


A review of the privatization records relating to the revenue account maintained by the External Resources Mobilization (ERM) Unit of the Ministry Finance and Economic Development revealed that:

Between 1993 and 2000, a total amount of K90.4 billion was realized from the sale of state owned enterprises and the money was deposited in the Privatization Revenue Account at Bank of Zambia. A review of expenditure records and bank statements

⁴ Ibid.
from Bank of Zambia revealed that an amount of K62.8 billion had been spent as of December 2000, leaving a balance of K27.6 billion. As at 16th January, 2001, the balance had reduced to K25,147,498,740. A scrutiny of the expenditure details pertaining to the account revealed that a total amount of K6.2 billion was spent: on the supply of aircraft spares for the Presidential Jet (K12,875,197), purchase of lubricants (K767,252), unexplained transfer of funds to ZANACO account (K5,214,000,000) and purchase of chancery building in Pretoria for the Zambian High Commission (K279,600,000), contrary to the provisions of the Act.

3. **Misapplication of Presidential Housing Initiative Funds**

One of the objectives of the Presidential Housing Initiative (PHI) was the creation of a revolving fund for the purpose of constructing new houses, creating more serviced plots and upgrading squatter compounds.\(^5\)

However, very few of the objectives have been achieved due to misapplication of the funds as revealed by the Report of the Public Accounts Committee on the Report of the Auditor-General on the activities of PHI for the period November, 1998 to August, 2001:

A total of K7,696,504,034 and US $39,169.50 were applied on activities not related to PHI programmes.\(^6\) Some of the money, K6,711,279,496, was used for preparatory expenses for the Organisation of African Unity (OAU) Conference that Zambia was due to host later in the year. Some other money (K766,417,035) was diverted to former president Chiluba’s private enterprise, the Institute of Democracy and Industrial Relations Studies. As a result of such

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\(^6\) *Ibid.*
misapplication of funds, only 426 housing Units out of the targeted 4,000 Units were constructed in three years, 323 at the Bennie Mwiinga Site and 103 at the Twapia Site.7

4. ZAMTROP ACCOUNT

This was the Zambia Security Intelligence Services (ZSIS) US Dollar Account held at Zambia National Commercial Bank (ZANACO) Branch in London. The Chiluba administration abused it and used it for making irregular payments to certain beneficiaries. Zambian President Levy Mwanawasa, revealed this on 11th July 2002 in an address to a special session of parliament on the state of the nation.8 Startling revelations of a network of corruption and abuse of office that led to the plunder of the country’s resources were made. Initially, the signatories to this account were the Zambian High Commissioner to England and former Intelligence Chief, Xavier Chungu. Later, Chungu became the sole signatory to the account. Highly unprofessional banking procedures were exhibited. For instance, instructions were given to the bank on phone by either Chiluba himself or Chungu, to give funds to certain named beneficiaries. Chungu would then sign against the list of recipients when he was in London. The list of some of the recipients is found in appendix 1.

5. CONTRACT FOR THE SUPPLY OF MILITARY EQUIPMENT

Other instances of impropriety by the Chiluba administration include engaging in a contract with one Raphael Sariano (alias Katebe Katoto), a Congolese businessman, to supply military equipment to the Zambia Army and Zambia Air Force at a total cost of US $100 million.9 Government paid US$20.5 million of this amount as down payment but no equipment was

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7 Ibid at 41.
8 See Speech by His Excellency the President Mr. Levy Patrick Mwanawasa, S. C. at the Special meeting of Parliament on 11th July 2002.
9 Ibid at 16.
delivered. The country thereby lost this huge amount of money as efforts to pursue Katoto to recover the money have been in vain. Having been a longtime friend to this man, it can be assumed that Chiluba knew or ought to have known that his friend had no capacity to deliver on the said contract. Besides, he was not even in the business of supplying military equipment! In the light of this, it can be argued that Chiluba and Katoto conspired to defraud the nation. Government believes that this money was paid out as a way of swindling the nation out of huge sums of money.  

6. MOFED ACCOUNT

Another case is where the Directors of a company called MOFED Limited, which was incorporated in England and Wales and formed to manage former ZCCM assets taken over by government, were being paid large amounts of money as sitting allowances and held their meetings in London instead of Zambia. Government paid not only the travel expenses but hotel expenses too. Directors' fees were £2000 for the Chairman, £1,500 per Director and £900 per consultant payable per sitting besides, in all cases, all expenses paid for at a top class hotel.

4.3. OBSERVATIONS

All these dealings form a prima facie case of theft of public funds, which funds would have greatly resolved some of the problems in the socio-economic sector had they been used effectively and efficiently. The extravagance exhibited by the leaders cannot be condoned in a country wallowing in poverty like Zambia. The money spent on the Presidential Jet for

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10 Ibid.
11 Ibid at 18.
12 Ibid at 24.
instance, or on board meetings held in top class hotels in London with all expenses paid for, reflects a poor style of government spending and a lack of priorities. There have also been other instances that attest to the same practice of poor spending style, such as purchase of expensive motor vehicles and cellular phones for the leaders. All these cause unnecessary expenses. For instance, in the year 2000, government had incurred a cellular phone bill of over K50 billion\textsuperscript{13} and this prompted the Secretary to the Cabinet to withdraw cellular phone services from some categories of civil servants.

Some of the money from the Zambia Privatization account would have been used to pay retrenchees. This would have greatly alleviated the suffering of this group of people and there would have been very few or no reports of retrenchees dying from destitution and depression\textsuperscript{14}. Likewise, had the money from the PHI been used properly, Zambians would have been truly empowered in the area of home ownership and the demand for quality housing would have been eased. Unfortunately, the seemingly good objectives of the PHI have not been achieved due to misapplication of funds.\textsuperscript{15} As a result, there has been no creation of more serviced plots and upgrading of squatter compounds as envisaged. This, therefore, means that problems in the area of shelter provision continue.

If the money from the Zamtrop account, for instance, were used towards the budget allocations for the Education and Health Sectors in the year 2000, it would have made the following contribution:

\textsuperscript{13} See AFRONET, ZAMBIA HUMAN RIGHTS REPORT 2000, Ch. 8 at 92.
\textsuperscript{14} See AFRONET, ZAMNET HUMAN RIGHTS REPORT 1997, Ch. 4 at 37.
\textsuperscript{15} See Report of the Public Accounts Committee on the Report of the Auditor-General on the operations of the Presidential Housing.

<table>
<thead>
<tr>
<th>MINISTRY</th>
<th>BUDGET ALLOCATION FOR THE YEAR 2000</th>
<th>CONTRIBUTION WHICH WOULD HAVE BEEN MADE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>382,825,762,927</td>
<td>3.6%</td>
</tr>
<tr>
<td>Health</td>
<td>282,227,525,575</td>
<td>4.8%</td>
</tr>
</tbody>
</table>


All these activities clearly demonstrate that the Zambian government has not set its priorities right and has not used ‘its available resources to the maximum’ to satisfy its minimum core obligations under the ICESCR in the realization of socio-economic rights.

4.4. THE QUESTION OF PROGRESSIVE REALISATION AND THE NATURE OF STATES PARTIES’ OBLIGATIONS

The fact that the full realization of some of the rights is to be attained progressively over a period of time is no escape clause for states parties to postpone the realization of these rights ‘Sine die’ and tactfully relieve themselves of their obligations under the covenant. It has actually been argued that the question of progressive realisation goes to the very heart of the issue of obligation.\[16\] This is so because it gives states parties enough room to manoeuvre in meeting the obligations in the Covenant. For instance, the undertaking in article 2(i) ‘to take steps’ is open-ended, its not qualified or limited to doing only certain things. Therefore, a state is not fettered in its endeavors; it is free to use the numerous avenues open to it. It can either take these steps single-handedly or do it through international assistance and cooperation, pursuant to the Charter of the United Nations.\[17\] Although the rights in the Covenant are to be realized progressively, a state should move expeditiously towards the full

\[17\] Articles 55 and 56.
realization of the rights; it should put in place deliberate policies and set for itself targets in the achievement of certain programmes.

Article 2(i) of the ICESCR does refer also to ‘all appropriate means.’ Here again a state has a variety of means to choose from in pursuing the full realization of socio-economic rights. This means that the steps that can be taken at domestic level include “legislative, administrative, judicial, economic, social and educational measures.” A state has wide discretion on the appropriateness of the means it applies; therefore, it can choose which of the means is most appropriate. This, too, gives a state enough breathing space because the means it may use are not imposed on it.

The ICESCR takes into account the realities of life and appreciates the difficulties of mobilizing resources. It acknowledges resource constraints as evidenced by its reference to ‘the maximum of available resources.’ In this regard, it does not obligate a state to do the impossible by using resources that it does not have or can possibly not get. States are not under absolute obligation to do more than they have the resources to do so. Once again, the state is free to work within its means. A state can therefore not be held liable for violating the provisions of the Covenant if it does not have the resources to use, but only if it has failed to use those available resources in an effective and rational manner. The onus is therefore on a particular state to use whatever resources it has effectively to the satisfaction of the Committee on Economic, Social and Cultural Rights, the international body tasked with the Supervision of Compliance with the ICESCR.

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4.5. CONCLUSION

The effective and efficient use of the resources available is the core obligation of the states parties to the ICESCR. A state that fails to discharge its obligations under the Covenant must show that it did try to use its available resources effectively. The foregoing discussion, however, shows that the Zambian government has lamentably failed to do so. The reason is lack of political will; it is a question of unwillingness as distinguished from inability. This can safely be assumed to be so because, as the discussion has shown, there have been instances when government has used huge sums of money on things which are of less importance to the general welfare of its citizens. This is a clear manifestation of lack of political will on the full realization of socio-economic rights. The problems in the socio-economic sector currently prevailing in the country are a consequence of actions that the leadership has decided to take or not to.
CHAPTER FIVE

5.0. LEARNING FROM SOUTH AFRICA’S EXPERIENCE: THE QUESTION OF JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS.

5.1. INTRODUCTION

The legal protection of socio-economic rights is basically rooted in International Law. There are many international human rights instruments that have a strong socio-economic rights dimension. They include the International Covenant on Economic, Social and Cultural Rights\(^1\) (ICESCR), the Universal Declaration of Human Rights (UDHR) of 1948\(^2\), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979,\(^3\) the Convention on the Rights of the Child (CRC) 1989\(^4\) and the African Charter on Human and People’s Rights.\(^5\)

Be this as it may, a lot of countries have not included socio-economic rights as justiciable rights in their Constitutions. The main reason generally advanced is that of resource constraints. However, there are a few countries that have done so and South Africa is one such country. It can, therefore, offer a useful model to other countries on this issue. It is against this background that this chapter is focused. It discusses socio-economic rights in the South African Constitution\(^6\). It begins with an examination of how these rights are incorporated in the Constitution and then proceeds to analyse subsequent Constitutional Court cases on the protected rights to assess the extent to which the justiciability of these

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1 Preamble, paragraph 3.
2 Articles 22-23.
3 Article 3 and 10-14.
4 Articles 4, 6(2), 19, 20, 24, 26-29 and 31.
5 Articles 15, 16, and 17.
rights has been practically possible. It then makes certain observations from which Zambia can learn.

5.2. HOW SOCIO-ECONOMIC RIGHTS HAVE BEEN INCORPORATED IN THE SOUTH AFRICAN CONSTITUTION OF 1996.

The following observation by Christof and Brand\textsuperscript{7} gives a summary of the incorporation of socio-economic rights in the South African Constitution.

"The very structure of the Bill of Rights is designed to emphasise the fact that socio-economic rights are part and parcel of the wider concept of human rights. Socio-economic rights are not listed separately under their own heading or even grouped together, they are interspaced between the other rights, on an equal level, emphasizing the interdependence and indivisibility of the different generations of rights."

Besides this arrangement, the incorporation is largely moulded on the international model, with the protected rights having internal qualifications like those found in the ICESCR, and a domestic reporting procedure in place.\textsuperscript{8} The Bill of Rights is formulated in such a way that it gives rise to two categories of socio-economic rights; these are: internally qualified rights and priority rights.

5.3. INTERNALLY QUALIFIED RIGHTS

These are rights with a fairly standard list of internal qualifications.\textsuperscript{9} This means that the rights or some aspects thereof are subjected to special qualifications such as ‘availability of resources’ and ‘progressive realization.’ Internally qualified rights are also referred to as ‘access rights’ because the limitations found therein provides that only ‘access’ to the

\textsuperscript{8} Ibid at 4.
\textsuperscript{9} Ibid at 7.
social goods in question, needs to be provided. Clearly, this arrangement restricts the obligation placed on the state. The obligation is only limited to creating an enabling environment to enable citizens acquire the social goods in question and not for the government to directly provide the goods, except in certain exceptional circumstances like times of famine.

As regards ‘access rights’, therefore, there is no absolute entitlement by individuals to the provision of the social goods in question. People cannot get these goods as of right, or get them freely and on demand. For instance, the right to access to sufficient food, provided for in section 27 (1) (b), does not mean the state should literally put food on every citizen’s table. It should only ensure that there is enough food available and this should be at affordable prices so that the citizens can reasonably access that food. 

Other examples of internally qualified rights are: section 26(1), which provides that everyone has the right to have access to adequate housing; section 22(1)(a), which provides that everyone has the right to have access to health care services, including reproductive health care; section 27(1)(b) which guarantees access to sufficient food and water; and section 29(1)(b) which provides that everyone has the right to further education which the state, through reasonable measures, must make progressively available and accessible.

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10 Ibid.
11 Ibid.
5.4. PRIORITY RIGHTS

Unlike access rights, these are rights with no internal qualifications or limitations on them. This means the obligation on the state is immediate and much more direct just like in civil and political rights. Provisions dealing with priority rights include the following: section 29 (1)(a), which provides that everyone has a right to a basic education including adult basic education; section 35(2)(c) which provides that every detainee, including every sentenced prisoner, has a right to conditions of detention that are consistent with human dignity, including at least exercise and provision, at state expense, of adequate accommodation, nutrition, reading materials and medical treatment. Section 27(3), which guarantees that no one may be refused emergency medical treatment, is another example of priority rights.

5.5. JUDICIAL ENFORCEMENT

Since socio-economic rights are justiciable, they can be invoked directly by litigants just as civil and political rights. An application can, therefore, be based directly on one of the rights in question for instance, the right to health, as was the case in B and Others v Minister of Correctional Services. In this case, HIV positive prisoners claimed that they had a right to receive certain anti-viral medication at state expense. The court found that the Prison Department had not proved its inability to provide the anti-viral treatment due to lack of funds. The application was consequently granted with regard to two of the four applicants who had been prescribed the anti-viral treatment.

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Another example is the case of Despatch Municipality v Sunridge Estate and Development Corporation (Pty) Limited. This case was considered in the light of section 26(3) of the Constitution, which is to the effect that no legislation may permit arbitrary evictions. The High Court held that section 3(b) of the Prevention of Illegal Squatting Act 1951, which permitted the summary demolition of unauthorised buildings or structures, without a court order, was in conflict with section 26(3) and accordingly, invalid. Using this enforcement mechanism, the courts therefore give 'hard protection' to the rights because their decisions are binding.

5.6. THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

This provides the 'soft' enforcement mechanism because, unlike the courts, its decisions are not legally binding. The Commission is mandated by section 184 of the Constitution to play a monitoring role in respect of all human rights. One of the Commission's duties is to request all relevant organs of the state to provide it with information on the measures they have taken towards the realization of the rights in the Bill of Rights. This practice is similar to the international reporting procedures created by conventions such as the ICESCR. South Africa's practice is unique in this area because it has a domestic reporting system, which is not found in many other jurisdictions. The objectives for reporting are the same both at domestic and international level. It is for inspection and introspection. The South African Human Rights Commission is able to inspect the activities of the organs of government while these organs are able to inspect themselves (introspection). The only sanction however, is public shame and embarrassment. This

only works well on the introspection part as organs of state are able to critically analyse their performance and improve on their weakness in order to avoid public shame.

5.7. TO WHAT EXTENT HAS THE JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS BEEN PRACTICABLE?

More often than not, practice belies theory, in that highly impressive ideas may be put on paper and yet fail to be realised in actual practice. In view of this, the following section analyses cases from the courts to see how well South Africa has fared in the actual protection in terms of legally enforcing the socio-economic rights enshrined in the Constitution.

The groundbreaking Constitutional Court decision on socio-economic rights was the Grootboom case. Brief facts of the case are that the applicants (some 390 adults and 510 children) were squatters in Wallacedene. Poor living conditions made them move to vacant private land in the Oostenberg Municipality from which they were evicted in May 1999 following proceedings in a Magistrate’s Court. The homeless squatters then attempted to erect temporary structures on the Wallacedene sports field but these proved to be wholly inadequate. They applied to the Cape High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. They relied on sections 26, which guarantees everyone’s right to have access to adequate housing, and section 28 (1) (c) which provides that every child has the right to basic nutrition, shelter, basic health care services and social services. The Court rejected the applicants’ argument in terms of section 26 but did

14 Grootboom V Oostenberg Municipality and Others. 2000 (3) BCLR 277 (C).
uphold the argument in terms of section 28 (1) (c). It ordered the respondents to provide the homeless children and their parents with shelter. The case was also heard in the Constitutional Court on appeal, and the respondents made an offer to address the desperate living conditions of the squatters. However, four months later, they had still not complied with the terms of the offer. On 21st September 2000, the Constitutional Court made an order putting the municipality on terms to deliver services agreed to in the offer.¹⁵

Another case, which dealt directly with a socio-economic right in the 1996 Constitution, is that of Soobramoney V Minister of Health, Kwa-Zulu Natal.¹⁶ The applicant, Mr. Soobramoney, was unemployed and suffered from chronic renal failure which required, for his survival, regular kidney dialysis treatment. Having been refused this treatment at a state hospital, he brought an urgent application to the High Court for an order directing the hospital to provide dialysis treatment to him. He based his application on the right in section 27(3) of the Constitution, which prohibits refusal of ‘emergency medical treatment.’ The court refused the application. On appeal to the Constitutional Court, the appeal was dismissed. The Court found that the hospital had clearly and convincingly demonstrated its resource constraints. It held that regular, on-going treatment for chronic disease, even if that treatment forestalled death, did not constitute emergency medical treatment as envisaged in section 27(3). The right is restricted to cases of ‘sudden catastrophe’, which called for immediate medical attention in order to avert harm.¹⁷

¹⁷ Per Chaskalson, P in paragraph 20 of the case.
The **Soobramoney case** can be distinguished from the case of **B and Others V Minister of Correctional Services** discussed earlier. In the latter case, the order requiring medical treatment at state expense was granted. The Prison Authority had not made out its case that as regards budgetary constraints, it could afford the anti-viral treatment and was accordingly ordered to provide it. In the former case on the other hand, the Hospital Authority clearly proved its case as regards budgetary constraints. This shows that the Court would have ruled otherwise had the issue of limited resources not been proved. The willingness of the courts to protect socio-economic rights is hereby clearly demonstrated. This is further confirmed in **In re: Certification of the Constitution of the Republic of South Africa.**

In this case, the Constitutional Court was required to certify that the 1996 Constitution complied with the 34 constitutional principles annexed to the Interim Constitution before it could come into force. In the course of the judgement, the Court rejected a challenge to the inclusion of socio-economic rights as justiciable rights in the Constitution. The opponents argued that socio-economic rights breached the doctrine of separation of powers and were incapable of enforcement by a court. But it was pointed out that many civil and political rights may also have budgetary implications and require the courts to interfere with the policy choices of the Legislature and Executive. The fact that socio-economic rights had budgetary implications was not a bar to their justiciability. The Court held that these rights are, at least to some extent, justiciable and can at the very minimum be negatively protected from improper invasion. The courts, through this

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19 *see* paragraphs 76 to 78 of the case.
decision, have demonstrated willingness to enforce the duty of the state to respect and protect the socio-economic rights.

5.8. OBSERVATIONS

It is appreciated that what is appropriate and practically possible in one country may not necessarily be so in another country with a different historical and economic background. In the light of this, it would be unreasonable to literary ‘transplant’ the South African experiences into the Zambian situation. However, on the reasons warranting the justiciability of socio-economic rights, there seems to be more similarities than differences. For instance, the provision of social services like medical services and shelter is needed in both countries. On the issue of resources, the fact that South Africa has a stronger economy than Zambia\(^{20}\) cannot stand because each country should work within its own budget, by using the resources available in that particular country. Therefore, the comparative aspect in terms of economic strength falls off. The argument that socio-economic rights are resource-based is also not a valid one because there are also some civil and political rights that need resources.\(^{21}\)

The other argument in the Zambian government’s case against the inclusion of socio-economic rights in the Bill of Rights as justiciable rights is that some of these rights are already provided for in other parts of the Constitution (other than part IX) and are therefore enforceable.\(^{22}\) It is also argued that some of these socio-economic rights are

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\(^{20}\) Gross Domestic Product for South African is $412 Billion and for Zambia, it is $8.5 Billion. On the World GDP Ranking, South Africa is on the 21\(^{st}\) while Zambia is on the 133\(^{rd}\) position. Source: World GDP Rankings. Wall Street View Website – Updated 19/03/2003.

\(^{21}\) For instance building of courtrooms, training Judicial Officers and Police Officers.

legally enforceable under separate pieces of legislation. These arguments notwithstanding, it is submitted that socio-economic rights should be made directly legally enforceable in their own right just like civil and political rights. This will provide a much more direct way of accessing these rights and the other pieces of legislation that provide for them can be alternative means of redress. Even for civil and political rights, there are some that are protected by the Constitution and also provided for in other pieces of legislation. Therefore, the same arrangement must be extended to socio-economic rights.

The last argument by the Zambian government is that:

"Courts in Zambia have in appropriate cases given judicial notice to international instruments which Zambia has ratified or acceded to, even though not reduced into domestic legislation and have accordingly given redress." 

It is submitted that it is unreasonable for the state to argue on this basis. Socio-economic rights hinge on people’s lives, so to depend on the goodwill of the courts to take judicial notice of an international instrument in order to enforce these rights is unreasonable. Courts will not do so at all times and sometimes they do things wrongly. It would therefore, be more rational to enact domestic legislation on the international instruments that the country has ratified or acceded to.

24 A case in point is the right to property in article 16 of the Constitution. It is also provided for under the Land Acquisition Act, Cap 198 of the Laws of Zambia.
25 Supra note 22 at 22.
26 See the case of Fellow Nanzaluka, SCZ No. 82/2001.
5.9. CONCLUSION

The foregoing observations and review of some South African cases has established the fact that the inclusion of socio-economic rights in the Bill of Rights as justiciable rights is not a futile exercise. Justiciability of socio-economic rights is practically possible and it has worked in a number of cases. Lack of adequate resources has not been a bar to the legal enforcement of these rights. The South African courts have actually enforced these rights against the state, budgetary constraints notwithstanding (as in the HIV prisoners case). This enforcement has a duo effect: firstly, it makes the state more accountable and responsible in the use of available resources, as failure to prove lack of adequate resources often leads to an order by the court to provide the services required. Secondly, the enforcement of these rights is extremely beneficial to the citizens because it is one way of getting the government to provide required social services such as medical care, houses and educational facilities. This in turn translates the vision of the UDHR into reality, to restore ‘the dignity and worth of the human person’.
CHAPTER SIX

6.0. CONCLUSION

6.1. SUMMARY

The objective of this work has been to make a case for the adoption of a different perspective to socio-economic rights in Zambia. This is to the effect that a holistic approach to human rights should be adopted because all human rights form a mutually dependent whole and, therefore, have meaning only when taken together. In the light of this, the notion that civil and political rights should always take precedence over socio-economic rights should be discarded.

The fact that the two sets of rights are indivisible, interrelated and interdependent, such that it is difficult to fully enjoy one set of rights without the other, has been brought to the fore. For instance, the right to life protected under article 12 of the Zambian Constitution, can only have meaning if people have equitable access to adequate health services and sanitation, besides the protection from arbitrary killing by the state. Poor and inadequate medical facilities may result in people dying due to shortage of drugs and preventable diseases, just as they would die under execution of a court sentence – the effect is the same. Therefore, simply guaranteeing rights in the Constitution without putting in place corresponding measures to enhance the enjoyment of these rights, is useless.

The consequences of protecting only one set of rights to the exclusion of the other have also been outlined. They include illiteracy, homelessness, high mortality rates, unemployment and poverty with its associated social vices. Such problems usually cause
a lot of suffering and breed discontent among the people. This consequently leads to strikes, demonstrations, looting and riots. These are indicators of the people’s loss of confidence in the Constitution as not providing for their basic needs. The legitimacy of the Constitution suffers as a result.

The question of resources and the nature of states party obligations have also been analysed. Zambia’s performance as regards the issue of ‘maximum use of available resources’ has been examined and results show that the country has fared very badly. This is more of a question of unwillingness as distinguished from inability to deliver. The fact that government has been able to spend huge sums of money on things which are of little benefit to the general welfare of it’s citizens, attests to this.

On the question of justiciability, a study of a different jurisdiction (South Africa) has been undertaken to determine how viable the exercise is. The South African experience has shown that justiciability of rights is practically possible and has actually worked in a number of cases. Lack of adequate resources has not been a bar to the legal enforcement of these rights.

Admittedly, not all issues have been exhaustively addressed. However, what has been discussed provides underpinnings for some conclusions on the perception of rights in Zambia, and what needs to be done to ensure that people’s enjoyment of their rights is meaningful.
The core obligation of states parties to the ICESCR is efficient and effective use of the available resources. In view of this, it is submitted that Zambia has failed to discharge its obligation under the covenant because, as the discussion has revealed, she has not used her available resources in an efficient and effective manner. She cannot plead ‘lack of resources’ because the resources are there but it is the use of the resources, which is in issue. She cannot also claim that other countries like South Africa have more resources hence the making of the rights justiciable. This argument is not valid because each country has to work within its own budget. On this basis, a country cannot compare itself to another. These arguments notwithstanding, Zambia has continued to use this plea of ‘lack of resources’ as a justification for not making these rights legally enforceable. On the strength of this, it has adopted a “hands-off” approach to socio-economic rights. This has led to untold misery and suffering among the people. It has greatly eroded the worth and dignity of the people. However, not all hope is lost, something can still be done to redress the situation as the following section shows:

6.2. RECOMMENDATIONS

- CHANGE OF PERSPECTIVE

The first step towards correcting past problems is for both the governors and the governed to change their perspective on socio-economic rights. These rights should no longer be looked at as second-class rights that should always come after civil and political rights, but as rights in their own right. Only then will it be appreciated that the two sets of rights are mutually dependent and should be enjoyed at the same time in order to be meaningful.
• SENSITISATION OF THE GENERAL PUBLIC

Interviews with some sectors of the public\(^1\) to determine the levels of knowledge on socio-economic rights among the people revealed that most of them did not even know that such rights existed, let alone, what they are all about. In view of this, there is need for public awareness on this issue. It is only when people know their rights and the benefits thereof that they will be able to fight for them and make government accountable. This public awareness campaign must be spearheaded by Non-governmental Organisations (NGO’s), the church and other interested persons by facilitating public meetings and media programmes. This cannot be left to government because it is an interested party and claims that it has no resources.

• AMENDMENT TO THE BILL OF RIGHTS

One sure way of making the government respond to socio-economic problems is to oblige it to do so under the Constitution. This calls for an amendment to the Bill of Rights to make socio-economic rights legally enforceable or justiciable just like civil and political rights. As the South African experience has shown, government becomes more accountable in the use of resources when socio-economic rights are justiciable. So the challenge is to both the citizens and lawmakers to fight for their socio-economic rights and to amend the law respectively.

• JUDICIAL ACTIVITISM AND CREATIVITY

\(^1\) Which included one Member of Parliament (Hon. Kalumiana, MP, Nalikwanda Constituency), some officers from Cabinet Office, some students from the University of Zambia – Directorate of Distance Education, Ministry of Health workers, some officers from Human Rights Commission, Women for Change, FOSEP, and Integrity Foundation, some marketers at Kafue Estates Market, and other randomly selected persons.
A creative and active judiciary can overcome the limitation imposed on citizen's full enjoyment of life by the non-justiciability of socio-economic rights. Zambian courts should adopt a pragmatic approach to the enforceability of socio-economic rights, as has been the case in India. Judges should not just rigidly follow the black letter of the law without considering the social context in which the law operates. If a new perspective to human rights is adopted and civil and political rights are viewed as having no fixed content of their own, but that this should be derived from other classes of rights, socio-economic would then be projected as the supplier of the requisite content. This will create an important and necessary link between the two sets of rights. It is this link, which should be successfully used to get government to positively respond to socio-economic needs. By broadening the scope of civil and political rights and connecting them to socio-economic rights, the courts will, through civil and political rights, be enforcing socio-economic rights as well. Hence, a creative and active judiciary can therefore shape the agenda of government to ensure that socio-economic rights are enjoyed by all even before the constitution is amended to recognise them as enforceable rights in their own right.

- **RIGHT TO STOP IMPLEMENTATION OF POLICIES NOT BENEFICIAL TO CITIZENS**
The government should be under constitutional obligation to only implement such programmes and policies as are beneficial to its citizens. People should have the right to stop the implementation of such programmes as the Structural Adjustment

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2 Socio-economic rights have been connected to civil and political rights and have thus been enforceable. In *Olga Tellis V Bombay Municipal Corporation* ((1985) 3 SCC 554), the right to adequate housing, shelter and livelihood were treated as part of the all-encompassing right to life. Other cases where the linking principle has been followed are *Ahmedabad Municipal Corporation V Nawab Khan Gulab Khan* ((1997) 11 SCC 123) and *Bandhua Mukti V Union of India* ((1984) 3 SCC 161).
Programme (SAP), which leads to wholesale retrenchments, redundancies and unemployment and just worsens the suffering of the people. A case in point is the attempt by the Labour movement to stop the privatisation of some key companies in Zambia.\(^3\) Citizens should be able to do this as of right.

**GOVERNMENT TO BE PROACTIVE**

The full realisation of socio-economic rights needs active government participation. Government has to be in full control of all situations in order for things to move. The laissez-faire attitude has to be abandoned and the traditional 'duty to respect,' which calls for non-interference, has to be replaced by the duties to protect, to promote and to fulfil. These are positive duties, which require positive action. The government should no longer confine itself to the duty not to interfere but should be at the centre of making things work. For instance, the obligation to promote, imposes a positive duty on the state to ensure that people are aware of something. When applied to socio-economic rights, it means the government should ensure that people know these rights. The duty to protect, if applied to food security, implies that the state should regulate prices of basic foodstuffs to ensure that they remain within reach of ordinary persons. When government becomes proactive as suggested, the quality of people's life will surely improve.

The recommendations proposed here are practical. They can work and produce the desired results.

\(^3\) Like Zambia Electricity Supply Corporation (ZESCO), Zambia National Commercial Bank (ZANACO) and Zambia Telecommunications Corporation (ZAMTEL).
<table>
<thead>
<tr>
<th>Region</th>
<th>Total Students</th>
<th>Total Teachers</th>
<th>Pupil/Teacher Ratio</th>
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<td>9,752</td>
<td>574</td>
<td>9.848</td>
</tr>
<tr>
<td>Southern</td>
<td>10,311</td>
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<td>9.391</td>
</tr>
<tr>
<td>Northern</td>
<td>15,380</td>
<td>854</td>
<td>18.08</td>
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<td>North Western</td>
<td>8,788</td>
<td>556</td>
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<td>1,335</td>
<td>1.000</td>
</tr>
<tr>
<td>Luapula</td>
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<td>1.000</td>
</tr>
<tr>
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<td>2,469</td>
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<tr>
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<tr>
<td>Central</td>
<td>17,460</td>
<td>974</td>
<td>17.89</td>
</tr>
</tbody>
</table>

Boarding Status: All Types; PACE Status: All Schools; SHN Status: All Schools; Schools: All Schools; Libraries: All Locations; Access: All Access; Website: All Websites; Level: All Levels; Type: All Types; Reporting Level: Provincial; Reporting Level: Provincial; S201: Pupil/Teacher Ratio, Grades 8-12; Appendix A
Appendix 2

LUSAKA DHB ESTABLISHMENT REGISTER
LUSAKA HEALTH MANAGEMENT TEAM

Staffing levels as at 01/10/2001
NAME OF THE HEALTH CENTRE: All Health Centres.

<table>
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<th>Category of staff</th>
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<th>Actual</th>
<th>Variance</th>
<th>Remarks</th>
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<td>Medical Officer/Superintendent</td>
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<td>17</td>
<td>-14</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Nursing Sister/Nursing Care Expert</td>
<td>25</td>
<td>18</td>
<td>-6</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Principal/Senior Clinical Officer</td>
<td>7</td>
<td>6</td>
<td>-1</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Social Worker</td>
<td>2</td>
<td>1</td>
<td>-1</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Community Health Nurse</td>
<td>6</td>
<td>4</td>
<td>-2</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Registered Midwife</td>
<td>90</td>
<td>67</td>
<td>-23</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Registered Nurse</td>
<td>93</td>
<td>69</td>
<td>-24</td>
<td></td>
</tr>
<tr>
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<td>Enrolled Midwife</td>
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<td>18</td>
<td>-11</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Radiographer</td>
<td>4</td>
<td>3</td>
<td>-1</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Dental Therapist</td>
<td>18</td>
<td>18</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Clinical Officer (General, Psychiatry, and Dental)</td>
<td>142</td>
<td>102</td>
<td>-40</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Laboratory Technician</td>
<td>26</td>
<td>22</td>
<td>-4</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Nutritionist</td>
<td>11</td>
<td>8</td>
<td>-3</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Pharmacy Technician</td>
<td>9</td>
<td>1</td>
<td>-8</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Environmental Health Technological</td>
<td>17</td>
<td>15</td>
<td>-2</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Cashier</td>
<td>65</td>
<td>64</td>
<td>-1</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Registry Clerk</td>
<td>83</td>
<td>77</td>
<td>-6</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Guard</td>
<td>110</td>
<td>101</td>
<td>-9</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>General Worker</td>
<td>321</td>
<td>305</td>
<td>-16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>1,777</td>
<td>1,444</td>
<td>-333</td>
<td></td>
</tr>
</tbody>
</table>

Grand Total:  

<table>
<thead>
<tr>
<th>Category</th>
<th>DHMT</th>
<th>HCs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>79</td>
<td>72</td>
<td>-7</td>
</tr>
<tr>
<td></td>
<td>1,777</td>
<td>1,444</td>
<td>-333</td>
</tr>
<tr>
<td></td>
<td>1,856</td>
<td>1,516</td>
<td>-340</td>
</tr>
</tbody>
</table>

Source: Lusaka District Health Management Board Establishment Register.
Appendix 3

Quarterly Report on Drugs: Zambia: 2000 All Quarters

Population
Total: 10,385,362
Under 5: 2,037,529 WCA: 2,284,690

Annual Target Groups
Under 1: 406,700
Pregnancies: 555,402 Deliveries: 534,843

Drugs and Totals
Health Centres
7.1. Drugs Kits

Drug Kits Opened

7.1. 8,617 (0.73) per OP plus IP

7.2a. Basic Drugs: In Stock

<table>
<thead>
<tr>
<th>Drug</th>
<th>% expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chloroquine</td>
<td>7.2.1. 9,526 (56%)</td>
</tr>
<tr>
<td>Paracetamol</td>
<td>7.2.2. 8,294 (57%)</td>
</tr>
<tr>
<td>Cotrimoxazole</td>
<td>7.2.3. 7,326 (51%)</td>
</tr>
<tr>
<td>Oral Contraceptive</td>
<td>7.2.1. 9,526 (56%)</td>
</tr>
<tr>
<td>BCG</td>
<td>7.2.2. 8,294 (57%)</td>
</tr>
<tr>
<td>DPT</td>
<td>7.2.3. 7,326 (51%)</td>
</tr>
<tr>
<td>OPV</td>
<td>7.2.1. 9,526 (56%)</td>
</tr>
<tr>
<td>Measles</td>
<td>7.2.2. 8,294 (57%)</td>
</tr>
<tr>
<td>TT</td>
<td>7.2.3. 7,326 (51%)</td>
</tr>
<tr>
<td>Total months in Stock</td>
<td>73,078 (56%)</td>
</tr>
</tbody>
</table>

7.2b. Summary for Basic Drugs in Stock
(Health Centre and Hospital)

| Health Centre Months in Stock | 73,078 (56%) |
| Hospital months in Stock      | 3,735 (45%) |
| Total months in Stock         | 76,813 (56%) |

7.3. Rational Drug Prescription
(Health Centre and Hospital)

Antibiotics prescribed 7.3 86 (14.6%) sample

Drugs and Totals
Hospitals

7.4. Basic Drugs / Supplies: In stock

<table>
<thead>
<tr>
<th>Drug</th>
<th>% expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fansidar</td>
<td>7.4.1. 497 (48%)</td>
</tr>
<tr>
<td>Amoxycillin</td>
<td>7.4.2. 472 (46%)</td>
</tr>
<tr>
<td>Benzyl Penicillin</td>
<td>7.4.3. 457 (44%)</td>
</tr>
<tr>
<td>Rifampicin / Isoniazid</td>
<td>7.4.4. 476 (46%)</td>
</tr>
<tr>
<td>Ketamine</td>
<td>7.4.5. 508 (49%)</td>
</tr>
<tr>
<td>Lancets</td>
<td>7.4.6. 490 (47%)</td>
</tr>
<tr>
<td>RPR Kits</td>
<td>7.4.7. 409 (40%)</td>
</tr>
<tr>
<td>HIV Kits</td>
<td>7.4.8. 426 (41%)</td>
</tr>
<tr>
<td>Total months in Stock</td>
<td>3,735 (45%)</td>
</tr>
</tbody>
</table>

Source: Health Management Information System Data Analysis, Central Board of Health, Zambia.
## Appendix 4.

### JCTR Basic Needs Basket

**September 2003**

(A) **Cost of Basic Food Items for a Family of Six in Lusaka**

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Kwacha</th>
<th>Quantity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mealie meal</td>
<td>28,000</td>
<td>3 x 25 Kg bags</td>
<td>84,000</td>
</tr>
<tr>
<td>Beans</td>
<td>5,200</td>
<td>2 Kg</td>
<td>10,400</td>
</tr>
<tr>
<td>Kapenta</td>
<td>48,000</td>
<td>1 Kg</td>
<td>48,000</td>
</tr>
<tr>
<td>Dry fish</td>
<td>22,000</td>
<td>1 Kg</td>
<td>22,000</td>
</tr>
<tr>
<td>Meat (Mixed cut)</td>
<td>11,900</td>
<td>4 Kg</td>
<td>47,600</td>
</tr>
<tr>
<td>Eggs</td>
<td>4,800</td>
<td>2 Units</td>
<td>9,600</td>
</tr>
<tr>
<td>Vegetables (greens)</td>
<td>1,700</td>
<td>7.5 Kg</td>
<td>12,750</td>
</tr>
<tr>
<td>Tomato</td>
<td>2,500</td>
<td>4 Kg</td>
<td>10,000</td>
</tr>
<tr>
<td>Onion</td>
<td>2,400</td>
<td>4 Kg</td>
<td>9,600</td>
</tr>
<tr>
<td>Milk</td>
<td>3,200</td>
<td>2 litres</td>
<td>6,400</td>
</tr>
<tr>
<td>Cooking oil</td>
<td>16,100</td>
<td>2 x 2 litres</td>
<td>32,200</td>
</tr>
<tr>
<td>Bread</td>
<td>2,800</td>
<td>1 loaf/day</td>
<td>60,000</td>
</tr>
<tr>
<td>Sugar</td>
<td>1,100</td>
<td>8 x 1 Kg</td>
<td>24,800</td>
</tr>
<tr>
<td>Salt</td>
<td>1,600</td>
<td>1 Kg</td>
<td>1,600</td>
</tr>
<tr>
<td>Tea (leaves)</td>
<td>5,500</td>
<td>500 plants</td>
<td>5,500</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td></td>
<td><strong>384,450</strong></td>
</tr>
</tbody>
</table>

(B) **Cost of Essential Non-Food Items**

<table>
<thead>
<tr>
<th>Item</th>
<th>Kwacha</th>
<th>Quantity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charcoal</td>
<td>21,000</td>
<td>2 x 90 Kg bags</td>
<td>46,000</td>
</tr>
<tr>
<td>Soap (Dulux)</td>
<td>1200</td>
<td>10 tablets</td>
<td>12,000</td>
</tr>
<tr>
<td>Wash soap (paste)</td>
<td>2,400</td>
<td>4 x 400 g</td>
<td>9,600</td>
</tr>
<tr>
<td>Jelly (e.g., Vaseline)</td>
<td>4,400</td>
<td>1 x 500 g</td>
<td>4,400</td>
</tr>
<tr>
<td>Electricity</td>
<td>87,000</td>
<td></td>
<td>87,000</td>
</tr>
<tr>
<td>Water (medium density)</td>
<td>14,000</td>
<td></td>
<td>14,000</td>
</tr>
<tr>
<td>Housing (medium density)</td>
<td>450,000</td>
<td></td>
<td>450,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td></td>
<td></td>
<td><strong>643,000</strong></td>
</tr>
</tbody>
</table>

**Total for Basic Needs Basket**

1,027,450

<table>
<thead>
<tr>
<th>Month</th>
<th>Jan</th>
<th>Feb</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>1,027,450</td>
<td>1,035,500</td>
<td>1,033,750</td>
<td>1,030,850</td>
<td>1,028,450</td>
<td>1,027,100</td>
<td>1,026,000</td>
<td>1,024,500</td>
<td>1,024,000</td>
<td>1,027,450</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(C) **Some Other Additional Costs**

<table>
<thead>
<tr>
<th>Item</th>
<th>Kwacha</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education (per year PTA)</td>
<td>K75,000-K185,000</td>
</tr>
<tr>
<td>Basic School</td>
<td></td>
</tr>
<tr>
<td>Health (monthly scheme per person)</td>
<td>K1,500</td>
</tr>
<tr>
<td>Transport bus fare round trip:</td>
<td></td>
</tr>
<tr>
<td>Chilenge-Town</td>
<td>K2,600</td>
</tr>
<tr>
<td>Chelidon-Town</td>
<td>K3,200</td>
</tr>
<tr>
<td>Matero-Town</td>
<td>K2,400</td>
</tr>
</tbody>
</table>

*Please note that other costs would include personal care, clothing, recreation, etc.*

(D) **Some Comparative Figures of Wages—“Take Home Pay”**

<table>
<thead>
<tr>
<th>Salary</th>
<th>Teacher</th>
<th>Secretary in civil service</th>
<th>Nurse</th>
<th>Police Officer</th>
<th>Security Guard</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>K407,000 to K913,000</strong></td>
<td><strong>K390,000 to K791,000</strong></td>
<td><strong>K461,000 to K1,489,000</strong></td>
<td><strong>K120,000 to K300,000</strong></td>
<td><strong>K40,000 to K180,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Please note that we are trying to get updated figures on some of the categories shown above.*

This survey was conducted on 30 September 2003 by the Social Conditions Research Project of the Jesuit Centre for Theological Reflection. Average prices were calculated on the basis of prices gathered from retail outlets at Northmead, Town Centre (Shopsite), City Market, Chawama, Chawama, Kabwata, Matero and schools, clinics, hospitals around Lusaka.

**Source:** Jesuit Centre for Theological Reflection, P.O. Box 37774, 10101 Lusaka, Zambia Tel: 060-1-290-410. Fax: 060-1-290-759. E-mail: jctr@zamnet.zm Internet: www.jctr.org.za
## Appendix 5

**RECIPIENTS OF FUNDS FROM THE ZAMTROP ACCOUNT**

<table>
<thead>
<tr>
<th>RECIPIENT/DETAILS AMOUNT</th>
<th>(US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Attain Shansonga (former Ambassador to the United States)</td>
<td>1,100,000</td>
</tr>
<tr>
<td>FTJ – payment to Busile Tailors</td>
<td>1,100,000</td>
</tr>
<tr>
<td>Former Chief Justice Mathew W. Ngulube</td>
<td>168,000</td>
</tr>
<tr>
<td>Mr. Vernon Mwaanga (former Minister of Information)</td>
<td>360,000</td>
</tr>
<tr>
<td>FTJ Democratic Institute</td>
<td>36,000</td>
</tr>
<tr>
<td>Helen Chiluba (FTJ’s daughter)</td>
<td>90,000</td>
</tr>
<tr>
<td>Fred Chiluba Jnr (FTJ’s youngest son)</td>
<td>10,000</td>
</tr>
<tr>
<td>Mr. Bonaventure Mutale (former Attorney General)</td>
<td>7,000</td>
</tr>
<tr>
<td>Mr. Katele Kalumba (then Minister of Finance and Economic Development)</td>
<td>8,000</td>
</tr>
<tr>
<td>Ms. Stella Chibanda (former Permanent Secretary at the Ministry of Finance and Economic Development)</td>
<td>3,500</td>
</tr>
</tbody>
</table>

**SOURCE:** Speech by His Excellency the President, Mr. Levy Patrick Mwanawasa, SC, at the Special Meeting of Parliament on 11th July, 2003, Pg 19-20.
Bibliography


Reports:


Human Rights Instruments:


Newspapers:


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8. TIMES OF ZAMBIA, Saturday, August 9, 2003.
