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**SEEDING CHANGE: A STUDY TO ADVANCE  
REALIZATION OF THE RIGHTS TO FOOD  
AND EDUCATION IN ZAMBIA**

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCA</b>	Common Country Assessment
<b>CCPR</b>	Centre for Civil and Political Rights
<b>CED</b>	Committee on Enforced Disappearances
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CO</b>	Core obligations
<b>CRC</b>	Convention on the Rights of the Child
<b>CRMW</b>	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSEND</b>	Children with special education needs and disabilities
<b>CSO</b>	Civil society organization
<b>CTPD</b>	Centre for Trade Policy and Development
<b>CwR</b>	Connect with Respect
<b>DSSI</b>	Debts Service Suspension Initiative
<b>ECE</b>	Early Childhood Education
<b>ESB</b>	Educational Statistics Bulletin
<b>ESCR</b>	Economic, Social and Cultural Rights
<b>ESCR-Net</b>	International Network of Economic, Social and Cultural Rights
<b>FAO</b>	Food and Agriculture Organization
<b>FISP</b>	Farmer Input Support Programme
<b>FSP</b>	Food Security Pack
<b>GBV</b>	Gender-based violence
<b>GEEC</b>	Gender Equity and Equality Commission
<b>GHI</b>	Global Hunger Index
<b>GRZ</b>	Government of the Republic of Zambia
<b>HGSF</b>	Home Grown School Feeding
<b>HRBA</b>	Human rights-based approach
<b>HRIA</b>	Human rights impact assessments
<b>HRM</b>	Human rights mechanisms
<b>HSMS</b>	Homegrown School Meals Strategy
<b>IBRD</b>	International Bank for Reconstruction and Development
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICPPED</b>	International Convention for the Protection of All Persons from Enforced Disappearance
<b>IFI</b>	International Financial Institutions
<b>IHRC</b>	International human rights consultant
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>INSS</b>	Integrated National Statistics System
<b>IO</b>	International organization
<b>IOM</b>	International Organization for Migration
<b>LSEN</b>	Learners with Special Needs

<b>LSEN</b>	Learners with Special Needs
<b>KGS</b>	Keeping Girls in School
<b>MAR</b>	Maximum available resources
<b>MELR</b>	Minimum essential levels of rights
<b>MoE</b>	Ministry of Education
<b>MoH</b>	Ministry of Health
<b>NDP</b>	National Development Plan
<b>NFSPP</b>	National Food Systems Position Paper
<b>NHRI</b>	National human rights institution
<b>NMIRF</b>	National Mechanism for Implementation, Reporting and Follow-up
<b>OCC</b>	Official Creditor Committee
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OP</b>	Optional Protocol
<b>OVP</b>	Office of the Vice-President
<b>SCT</b>	Social cash transfer
<b>SDG</b>	Sustainable Development Goals
<b>SFP</b>	School Feeding Program
<b>SHRA</b>	Senior Human Rights Advisor
<b>SUN</b>	Scaling Up Nutrition
<b>TEVET</b>	Technical Education, Vocational and Entrepreneurship Training
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCT</b>	United Nations Country Team
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNHRC</b>	United Nations Human Rights Council
<b>UNICEF</b>	United Nations Children's Fund
<b>UNSDCF</b>	United Nations Sustainable Development Cooperation Framework
<b>UPR</b>	Universal Periodic Review
<b>VAT</b>	Value Added Tax
<b>VNR</b>	Voluntary National Review
<b>WASH</b>	Water, Sanitation and Hygiene
<b>WB</b>	World Bank
<b>WFP</b>	World Food Program
<b>WHO</b>	World Health Organization
<b>ZamStats</b>	Zambia Statistics Agency
<b>ZAPD</b>	Zambia Agency for Persons with Disabilities
<b>ZCSD</b>	Zambia Council for Social Development
<b>ZDHS</b>	Zambia Demographic and Health Survey
<b>ZHRC</b>	Zambia Human Rights Commission
<b>ZIPAR</b>	Zambia Institute for Policy Analysis and Research
<b>ZMW</b>	Zambian Kwacha

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## EXECUTIVE SUMMARY

Zambia is a low-income country with a largely undiversified economy which ranks amongst the 54 developing countries with “severe debt problems” or who are “most debt vulnerable”.<sup>1</sup> This standing has bearing on its ability to implement its international human rights legal obligations, including “to take steps, using its maximum available resources (MAR), towards achieving progressively, the full realization of economic, social and cultural rights”, as codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which it is State Party.

In the lead up to the 75th anniversary of the 1948 adoption of the Universal Declaration of Human Rights (UDHR), this catalytic study<sup>2</sup> was undertaken to advance realization of UDHR articles 25 (adequate standard of living, including food) and 26 (right to education) which were rendered legally binding through ICESCR articles 11 (right to adequate food) and 13 (right to education). It aims to do so by amplifying understanding of Zambia’s general legal obligations under the ICESCR and the normative content of the rights to food and education and uses these markers to assess State actions effecting its obligations, including the use of MAR to progressively realise these rights.

Specifically, the study investigated the extent to which Zambia has incorporated the principle of progressive realization of the rights to food and education in its legal, policy and administrative systems, without the risk of retrogression, and how this has translated into investments in MAR to guarantee the minimum essential levels of rights (MELR) to food and education for all without discrimination. In-depth analysis of budget allocations and expenditures related to the rights to food and education, and related implementation and monitoring, was undertaken to discern whether resources adequately reach women and the most vulnerable in the poorest areas of the country, in particular, in line with Agenda 2030’s promise to reach those furthest behind first.

The challenges of sustaining and increasing allocations and expenditures to the rights to food and education and other economic, social and cultural rights (ESCR) were examined with a focus on how the capacity, quality, and effectiveness of related services could be improved beyond minimal safety nets and temporary special measures. The study also considered the actual and potential impacts of Zambia’s macro-economic

policies, loan agreements, debt restructuring and austerity measures on the realization of the rights to food and education, especially for women, vulnerable and marginalized groups.

Overall, the findings indicate that Zambia continues to struggle to give effect to the normative content of the rights to food and education, sectors which require continuous monitoring to ensure progressive realisation and non-retrogression. In terms of its political commitments, Zambia is off track from achieving Sustainable Development Goals (SDG) 2 (zero hunger) and 4 (quality education) targets. Despite important and continuing progress since mid-2021, not least increased budgetary allocations to social protection and the free education policy, much remains to be accomplished to advance realization of these rights.

Zambia’s economic situation as well as its crippling debt burden closed off much needed fiscal space for investments to realise economic, social and cultural rights. In June 2023, however, it succeeded in securing a deal to restructure USD 6.3 billion in Central Government loans with its bilateral creditors. It has embarked on negotiations with its other lenders to secure equal or better terms on its debt servicing obligations. The June 2023 deal unlocks USD 5.8 billion in debt service savings which augments MAR towards greater realisation of the rights to food and education. These rights are indivisible, interdependent and mutually reinforcing. This led the study to further questions: What mix of legislative, policy, budgetary and other actions can be instituted to move the needle to sustainably alleviate chronic hunger and under-nourishment, get more children in school, and enhance the availability, accessibility, acceptability and adaptability of education? Can targets be reached, such as the Maputo Declaration which recommends allocating at least 10% of the national budget to agriculture and the Education 2030 Incheon Declaration and Framework for Action which urges governments to allocate at least 15% to 20% of total public expenditure to all levels of education? And how can the international human rights framework and rights-based budgeting contribute to better outcomes?

This study notes that current and future agreements with the International Financial Institutions (IFI) entail measures that are likely to impact human rights and the

attainment of the SDGs which would violate the principle of non-retrogression and recalls the importance of ensuring that human rights impact assessments are done prior to the conclusion of agreements.

The findings of this study indicate that the Government's capacity to monitor progress on ESCR must be strengthened by greater awareness and use of the international human rights framework and recommendations to guide national actions. This in turn would ensure greater alignment of data collection, disaggregation and analysis to show progress and gaps. In this regard, the study provides a monitoring framework which may prove useful to the Government and other stakeholders in tracking and assessing progress and regress on the rights to food and education.

The findings, conclusions and recommendations of this study and the monitoring framework are intended to assist the Government, the United Nations Country

Team (UNCT), civil society and other national and international stakeholders in promoting key measures to accelerate the realisation of the rights to food and education (and related SDGs 2 and 4) for all, and especially for marginalised and vulnerable groups, and reinforce their monitoring in Zambia. They are also intended to serve as awareness-raising and policy advocacy tools with Government, the Zambia Statistics Agency (ZamStats), Zambia Institute for Policy Analysis and Research (ZIPAR), and national/sub-regional stakeholders, with the engagement of the Zambia Human Rights Commission (ZHRC), national civil society organizations (CSOs) and think tanks working in food and education, to (1) increase understanding of State obligations and the normative content of the rights to food and education; and (2) use this framework to inform/influence future constitutional and law reform processes, policies and plans, including the 9th and subsequent National Development Plans (NDPs), budgets and priorities.<sup>3</sup>







# 1

## INTRODUCTION

Zambia is State Party to eight of the nine core international human rights treaties, including the ICESCR.<sup>4</sup> It has not, however, ratified the Optional Protocol (OP) to the ICESCR which establishes a mechanism for recourse. In accordance with Article 2 of the ICESCR, it has an obligation to take steps, using its MAR, towards achieving progressively, the full realisation of economic, social and cultural rights.

This study aims to enhance awareness of the State's general legal obligations under the ICESCR by fleshing out the principles of progressive realisation, non-retrogression and MAR. It then takes a closer look at two of the Covenant's rights – to food and education – to lay out the normative content of these rights and the corresponding obligations of the State to realise these rights as well as national actions or lack thereof to give effect to these obligations. It attempts to respond to some key questions:

- Has Zambia taken all appropriate measures to effectively incorporate the principle of progressive realization of the rights to food and education in the national constitutional, legal, judicial, administrative and policy systems, preventing risks of retrogression (legal sustainability)?
- Has Zambia guaranteed the MELR to food and education?
- Has Zambia invested MAR towards the progressive realization of the rights to food and education to all without discrimination?
- What are the challenges to adequately implement and monitor budgets allocated to these rights, social protection and sustainable livelihoods, to ensure they especially reach women and the most vulnerable in the poorest areas of the country in line with Agenda 2030's promise to reach those furthest behind first?
- Can current allocation levels be sustained and increased to include everyone without discrimination in the access to these and other ESC rights, while improving the capacity, quality, and effectiveness (improved outcomes) of related services (financial sustainability), in lieu of just adopting minimal safety nets and temporary special measures?
- What are the actual and potential impacts of macro-economic policies, loan agreements, debt restructuring and austerity measures on the realization of at least MELR to food and education,

especially for women, vulnerable and marginalized groups? Are potential retrogressive measures justified and unavoidable? Are appropriate measures being taken to minimize discriminatory impacts?

To respond to these questions, this study thus contains a review of:

- Zambia's core obligations (CO) to meet at least the minimum essential levels of the rights to food and education, based on the ratification of international human rights instruments and the recommendations of human rights mechanisms (HRM);
- The legal, policy, strategic (including the 8<sup>th</sup> NDP and related programmes) and budget measures adopted by Zambia to implement its CO and HRM recommendations;
- Data-collection and statistics, progress and challenges (capacity and resources) towards rights-based/leave no one behind monitoring;
- The interlinkages between the realization of ESCR and the role of IFIs and other bilateral and private creditors;
- Rights-based budget analyses.

Based on the review, key conclusions and recommendations are contained in Chapter 6 for follow-up.





## 2

## ZAMBIA'S INTERNATIONAL LEGAL OBLIGATIONS AND POLITICAL COMMITMENTS

## Understanding Zambia's legal obligations under the ICESCR:

By ratifying international treaties Zambia has an obligation to respect, protect, promote and fulfil the human rights of all persons within its jurisdiction. As a State Party to the ICESCR and in light of the authoritative interpretations of the Committee on Economic, Social and Cultural Rights (CESCR) as contained in **General Comment No. 3 (1990)<sup>5</sup>: The Nature of States Parties' Obligations (Article 2 ICESCR)**; and **General Comment No. 9 (1998): The domestic application of the Covenant<sup>6</sup>**; Zambia's general legal obligations under the Covenant encompass the principles of progressive realization, non-retrogression and core obligations, as well as non-discrimination in the enjoyment of all fundamental freedoms and rights.

**1. Progressive realization** imposes an obligation to move as expeditiously and effectively as possible and by **"all appropriate means"**, including **legislative, administrative, financial, educational and social measures to realize the rights recognized in the Covenant. These measures entail:**

- Incorporating ICESCR provisions in domestic law so that they can be invoked before, and directly enforced by courts, tribunals or administrative authorities. While Zambia has enacted laws that domesticate the provisions of some key international treaties such as the Persons with Disabilities Act No. 6 of 2012 which domesticates the CRPD, the Gender Equity and Equality Act, 2015, which domesticates the CEDAW and the Children's Code Act 2022 which domesticates the CRC, gaps still exist. For example, the Special Rapporteur on the rights of persons with disabilities noted: "The Act only domesticates some provisions of the Convention while excluding other important ones, such as those relating to the rights of women and children with disabilities, the right to a nationality, respect for privacy and freedom of opinion and expression."<sup>7</sup> Further, specific steps to facilitate strategic litigation that would give effect to the protected rights is still required. Some of this action can draw lessons from other countries where for example, civil society activism, community education, mobilization and litigation contributed to cases; courts were recourse for direct enforceability of ESC Rights; and international norms were used as interpretive

tools. Annex 6 contains a summary of emblematic rights to food and education case law from various regions of the world.

- Having laws that institute **appropriate remedies or means of redress<sup>8</sup>**, such as judicial or non-judicial remedies with respect to rights which may be considered justiciable<sup>9</sup>. For some obligations, such as non-discrimination, the provision of judicial remedies is indispensable.
- Having administrative remedies which are accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures is also appropriate.
- Ensuring that courts take account of Covenant rights to ensure that the State's conduct is consistent with its obligations.



- 2. Non-retrogression** does not preclude setbacks but prescribes that any deliberately **retrogressive** measures should be fully justified by reference to the totality of the rights protected by the Covenant and in the context of the full use of MAR. Essentially, there is a presumption that retrogressive measures violate the Covenant and the State bears the burden of proving that these measures were adopted only after carefully considering all options, assessing the impact and fully using its MAR. If such measures are unavoidable, they should be (a) necessary and proportionate, considering alternatives, and remain in place only insofar as necessary; (b) non-discriminatory (ensuring that the rights of disadvantaged and marginalized individuals and groups are not

disproportionately affected); and (c) not affect the core content of the rights. The adoption of fiscal consolidation programs, including austerity programs negotiated with States, international or regional organizations, the International Monetary Fund (IMF), International Bank for Reconstruction and Development (IBRD), development and regional development banks or regional integration organizations, as a condition for obtaining loans, should not adversely affect ESC rights.<sup>10</sup> Both lenders<sup>11</sup> and borrowing States should carry out human rights impact assessments prior to the provision of the loans, to ensure that conditions attached to a loan do not reduce the borrowing State's ability to respect, protect, promote and fulfil ESC rights, and take all measures possible to reduce negative impacts.<sup>12</sup>

3. **Core obligations** to use **MAR**, including resources existing within the State and available through international cooperation and assistance, to progressively realize rights, even in times of severe resources constraints.

**Engagement with, reporting to, and follow-up to the recommendations of the UN human rights mechanisms:**

Zambia's Ratification of International Agreements Act No. 34 (2016) provides a legal framework for Zambia's reporting to treaty bodies. Article 11(1) stipulates that where an international agreement provides for the submission of State reports, the ministry responsible for the subject matter of the international agreement shall prepare and submit the report within the period specified in the international agreement.<sup>13</sup>

Since 2017, Zambia has had concluded reviews under the Human Rights Committee (ICCPR) (2023); Committee on Enforced Disappearances (CED) (2023); Committee on the Rights of the Child (CRC) (2022); Committee on the Elimination of Racial Discrimination (CERD) (2019); and CRPD (2017). Its reports to CEDAW and CESCR were due in July 2015 and June 2010, respectively. Pursuant to the Standing Invitation extended to the Special Procedures of the Human Rights Council in 2008, the Special Rapporteur on the right to food visited Zambia in 2017 and issued her report<sup>14</sup> in 2018. The Human Rights Council adopted Zambia's Fourth Cycle Universal Periodic Review (UPR) on 7 July 2023. Out of a total of 250 recommendations,



Zambia supported 226 and noted 24, including many that are the subject of this study and its recommendations.<sup>15</sup>

The aforementioned human rights mechanisms have issued hundreds of recommendations to Zambia; in this regard, a fully functioning National Mechanism for Implementation, Reporting and Follow-up (NMIRF) is key. In response to a 2017 UPR recommendation to strengthen the existing national human rights mechanism, Zambia established a NMIRF with a Secretariat within the Ministry of Justice in December 2018. On 22 August 2022, Cabinet approved the establishment, TORs and membership of the National Mechanism and formally launched it on 27 June 2023. The 8NDP foresees a budget for its functioning, however, the network of technical level focal points from various ministries and departments remains to be communicated. Government is aware of the need to amend the Ratification of International Agreements Act to recognize the NMIRF as a coordinating body for implementation of recommendations and reporting, to enable it to receive the resources for its functioning.

**A. RIGHT TO ADEQUATE FOOD**

The right to adequate food is recognized in Article 25<sup>16</sup> of the UDHR: "1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food..."; and by the ICESCR in Article 11<sup>17</sup>, proclaiming the "right of everyone to an adequate standard of living for himself and his family, including adequate food"; and the "fundamental right of everyone to be free from hunger". It is also recognized by several other treaties ratified by Zambia, including the ICCPR: Article 6 (right to

life)<sup>18</sup> and the common provision of the International Covenants, Article 1.2 ("In no case may a people be deprived of its own means of subsistence."); the CRC, in articles 24<sup>19</sup> (highest attainable standard of health, child health and nutrition) and 27<sup>20</sup> (standard of living adequate for the child's physical, mental, spiritual, moral and social development); and the CEDAW: articles 12<sup>21</sup> (adequate nutrition during pregnancy and lactation) and 14<sup>22</sup> (adequate living conditions of women living in rural areas, without discrimination). Article 25<sup>23</sup> of CRPD also prohibits discriminatory denial of health care or health services or food and fluids on the basis of disability and Article 28<sup>24</sup> recognizes the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, without discrimination. The right to food is also reflected in Agenda 2030 as Sustainable Development Goal (SDG) 2: Zero Hunger.

In **General Comment No. 12 on the right to adequate food**<sup>25</sup>, the CESCR clarifies the normative content of Article 11 of the ICESCR and defines the content of the right and the corresponding States' **obligations**:

1. **Adequacy and sustainability of food availability and access.** The right to adequate food is realized when everyone has physical and economic access at all times to adequate food or means for its procurement. Food must be **available** in a quantity and quality **sufficient** to satisfy the **dietary needs**<sup>26</sup> of individuals, **free from adverse substances** (through adequate requirements for food safety), and **acceptable** in the local culture.

- a. **Availability** is based on direct access to productive land/natural resources, or on a well-functioning distribution, processing and market system.
- b. **Economic accessibility:** costs to acquire a dequate food should not threaten the satisfaction of other basic needs. Vulnerable groups should receive support.
- c. **Physical accessibility:** food should be accessible to everyone, including vulnerable individuals (children, elderly people, persons with disabilities, persons with mental health conditions, persons living with terminal illnesses), victims of natural disasters, people living in disaster-prone areas, and indigenous populations.



2. **Freedom from hunger.** Even in the event of resource constraints or natural or other disasters, States should take measures to ensure that the right to food is especially fulfilled for **vulnerable population groups and individuals**. Zambia should take the necessary action to mitigate and alleviate hunger (Article 11.2), and ensure everyone access to the **minimum essential food** which is **sufficient, nutritionally adequate and safe**. This obligation is threefold: (a) **obligation to respect** access to adequate food, by not taking any measures to prevent it; (b) **obligation to protect**, by taking measures to ensure that enterprises or individuals do not deprive anyone of their access to adequate food; and (c) **obligation to**

**fulfil** i.e.: (1) **facilitate** people's access to resources and means to ensure their livelihood and food security; and (2) **provide** the right to food to individuals or groups unable to enjoy it, including victims of disasters. Violations occur in case of lack of improvement in the enjoyment of the right to food (no progression or stagnation), retrogression and when failing to ensure at least minimum essential levels of enjoyment of the right to food (core content freedom from hunger). **Violations** also occur when the State fails to ensure the satisfaction of, at the very least, the **MELR required to be free from hunger**. The State should use **MAR** to satisfy, as a matter of priority, the duty to ensure progressive realization. Other State obligations include: (a) Not to adopt legislation or policies which are incompatible with pre-existing legal obligations relating to the right to food; (b) Eliminate any legal or de facto discrimination against any individuals or groups in access to food, as well as to means and entitlements for its procurement; (c) Do not deny access to food to any particular individuals or groups (including the prevention of access to humanitarian food aid in conflicts or emergencies); (d) Adequately regulate activities of individuals or groups to prevent them from violating the right to food of others<sup>27</sup>; and (e) Take into account international legal obligations on the right to food when entering into agreements with other States or international organizations.

### 3. Implementation at the national level.

- a. The State should adopt a **national strategy for the right to food and nutrition security for all**<sup>28</sup>, identify the **resources available** to meet the objectives and the most cost-effective way of using them. The strategy should set out responsibilities and a timeframe for implementation, address critical issues concerning all aspects of the food system, ensure the most sustainable management and use of resources for food at the national, regional, local and household levels, and **prevent discrimination** in access to food or resources for food, particularly for women<sup>29</sup>.
- b. **Framework legislation.** States may adopt a **framework law** including provisions on its purpose; targets and timeframe; means of implementation, and the collaboration with civil society, private sector and IOs; institutional responsibility; monitoring mechanisms, and possible recourse procedures. UN programs and agencies (Food and Agriculture

Organization [FAO], United Nations Children's Fund [UNICEF]), should assist, upon request, in drafting the framework law and in reviewing sectoral legislation. Victims of a violation of the right to food should have access to effective **judicial or other appropriate remedies** at national, regional and international levels, and be entitled to adequate reparation (restitution, compensation, satisfaction or guarantees of non-repetition). The incorporation in the domestic legal order of international instruments recognizing the right to food or recognizing their applicability, should be encouraged to **empower courts to adjudicate violations of the right to food**. The **ZHRC** also should address complaints of violations of the right to food.

- c. **Indicators.** States should set benchmarks and develop mechanisms to monitor progress, identify implementation challenges and facilitate adoption of corrective measures.

4. **International obligations.** The food organizations, FAO, World Food Programme (WFP) and International Fund for Agricultural Development, with the United Nations Development Programme (UNDP), UNICEF, World Bank (WB) and regional development banks, should cooperate more effectively. International financial institutions, IMF and WB should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis.

The above should be read in conjunction with Article 6 of the ICCPR (right to life); the common provision of the International Covenants, Article 1.2; articles 24 and 27 of the CRC; articles 12 and 14 of the CEDAW; and articles 25 and 28 of the CRPD.

## B. RIGHT TO EDUCATION

The right to education is recognized by Article 26 of the UDHR<sup>30</sup> (right to education; free, compulsory elementary education accessible to all); and by articles 13<sup>31</sup> (right to education) and 14<sup>32</sup> (plans of action for primary education), of the ICESCR; as well as by several other treaties ratified by Zambia, including the ICCPR: Article 18<sup>33</sup> (liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions); the CRC: articles 28<sup>34</sup> (right of the child to education and obligations of the State) and 29<sup>35</sup> (the aims of education); the CEDAW: Article 10<sup>36</sup>

(prohibiting discrimination against women in the field of education); the CRPD: Article 24<sup>37</sup> (recognizing the right of persons with disabilities to education and lifelong learning); and the ICERD: articles 5<sup>38</sup> (prohibiting racial discrimination in the enjoyment of human rights including the right to education and training), and 7<sup>39</sup> (teaching, education, culture and information measures to combat racial discrimination), as well as the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on Technical and Vocational Education<sup>40</sup>. Zambia has not yet ratified the UNESCO Convention against Discrimination in Education<sup>41</sup>, but has already agreed to it and is reporting on its implementation<sup>42</sup>. The right to education is reflected in Agenda 2030 as SDG 4: Quality Education.

The CESCR **General Comment 11 (1999) Plans of action for primary education**<sup>43</sup>, and **General Comment No. 13 (1999) on the right to education**<sup>44</sup> spell out in more detail the **obligations of Zambia** with regards to the right to education.

1. **Progressive realization:** State Parties should incorporate the right to receive an education in the domestic legal system and take all appropriate measures to ensure the satisfaction of, at the very least, **minimum essential** levels of rights including "the most basic forms of education", through the adoption and implementation of a **national educational strategy** including provision for secondary (including technical and vocational), higher and fundamental education.
2. **Non-retrogression:** Zambia should avoid any deliberately retrogressive measures in the context of the full use of Zambia's **MAR**.
3. **Primary education** should be available and free for all on an equal footing. Zambia must have a **detailed plan of action** for the progressive implementation, within a reasonable number of years fixed in the plan, of compulsory primary education free of charge for all, respecting the following standards:
  - a. **Availability:** functioning education institutions and programs should be available in sufficient quantity, with buildings, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive remuneration, teaching materials and facilities (library, computer, information technology)<sup>45</sup>.
  - b. **Accessibility:** educational institutions and programs should be accessible to all, without discrimination. This entails: (i) **Non-discrimination:** education must be accessible to all, especially the most vulnerable, in law and fact, without discrimination; (ii) **Physical accessibility:** education should be within safe physical reach (at reasonably convenient geographic locations or via "distance learning"). The special needs of girls (including sanitation) and persons with disabilities should be considered; (iii) **Economic accessibility:** primary education shall be available "free to all".
  - c. **Acceptability:** the form and substance of education should be relevant, culturally appropriate, with good quality curricula and methods.
  - d. **Adaptability:** education should be flexible, adapted to the needs of changing societies and of students within their diverse social and cultural settings.
4. **Secondary education** should be progressively made available and accessible to all. **Higher education** should be equally accessible to all, based on capacity.<sup>46</sup> **Fundamental education (or basic education)**, including adult education and life-long learning, should be equally available and accessible to all those "who have not received or completed the whole period of their primary education".
5. **Non-discrimination and equal treatment:** (a) **Educational data should be disaggregated** by prohibited grounds of discrimination. (b) The State should set up an **adequate fellowship system** to enhance equality of educational access for disadvantaged groups including in higher education. **Temporary special measures** may be adopted for women and for disadvantaged groups<sup>47</sup>. (c) The State should take measures to **remove gender and other stereotyping** which impedes the educational access of girls, women and other disadvantaged groups. (d) **Sharp disparities in spending** may result in differing geographic qualities of education. (e) "**Minimum educational standards**" should be in place, and a transparent and effective system to monitor such standards should be maintained. (f) The State should take measures against **child labor**.
6. **Discipline in schools:** Corporal punishment should not be applied.



The above obligations should be read in conjunction with CRC articles 28 (right of the child to education) and 29 (the aims of education); Article 10 of the CEDAW (prohibiting discrimination against women in the field of education); ICERD articles 5 (prohibiting racial discrimination in the enjoyment of human rights including the right to education and training), and 7 (teaching, education, culture and information measures to combat racial discrimination); and Article 24 of the CRPD (recognizing the right of persons with disabilities to education and lifelong learning)<sup>48</sup>.





# 3

**IMPLEMENTING INTERNATIONAL LEGAL OBLIGATIONS AND POLITICAL COMMITMENTS THROUGH NATIONAL LEGISLATION, POLICIES, STRATEGIES, PLANS, BUDGETS AND DELIVERY**

Bearing in mind Zambia's legal obligations emanating from the ICESCR, this chapter reviews the measures adopted by the Government of the Republic of Zambia (GRZ) to realize the rights to food and education. It identifies key gaps which remain.

### Measures for the progressive realisation of economic, social and cultural rights

Zambia's Constitution makes no reference to the status of international law in the Zambian legal system. Zambia has adopted a dualist approach in which international law and domestic law are treated as two distinct legal systems, and a separate process for domestication of international agreements is required through enactment of law in Parliament. The Ratification of International Agreements Act, No. 34 (2016), Section 12, sets out the avenues through which an international agreement may be domesticated. Zambia's dualist system thus requires domestication of international treaties for them to be enforced in court. They are not self-executing after ratification or accession, and individuals cannot use a ratified international instrument to enforce a right contained therein unless it has been domesticated.

The Bill of Rights in Part III of the Zambian Constitution provides for the protection of fundamental rights and freedoms. Economic, social and cultural rights, however, are not included in it. The Bill of Rights can only be amended through a national referendum where at least 2/3 of registered voters vote and at least 50% vote in favour of the amendment. The 2016 referendum for the inclusion of ESCR in the Bill of Rights<sup>49</sup> did not meet these thresholds<sup>50</sup>.

Although all stakeholders consulted agreed there exists real political will by the Government to promote the realization of ESC rights, the lack of their constitutional recognition does not rule out risks of retrogression in the future. The sustainability of any progress and the political focus are not guaranteed but left to the will of the sitting government. Legal recognition is also essential for the purposes of **justiciability** and government accountability. There already are, however, examples of case law on the right to food: the Supreme Court of Zambia on 9 December 2019 handed down an important judgment on a case brought by two prisoners with HIV on antiretroviral treatment, who sought access to a balanced diet in prison. In its concluding remarks, the Court stated:

We must make the point that adjudication through the courts is not, and cannot be the main means to fulfil the realization of prisoners' rights, particularly those alleging neglect and violation of rights of an economic and social nature. The development and implantation of services and policies necessary to make these rights a reality, are the kinds of tasks that repose in the political branch of the government - not the judiciary. We as courts are not even the best actors to perform the task of monitoring the general result of policies oriented to ensure the full realization of the whole range of prisoners' rights - a task which the political and especially independent constitutional technical bodies such as the Human Rights Commission are better equipped to do.<sup>51</sup>

The Court's pronouncement underscores the importance of ensuring that ESC rights are rendered legal, justiciable and enforceable by the courts, rather than maintained as policy with less stringent standards and accountability for progress and regress, act and omission. The Constitution would thus need amendment to inter alia, include clauses which stipulate that international agreements entered into by the State automatically become part of domestic legislation.

At the policy level, Zambia's **national guiding Vision 2030** includes "respect for human rights" in its 7 basic principles. The **8NDP (2022-26) Area 4 on Good Governance Environment** includes among its strategic development outcomes (2) Improved Rule of Law, Human Rights and Constitutionalism: strengthen the criminal justice system and the rule of law through Constitutional review, enhance access to justice and promote human rights.<sup>52</sup> The country does not currently have a National Human Rights Action Plan.<sup>53</sup>

The 8NDP Strategic Areas (1) Economic Transformation/Job Creation; (2) Human/Social Development; and (3) Environmental Sustainability, create a conducive environment for the realisation of ESC rights. **Strategic Development Area 2 on Human and Social Development**, in particular, sets as strategic development outcomes: (1) Improved Education and Skills Development<sup>54</sup>; (2) Improved Health, Food and Nutrition<sup>55</sup>; (3) Improved Water Supply and Sanitation; and (4) Reduced Poverty, Vulnerability and Inequalities.

Zambia's key institutions for human rights are the **Judiciary**, the primary institution charged with the

protection of human rights by enforcing the Bill of Rights, and the ZHRC, established in 1997 in accordance with the Paris Principles, mandated to investigate human rights violations, maladministration of justice, and propose measures to prevent human rights abuses<sup>56</sup>. Other relevant institutions are the Gender Equity and Equality Commission which is yet to be established although provided for by law, and the Zambia Agency for Persons with Disabilities (ZAPD).

### Core obligations

Generally, the financing of measures is determined by key documents such as the Budget Policy Concept Paper on the 2022-2024 Medium Term Expenditure Framework, Annual National Budgets, and the Extended Credit Facility with the IMF – Special Drawing Rights funding. The 2023 National budget (“Stimulating Growth for Improved Livelihoods”) covers Economic Transformation and Job Creation, Human and Social Development, Environmental Sustainability and Good Governance.

## A. RIGHT TO ADEQUATE FOOD



In 2022, Zambia's hunger status was rated as “serious” on the Global Hunger Index (GHI) and it ranked 108th out of the 121 countries with sufficient data to calculate GHI scores, with a score of 29.3.<sup>57</sup> The cost of a nutritious diet has increased in less than 18 months with over 53% non-affordability due to high food prices. Persistent income inequality and reduced income and employment due to the COVID-19 pandemic put healthy

diets out of reach for vulnerable or poor groups<sup>58</sup>. Zambia has “a triple burden of malnutrition, i.e., undernutrition, micronutrient deficiency and overweight among children, adolescents and women”<sup>59</sup>. In 2018, 35% of children under age 5 were stunted, 12% were underweight and 4% were wasted<sup>60</sup> and a 2020 assessment showed 8.7% acute malnutrition among children under the age of five in drought prone districts.<sup>61</sup>

The causes of malnutrition include high morbidity, limited access to adequate health services, poverty and food insecurity. Infant/young child feeding practices are not optimal, with wide disparities across socioeconomic gradients. In the last five years, exclusive breastfeeding fell by 3%, highlighting the need to strengthen maternal, infant and young child feeding practices at the health facility and community levels. Food insecurity and malnutrition are multi-sectoral in nature and driven by the presence of high-income inequality, low productivity among smallholder farmers, food loss and waste, insufficient safe and nutritious food, low dietary diversity, and natural resource degradation.<sup>62</sup> Anaemia also affects many women and children, leading to maternal mortality and poor birth outcomes. An additional factor of concern is lack of water for irrigation and the negative impacts of climate change (droughts, floods) affecting food production and food security<sup>63</sup>.

Against the backdrop of the normative content of Article 11 of the ICESCR on the right to food, this section looks at the corresponding actions of the State to give effect to its obligations, including to use MAR to progressively realize the right.

### 1. Progressive realization of obligations

**Legal framework.** Legislation relevant to the right to food is contained in Volume 12 and Volume 14 of the Acts of Parliament.<sup>64</sup> Gaps remain, however, and the Special Rapporteur on the right to food for example, has recommended to (1) **explicitly recognize in the Constitution the right to adequate food** and (2) **adopt a human rights-based national framework law on the right to food**, with benchmarks and implementation plans for each region, that (a) includes budgetary and taxation measures to support smallholder farmers, and gender sensitive budgeting; (b) protects long-term sustainability for agricultural production; (c) establishes agencies responsible for

implementation; and (d) provides for accountability mechanisms to promote the active participation of all interested parties, including those most vulnerable. The Special Rapporteur also recommended to **establish a legal and institutional framework for environmental protection** to prevent soil degradation and water contamination as a result of intensive farming or large-scale animal husbandry and **legislate to limit the excessive and dangerous use of toxic agrochemical products**. Efforts to implement these recommendations should be linked to constitutional and other legal reform efforts. Incorporation in the domestic legal order of the right to food as recognized by the ICESCR would **empower national courts to adjudicate violations of the right to food** by direct reference to obligations under the Covenant.

**National strategy for the right to food and nutrition security for all.** In 2021, the President of Zambia took part in the Food Systems Summit and pledged to end food insecurity and malnutrition in the country.<sup>65</sup> He placed the matter under the direct responsibility of the Office of the Vice - President (OVP). The GRZ is finalizing the **National Food Systems Position Paper (NFSPP)** aligned with the 8NDP, spearheaded by the National Food and Nutrition Commission, with inputs from the agriculture, fisheries, forests, livestock and water sectors.<sup>66</sup> FAO and WFP coordinated the UN's input. The GRZ is also finalizing the **Food and Nutrition Strategic Plan 2022-2027**. Both documents may be further assessed against the recommendation to **prevent discrimination in access to food or resources for food, particularly for women**, including guarantees of full and equal access to economic resources, the right to inheritance and ownership of land and other property, credit, natural resources, and appropriate technology. The Special Rapporteur on the right to food recommended to (a) improve **gender mainstreaming in the institutional, legal, and legislative framework**; (b) adopt a **gender-sensitive, inclusive national land policy** with an effective monitoring mechanism; and (c) support **women farmers** with access to credit and agricultural resources. The CRC also recommended to **address the underlying causes of undernutrition and malnutrition in adolescent girls** and strengthen preventive measures, including by raising awareness of nutrition issues and proper feeding practices. The assessment should see the participation of women and vulnerable groups at early stages of implementation and may also integrate the review of how the Food and Nutrition Strategic Plan contributes to the

implementation, in liaison with the NMIRF, of other key recommendations by human rights mechanisms.<sup>67</sup>

## 2. Maximum Available Resources.

The 2024 Budget made critical linkages with the 8NDP strategy "to improve agriculture production and productivity" under the "Economic Transformation and Job Creation" development outcome. Budget measures are expected to uphold the 8NDP agricultural sector target of 10% annual growth rate from an average 0.4% attained during the 7NDP.<sup>68</sup>

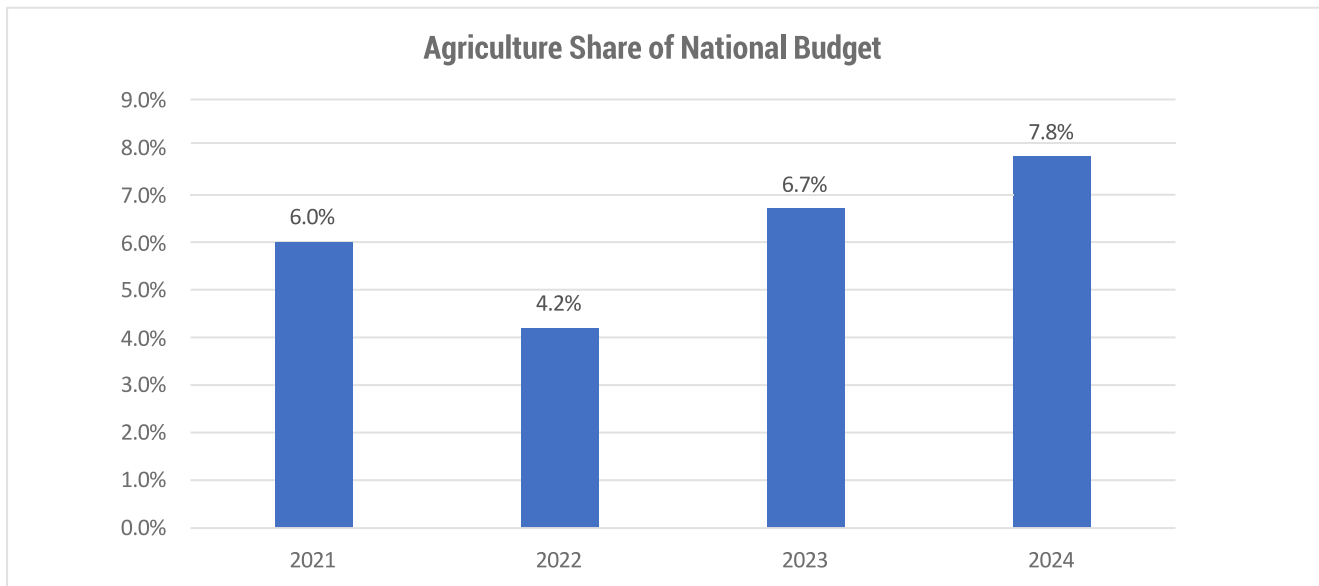
The 2024 Budget allocates ZMW 13.8 billion (7.8% of the Budget) to agriculture, compared to the 2023 allocation of 6.7%, but it still falls short of the Maputo Declaration of at least 10% of the national budget(see figure I). The 2023 Budget also allocates ZMW 52.7 million for the recruitment of 500 agriculture extension officers (256 in 2022).<sup>69</sup>

Institutional capacity challenges leading to low utilization of funds and environmental challenges leading to low agricultural output, however, are likely to be obstacles to implementation of the budget. A budget execution trend analysis between 2018-2021 (see figure II) shows that allocations have consistently outpaced expenditure with an average of 50% under- expenditure between 2018 and 2021.

The low budget execution has the potential to affect agricultural productivity and subsequently affect access to **sufficient, nutritionally adequate, and safe food, especially for the poor and vulnerable groups**. In 2022-2023, approximately 1.35 million people (10% of the population) were assessed to face high levels of acute food insecurity (Integrated Food Security Phase Classification Phase 3 or above)<sup>70</sup> and required urgent humanitarian action to reduce food gaps, protect and restore livelihoods and prevent acute malnutrition.

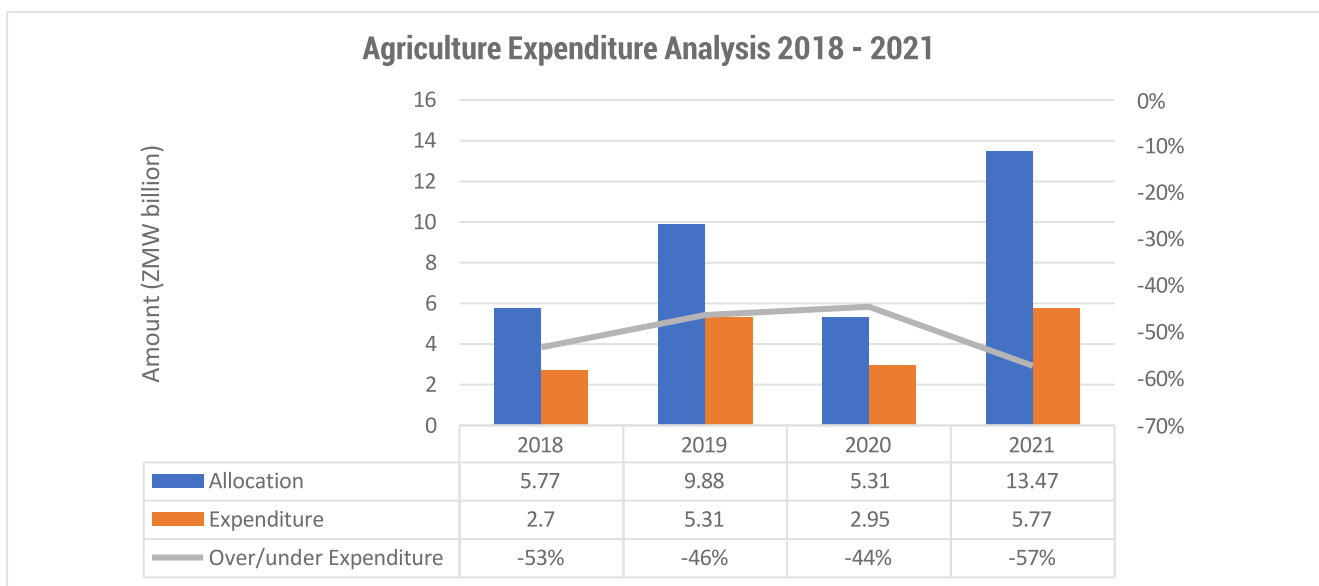


Figure I



Source: compilation from the national budget speech 2021-2024.

Figure II



### 3. Vulnerability, gender equality and non-discrimination, and social protection

All stakeholders consulted recognized GRZ efforts. The recent vulnerability assessment report of the OVP Disaster Management and Mitigation Unit, however, shows persisting food problems in rural areas and an even higher number of affected people in peri-urban areas. Persisting issues of chronic malnutrition and stunting also relate to water and sanitation. It is necessary to mainstream nutrition in the right to food.<sup>71</sup> While the OVP is aware of this need, the administrative capacity to implement this strategy and deliver the package of interventions efficiently, reaching

those who are marginalized, is in question, in a context where the majority of Zambians are struggling. No social protection package fully integrates the nutrition lens: malnutrition is not a condition for receiving support, although poverty is one. The capacity of the GRZ to apply rights-based approaches to programming and data collection and to observe fiscal discipline would benefit from further strengthening, especially at the lower decentralized levels.

The Special Rapporteur on the right to food recommended to enact the **social protection bill** and allocate budgetary and human resources for its implementation.<sup>72</sup> The GRZ expanded **social**

**protection programs** to mitigate unintended consequences that the removal of subsidies could have on vulnerable populations and the impact of the projected changes in living costs. The allocation increased by 29% from ZMW 6.2 billion in 2022 to ZMW 8.1 billion in 2023 (from 3.6% of the total budget in 2022 to 4.9% in 2023). The **Social Cash Transfer (SCT)**, 45,8% of the social protection budget, increased from ZMW 3.1 billion in 2022 to ZMW 3.7 billion in 2023, to scale up beneficiaries by 37% (from 973,323 to 1,374,500 households). Even so, a significant proportion of the poor population may still remain without coverage even after the 2023 scale -up. The **FSP** increased from ZMW 1.1 billion in 2022 to ZMW 1.2 billion in 2023. As of August 2022, ZMW 903.3 ( 75% of the FSP budget ) was released . The **Public Service Pension Fund** rose from ZMW 2.0 billion in 2022 to ZMW 2.3 billion in 2023. The increase is attributed to the GRZ's commitment to dismantling arrears that are owed to pensioners as well as reducing their waiting period. This information is summarized in table 1 below.

The budget allocations to address the right to food, based on regional disparities, do not reflect the nuances that affect access to food and food security in relation to weighting allocations. The response to inequality based on regional disparities mostly has been through programme adaptations. Programmes that support the outcome of food security such as the FSP have undergone changes to make them adaptive to the context. The FSP, for instance, now has three sub-programme initiatives, which include the FSP –

Rain-fed Cropping (cereals and legumes) with a coverage of 200,000 households, FSP - Wetland Cropping (green maize and vegetables), with a coverage of 40,000 households, and FSP – Alternative Livelihood Intervention (small livestock), with a coverage of 1,000 households. As depicted in figure III below, between 2019 and 2023, allocation to the FSP has been trending upwards although there still remains a dominance in focus on the rainfed cropping sub- programme.

The GRZ also committed to scale up other social protection interventions including the Public Welfare Assistance Scheme, which received a 1000% budget increment over the five years rising from an allocation of ZMW 274,840 to ZMW 3,000,001, and the Child Welfare Programme which also increased 1000% from ZMW 278,267 in 2019 to ZMW 29,387,659 in 2023. Other programs to which the GRZ committed include the **School Feeding Program (SFP)** and the **Homegrown School Meals Strategy (HSMS)** to develop production gardens in schools to produce food consumed at school level (other interventions in the area of education will be addressed in the relevant section).<sup>74</sup> Resources allocated to the SFP and the HSMS remain insufficient, however, and are not captured in the country's Estimates of Revenue and Expenditure (Yellow Book) to enable analysis of allocations. The GRZ's actions are complemented by international partners such as Mary's Meals International, thereby responding to the key provision of Article 2 of the ICESCR on international assistance and cooperation.

**Table 1**  
**Budget allocations to social protection programs 2022-2023**

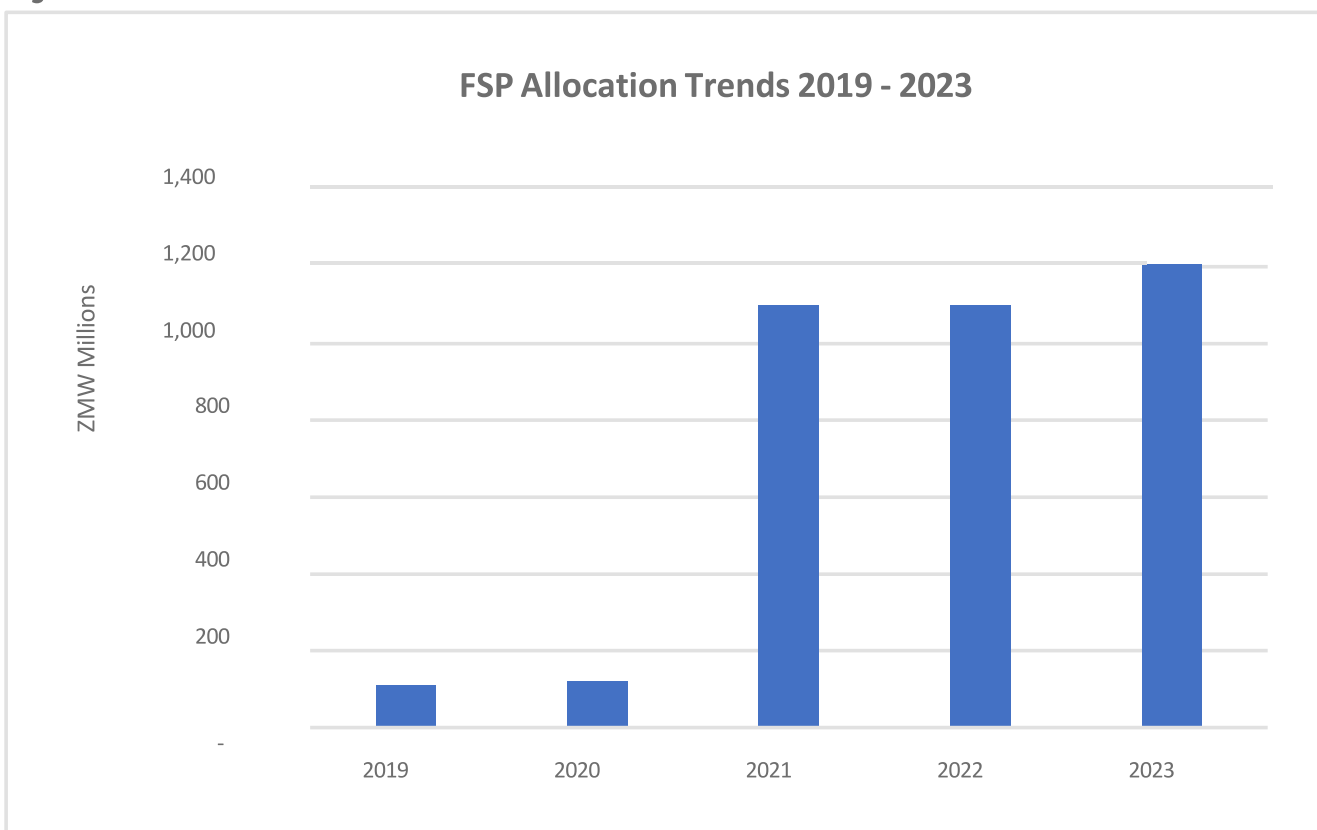
	2022	% of total budget	2023	% of total budget	Differential
Social Protection Budget	ZMW 6.2 billion (approx. USD 319.2 million)	3.6	ZMW 8.1 billion <sup>73</sup> (approx. USD 417 million)	4.9	29% (Year to Year)
Social Cash Transfer	ZMW 3.1 billion	-	ZMW 3.7 billion	-	37% (increase in beneficiaries)
Food Security Pack	ZMW 1.1 billion (approx. USD 51.5 million)	-	ZMW 1.2 billion (approx. USD 61.5 million)	-	-
Public Service Pension Fund	ZMW 2.0 billion	-	ZMW 2.3 billion	-	-

Government also expanded the Constituency Development Fund (from ZMW 25 million in 2021 to ZMW 28 million in 2022) providing the opportunity to make service delivery more responsive to the public's needs, strengthen local institutions, and promote economic development<sup>75</sup>. The 2022 Living Conditions Monitoring Survey will show the proportion of poor population left without coverage, for whom adequate measures are needed.

Additional interventions concern specific vulnerable groups such as **refugees and asylum seekers**. The GRZ has adopted a **refugee policy** and aims to reform the **Refugee Act**<sup>76</sup> to address restrictions. WFP provides humanitarian support to over 17,000 refugees in three settlements through "saving lives" interventions (5% receive a food basket, 95% cash-based transfers); however, the food basket was sharply reduced from 2021 to the present. In the 2021 to 2023 budgets, allocations to migrants and asylum seekers have been provided explicitly under the Ministry of Home Affairs and Internal Security as indicated in table 2 below.

These allocations cover the facilitation of visa and permit processing, acquisition of travel documents for enforcement purposes and national status to immigrants, and for management and protection of refugees and asylum seekers, including relocation of refugees from urban to settlement camps. Since the allocations do not respond to the GRZ's ESC rights obligations, the GRZ Commissioner for Refugees, with assistance from WFP and UNHCR, aims to expand refugees' access to land and productive activities and self-reliance (changing lives). Stakeholders<sup>77</sup> indicated that the amount refugees receive per month is not enough for a week. Discussions are ongoing about leveraging existing social protection tools to extend social support to refugees, including facilitating access to safety nets (SCT) for extremely vulnerable and labor constrained refugees, and for the others, access to productive agriculture input safety nets (FSP, Farmer Input Support Programme [FISP], and Village Savings and Loan Associations). The SFP also targets refugee children. Refugees face many obstacles in trying to secure livelihoods and their right to food. The same restrictions apply to migrants.<sup>78</sup> They are subject to costly permits for study, movement and work, and labor market policies give Zambians priority on job opportunities.

Figure III





**Table 2**  
**Budget allocations to migrants and asylum seekers 2021-2023 (ZMW)**

	2021	2022	2023
<b>Immigration Services</b>	63,421,135	67,269,022	19,570,000
<b>Regional Immigration Administration</b>	12,015,183	18,005,000	100,073,499
<b>Refugees and Asylum Management</b>	3,814,290	4,386,434	4,386,434
<b>Migration Services</b>	<b>79,250,608</b>	<b>89,660,456</b>	<b>124,029,933</b>



b. **National policies and strategy.** The sector is guided by the Zambia National Education Policy, the Education Sector Strategic Plan and the National Higher Education Policy 2019. The GRZ is implementing the free education policy and made progress in implementing free education up to Grade 12, eliminating user fees for secondary education learners and Early Childhood Education (ECE), and fringe fees for primary level learners. The GRZ committed to continue the construction and rehabilitation of secondary schools and early childhood centres; include financial literacy and anti-corruption in the education curriculum; invest in information and communication technology infrastructure and in innovative methods of delivering education; increase school inspections to ensure adherence to standards; and introduce meal allowances in public universities.

## B. RIGHT TO EDUCATION

Against the backdrop of the normative content of Article 13 of the ICESCR on the right to education, this section looks at the corresponding actions of the State to give effect to its obligations, including the use of MAR to progressively realize the right.

### 1. Progressive realization of obligations

a. **Legal framework.** Volume 10 of the Acts of Parliament contains relevant legislation<sup>79</sup>, including the Education Act (2011)<sup>80</sup>, which regulates the provision of accessible, equitable and qualitative education and domesticates the CRC in relation to education<sup>81</sup>. In September 2022, Zambia adopted the Children's Code Act<sup>82</sup>. The Act's Section 10 on the right to education puts emphasis on gender equality and on the respect for the natural environment. The Act further promulgates the obligation of the State and responsibility of parents to ensure education of the child.



Planning was affected by various factors, however, particularly the COVID-19 pandemic.<sup>83</sup> The closure of educational institutions (20 March - 11 September 2020) affected 4,548,968 learners, comprising 4.9% early childhood, 73.4% primary, 18.9% secondary and 2.8% tertiary learners. To reduce learning losses, the GRZ expanded alternative education, including online teaching. Inequality and gender disparity in education, however, caused unequal distribution of the loss of learning time due to differential digital access. Other impacts included loss of access to school feeding programmes, school peer support networks, support to vulnerable children with counselling and the social environment for play and interactions. Child sexual/physical abuse, teenage pregnancies, early marriages and child labour increased. The pandemic increased the numbers of out-of-school children and teachers were also impacted by loss of jobs.

- 1) **Primary education available and free for all**<sup>84</sup>. Zambia has achieved near universal primary school completion levels (91.8% at grade seven) due to free primary education and the 50-50 enrolment policies; but 44% of grade one entrants in 2018 were above the official school age (seven). The primary net enrolment rate has declined from 90.4% in 2016 to 83.6% in 2018. An estimated 816,641 school-aged children remain out-of-school: 27% (over 220,000) are of primary school age, due to various factors including the scarcity of ECE opportunities. ECE was formalized in public schools through the 2011 Education Act No 23. Children attending ECE increased from 139,394 in 2014 to 222,065 in 2018, but the majority is still excluded, especially in rural areas<sup>85</sup>. Assessments show very poor learning outcomes. The 2016 national assessment survey for grades 5 and 9 revealed a learning crisis: a score below 40%. A 2018 Programme for International Assessment study indicates that only 5% of learners attained the minimum proficiency in reading and 2% the minimum proficiency in mathematics. The GRZ recruited over 30,000 teachers in 2022, more than 80% (26,594) were primary school teachers and 6% were ECE teachers. In 2023, the GRZ planned to recruit another 4,500 teachers to be deployed mostly in rural areas, to reduce the teacher-pupil ratio (1:60 in primary schools) to 1:40.

- 2) The CRC recommended to **ensure effective implementation of school grants** for primary education, bursary support for vulnerable children to attend secondary schools, the expansion of early childhood development through low-cost community centres, and free secondary education; and to **expand access to age-appropriate, quality, affordable and inclusive ECE** in order to meet demand and strengthen the use of licensed community-based volunteers for early childhood development.
- 3) **Secondary education progressively made available and accessible to all**. The system creates a funnel: from 9,000 primary schools and three million primary school learners, to only 800,000 places in 1,000 secondary schools.<sup>86</sup> The net enrolment is 20.2%, with acute regional disparities. Even if Constituency Development Fund (CDF) bursaries are now available for vulnerable children in secondary schools at local level, many children remain out of school also due to indirect costs, and long distances to secondary schools. Ministry of Education (MoE) data shows that only 29% of children eligible for secondary schools were actually enrolled during 2014-2018, far below the 7NDP target of increasing the net enrolment to 60% by 2021. Just 4% (1,435) of teachers hired in 2022 were for secondary school.
- 4) **Higher education equally accessible to all, on the basis of capacity**. Technical Education, Vocational and Entrepreneurship Training (TEVET) institutions lack infrastructure and equipment to give students market relevant competencies; graduates struggle to find jobs. Further, only 5% of Zambian women and 8% of men have a post-secondary level education. The GRZ committed to reinstating meal allowances for vulnerable university students through student loans<sup>87</sup>. Student loans vary depending on university fees, length of programme and other costs (accommodation, book and meal allowances).

Over the years, Zambia has provided educational bursaries for children who could not afford fees charged by schools. Bursary support at tertiary level is in the form of a student loan available for selected public universities in the country while the bursaries for secondary schools target children from poor and vulnerable households and children who are orphaned or otherwise vulnerable.

In 2022, the GRZ extended free education in public schools for all learners at early childhood, primary, and secondary school levels. This initiative addresses the inequality in access to education resulting from restrictive tuition, Parent Teachers Association costs, and examination fees that predominantly affect children from low-income households. To support the implementation of free education, in 2022, the GRZ allocated an unprecedented ZMW 1.8 billion towards school grants to help cover operational support costs.

## 2. Non-retrogression/Maximum Available Resources.

The GRZ increased the 2023 budget allocation to ZMW 23.2 billion, 28% more than it allocated in 2022.<sup>88</sup> This trend responded to the UPR recommendation 131.107: "Make efforts to reverse the downward budgetary allocations to the education and health sectors in order to meet the African thresholds on health and education, respectively set in the Abuja and Dakar Declarations" (Namibia).<sup>89</sup>

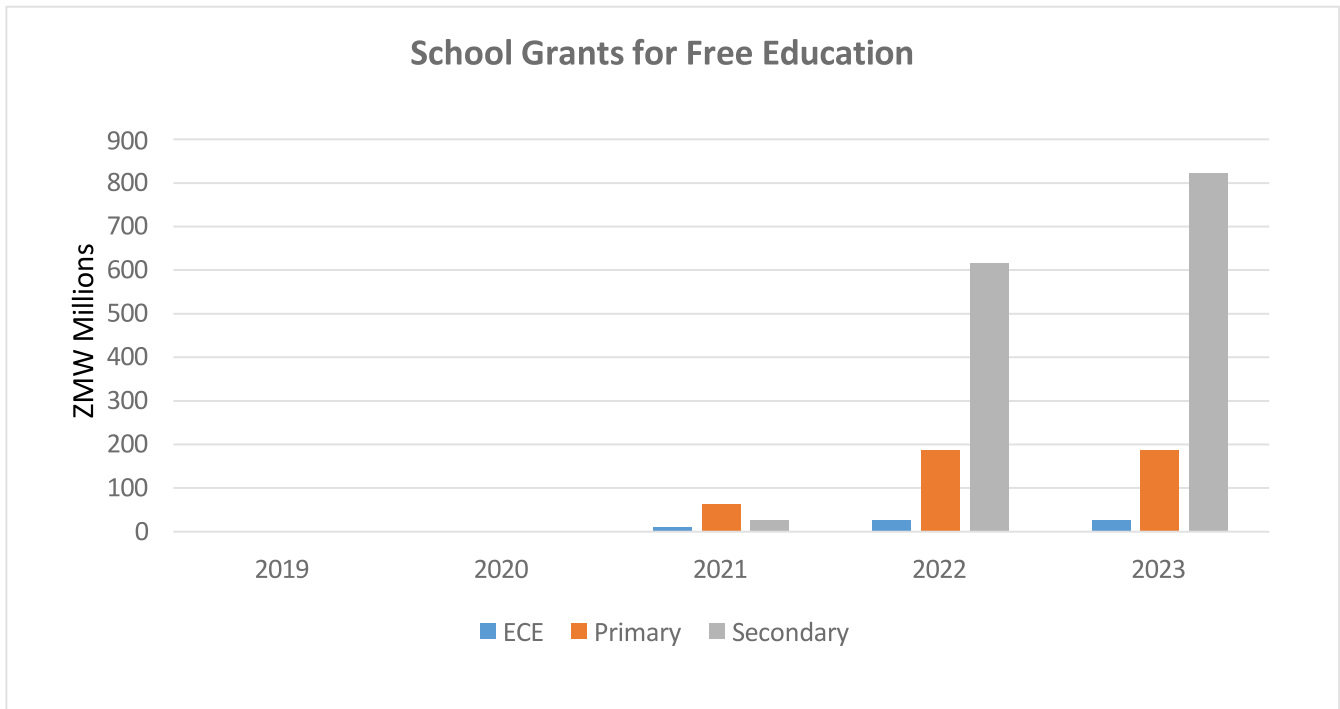
Overall, the budget to education, based on allocations to the MoE, totals ZMW 23,188,742,597 out of the total GRZ budget of ZMW 167.3 billion in 2023. This is equivalent to about 14% of the national budget. While this is commendable, it still fails to meet the Education 2030 Incheon Declaration and Framework for Action which urges Governments to allocate at least 15-20 per cent of their total public expenditure on all levels of education.

In terms of trends, the allocation to education has maintained a steady rise marginally going from ZMW 13,274,546,421 (representing 15.3% of the national budget) in 2019 to the current ZMW 23 billion (13.9% of the national budget) in 2023 and to ZMW 27.4 billion (15.4% of national budget) for 2024 (see figure V below). While in nominal terms the allocation to education has nearly doubled, its prioritisation as a share of national budget has waned dropping 2.3% since 2019. According to a UNICEF report, to effectively maximise learning outcomes in the COVID recovery context, the **GRZ would need to spend as much as 7% to 8% of GDP on education.**<sup>90</sup>

Furthermore, despite the gradual rise in allocations to education over the years, execution has consistently underperformed, similar to the agriculture budget.



Figure IV



Source: compilation from the national budget speech 2020-2024

Figure V

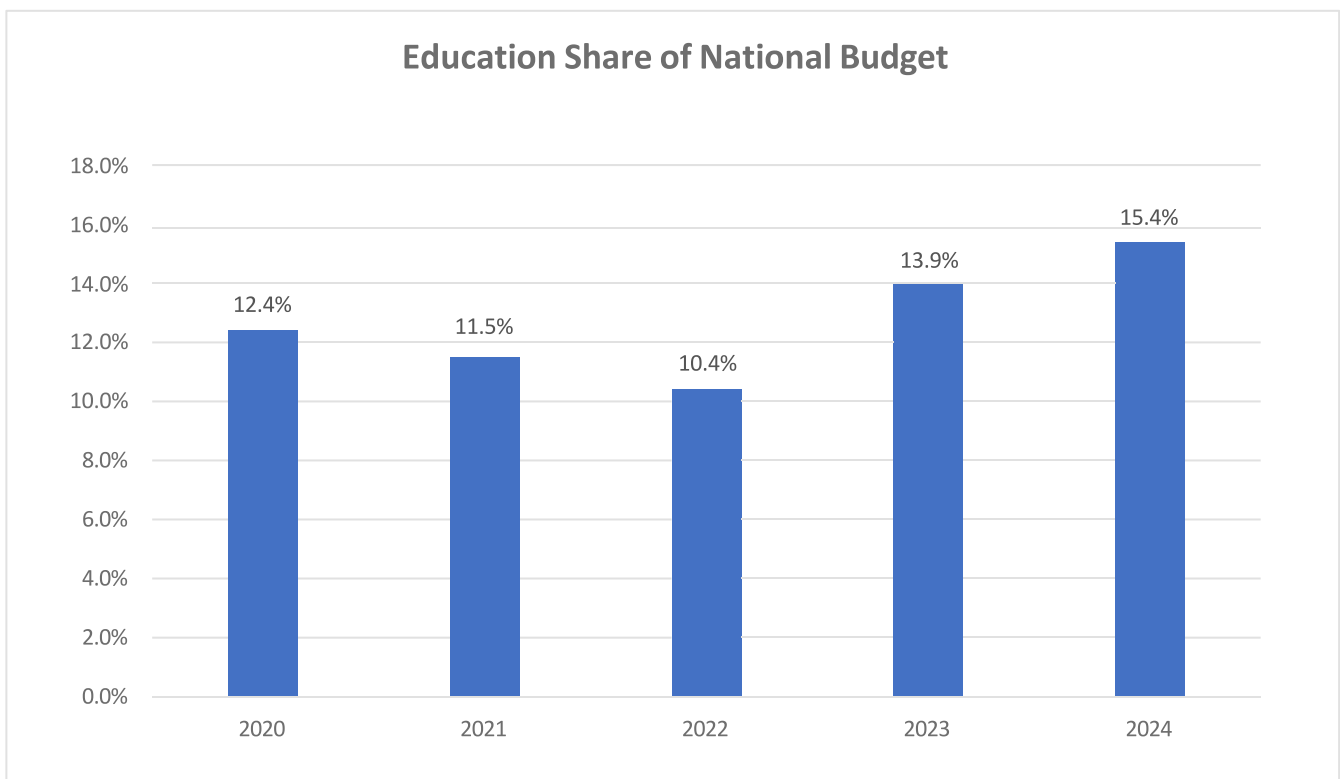


Figure VI

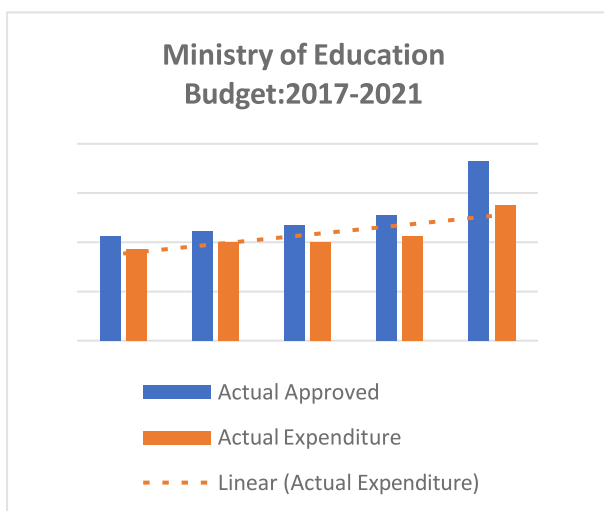


Figure VII

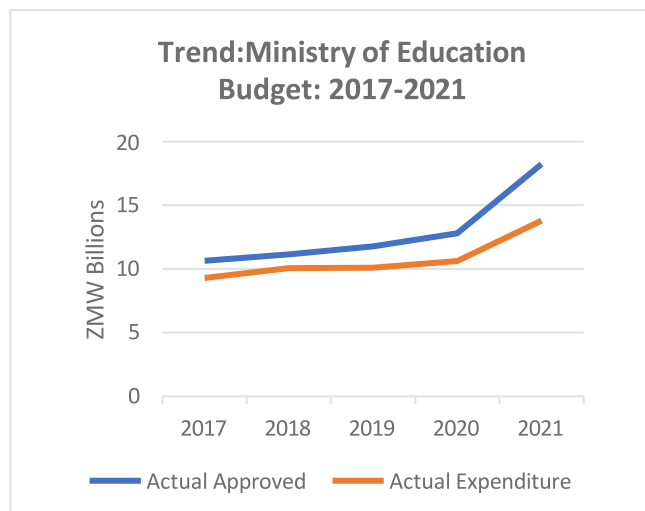
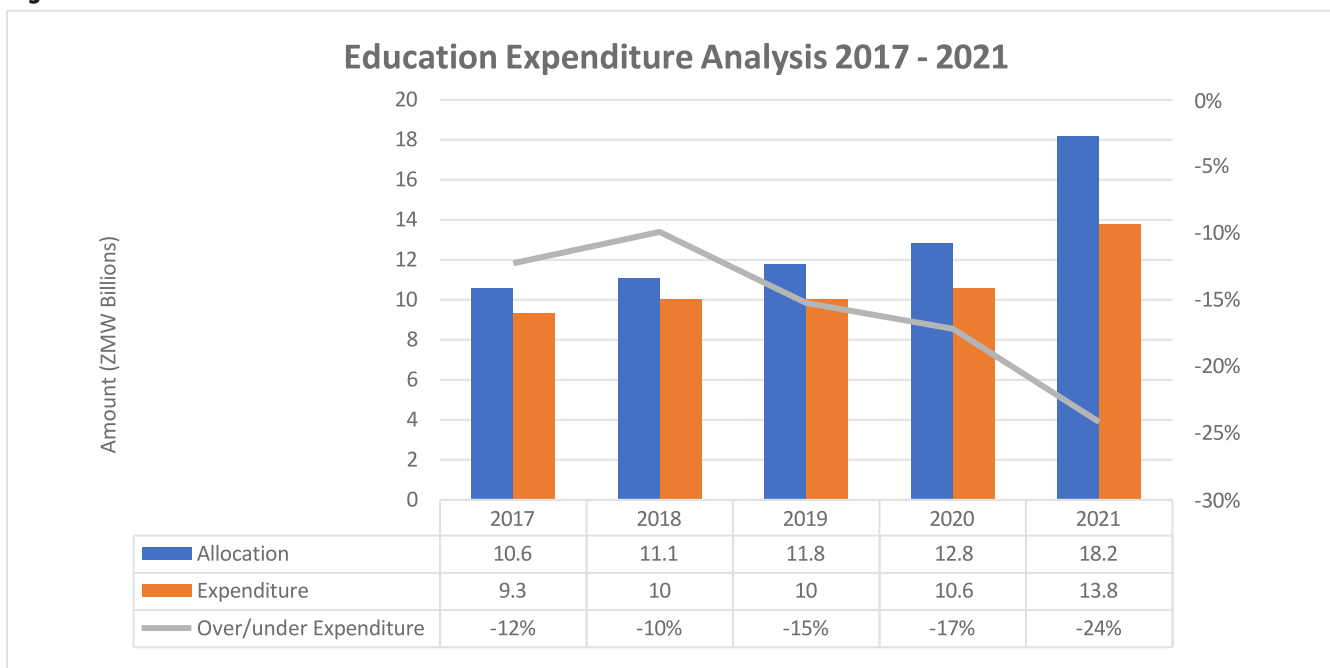


Figure VIII



As shown in figures VI, VII and VIII, actual expenditure of the education budget has remained consistently lower than approved budgets with an average under expenditure of about 16% between 2017 and 2021. This is similar to the agriculture budget that experienced an average 50% under expenditure between 2018 and 2021, impacting the realisation of the right to food and relatedly, the right to education.

The CRC raised concerns about this discrepancy between social allocations and expenditures and recommended an increase in both budget and expenditure on the social sectors benefiting children. Low budget execution hampers efforts to realise quality education as stipulated in SDG 4 and the right

to education for all, especially vulnerable groups. Following the recommendations of the CRC, within the recovery period, it would be important to define strategic budgetary lines for children in disadvantaged or particularly vulnerable situations (such as children in street situations) that may require affirmative social measures and make sure those budgetary lines are protected even in situations of economic crisis or other emergencies.

To address the school infrastructure deficit, the GRZ has been investing significantly in infrastructure to increase the availability of functional educational institutions from ECE through to tertiary level. Inadequate school infrastructure and teaching

personnel have been a formidable barrier to transitioning from primary to secondary and from secondary to tertiary education and have limited availability at the ECE level. Between 2019 and 2023, as noted in figure IX, the GRZ spent just under ZMW 4 billion overall on school infrastructure, with allocations between 2019 and 2023 growing nearly six-fold from ZMW 250 million in 2019 to ZMW 1.5 billion in 2023.

In the 2022 and 2023 budgets, the GRZ increased allocations for building secondary school infrastructure. To offset the schooling infrastructure deficit and thus increase access to education, the GRZ allocated resources in its 2023 national budget to complete the construction of 56 ECE Centres and 115

secondary schools, and to construct 120 new secondary schools. As depicted in figure X, allocations to ECE have more than doubled between 2022 and 2023 rising from ZMW 69,540,000 in 2022 to ZMW 155,085,000 in 2023. Primary school allocations have held steady in nominal terms with an allocation of ZMW 130,380,000 each year in 2022 and 2023. In contrast, secondary school allocations have increased exponentially from an allocation of ZMW 21,773,109 in 2021 to ZMW 1,119,382,895 in 2023, 50 times the allocation in 2021. The trends show differing priorities in infrastructure development for each level of education with no apparent consistent rollout plan to guide investments in educational infrastructure.

Figure IX

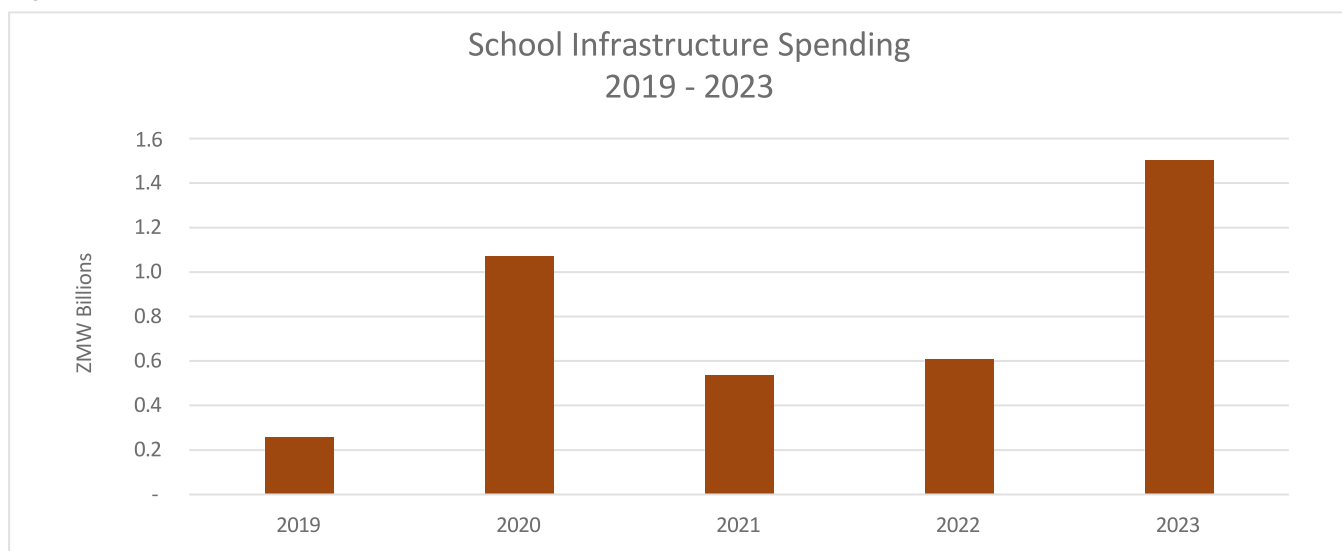
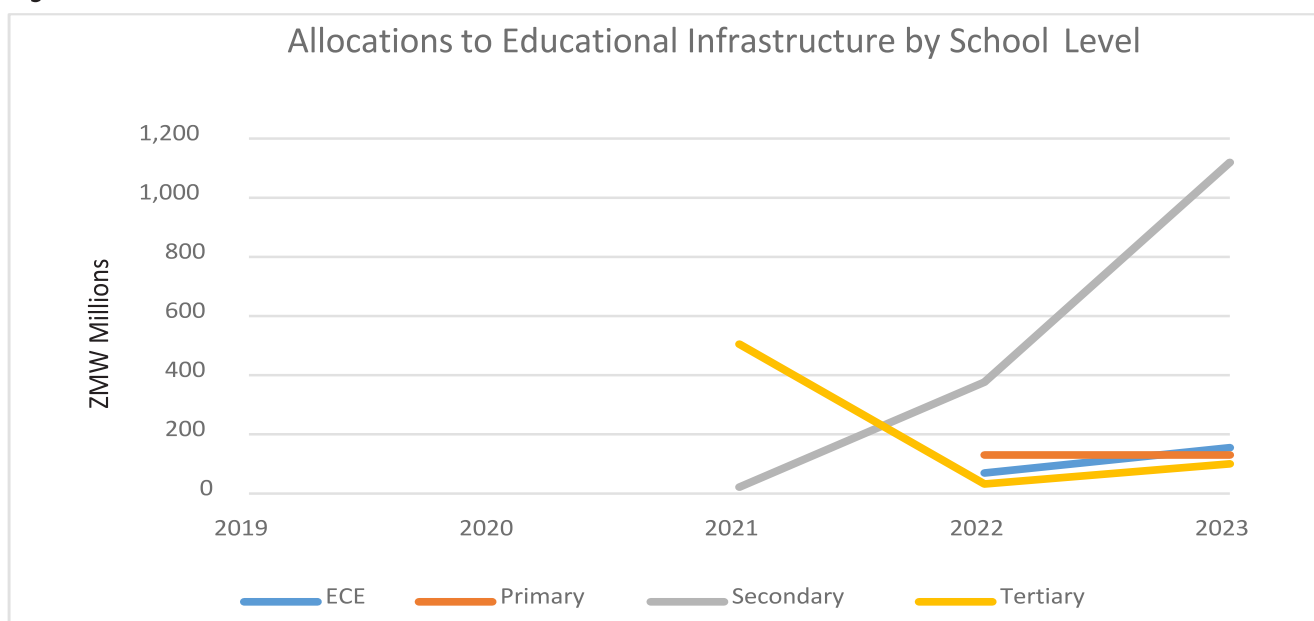


Figure X



### 3. Vulnerability, gender equality and non-discrimination, and social protection

The Zambia Multi-Dimensional Poverty Index for 2014 – 2018<sup>91</sup> showed an increase of children dropping out of school due to household poverty, leading to a rise in child labor. To counter this, the GRZ pledged to scale up the ECE and primary SFP as well as the HSMS to reach more children.

The Global Child Nutrition Foundation's 2019 Global Survey of School Meal Programs revealed that SFP in most schools was not sustainable because it relied mostly on external support. It also showed that the challenges facing the implementation of SFP were diverse. Few schools that revealed SF was sustainable attributed the sustainability to the school projects in which they were engaged. The SFP has experienced some recent setbacks. Although the Home-Grown School Feeding (HGSF) was identified as the best option for effective and sustainable SFP, WFP's support has ceased, and there remains inadequate funding. Rather, the program is funded solely by the GRZ through the budget of the MoE. There is limited stakeholder participation in resource mobilization or management of the program. There are also serious concerns regarding mismanagement of food and funds at the sub-national level. Nationally, the GRZ would need to revamp the production unit in all of the schools, and correctly assess local and national capacity and the need for complimentary investment in local agricultural production to ensure smooth program operation and sustainability. There is a proposal to conduct an assessment of this program in order to have evidence-based arguments as to its benefits.

In 2022, the GRZ was reaching about 1.9 million learners with the SFP.<sup>92</sup> In terms of resources, to scale up the SFP to reach all children in ECE and primary school, it is important to understand what the Government will need to allocate to the program for it to be effectively and sustainably provided.

To reach universal coverage at the different levels of education the GRZ will need to allocate ZMW 4,644,761 for ECE, ZMW 71,445,009 for primary, ZMW 18,604,061 for secondary for a total of ZMW 94,693,831 for Universal SFP across all three education levels. If a universal school feeding

program is provided across all three levels, the GRZ will need to spend an estimated ZMW 55 million more than it currently does on an annual basis. If, however, the GRZ rolled out the SFP to universal coverage of learners in ECE and primary only, to follow current trends, the GRZ will need to spend ZMW 36 million more than its current spending. Providing Universal SFP only at the ECE level would likely be the most easily attainable level to cover in the short term with additional allocations of only ZMW 3 million to reach universal coverage of SFP in early learning centres.

In terms of how significant the spending on universally provided SFP would be in relation to the allocations to the three education levels, in all but one case, the GRZ would need an allocation of no less than one per cent of the allocation to the respective level. The exception is spending on ECE which would command approximately 4.5 per cent of the allocation to the ECE education level. The table in Annex 5 details the analysis of the spending implications for universally provided SFP.

There is **gender parity** in primary school, but the completion rate at grade 12 stands at 31.6% for girls and 40.4% for boys. Girls in secondary education face disproportionate challenges due to child marriage/early pregnancies: 29% of girls aged 15 to 19 are mothers or pregnant with their first child (37% rural, 19% urban). Re-admissions of girls after giving birth stands at 51% and 69% at primary and secondary levels, respectively. The CRC expressed concerns about **sexual abuse in schools**, and recommended to (1) investigate all cases of sexual abuse, end impunity and sanction the perpetrators, and ensure that children have child-friendly and effective reporting channels and do not face reprisals; (2) strengthen support to pregnant teenagers and adolescent mothers to continue their education, including by overcoming discriminatory traditional attitudes; and (3) address disparities between the enrolment and retention rates for boys and girls in primary and secondary school.<sup>93</sup>

Reproductive health and sexuality education is a cross-cutting theme in the Zambia Education Curriculum Framework and is integrated into

several subjects from grade 5 to 12. Strengthening implementation of the comprehensive sexuality education programme could address factors that lead to school dropout and gender disparities in education, such as early and unintended pregnancy and school gender-based violence (GBV). UNESCO supported the MoE to implement comprehensive sexuality education to make schools safe by addressing school related GBV. In addition, in 2019, UNESCO worked with the MoE to pilot the Connect with Respect (CwR) tool to build the capacity of teachers, improve learning environments and prevent GBV. The MoE agreed to roll it out to other schools and train teachers on CwR to address violence including GBV.

Finally, the Government has, in successive budgets, allocated funds to support access to education for poor and vulnerable girls through programs that provide girls education such as the **Keeping Girls in School (KGS)** program. KGS provides bursaries to secondary school girls from poor Social Cash Transfer households to address gender and poverty-related inequalities. The allocation to KGS has been regular, based on secured funding from the WB with a sum of USD 25 million between 2016 and 2020. Additional financing to KGS extended the initiative's financing until 2024 with a total coverage of over 80,000 girls and budget estimates of ZMW 133.5 million in 2023.

Stakeholders indicated<sup>94</sup> that to improve the situation of **young learners in vulnerable categories**, the MoE needs to strengthen its **data collection system**. The prevalence of disability in Zambia among children age two to 17 is estimated at 4.4%, but educational opportunities for children with special education needs and disabilities (CSEND) remain limited. Only 2% of teachers have a special education qualification. The current pupil teacher ratio for Learners with Special Needs (LSEN) is very high: 1:80, much above the MoE's recommendation of 1:15; however, 2022/23 recruitments did not include teachers for LSEN. In 2018, CSENDs in school were only 3% of children in school, with 113,698 (85%) in primary school and only 23,804 (15%) in secondary school. Most CSENDs never enter school or are withdrawn by parents or dropout from school due to stigma and exclusion, and inadequate water and sanitation facilities. Zambia participated in the 2022

Transforming Education Summit at the UN General Assembly. Learners with disability participated in national consultations with Government and stakeholders and submitted inputs.<sup>95</sup>

Budget-wise, expenditure on disability and children with special education needs has been deprioritised over the years. After three years of not providing explicitly for learners with special education needs, the 2023 National Budget allocated a total of ZMW 15 million towards LSEN. This amount is only provided for primary (ZMW 10 million) and secondary school (ZMW 5 million) education without a provision for ECE. This continues to disadvantage children in the early years with special learning needs and overall is insufficient to cover the needs of learners with a disability and learners with special education needs. The CRC recommended government to adopt a human rights-based approach to disability, develop a comprehensive strategy for the inclusion of children with disabilities, ensure full implementation of the guidelines on inclusive education in all schools, ensure that all children with disabilities have access to inclusive education in mainstream schools and early childhood education centres, and guarantee that schools and early childhood education centres are equipped with trained teachers, accessible infrastructure and teaching materials adapted to the needs of children with disabilities.

**Refugee children** and asylum seekers have limited access to education despite Zambia's 2019 Global Refugee Forum Pledges "to continue including refugees in the national educational system at all levels" (ECE, primary, secondary and tertiary): only 50% (18,264 students in 2022) are currently enrolled in 14 schools within the three refugee resettlements. Challenges include inadequate teachers, lack of learning materials, inadequate school infrastructure, language barriers, high poverty and vulnerability. The Free Education Policy of 2022 extends from ECE to secondary education only; for tertiary education, refugees need costly study permits and permits of movement: most refugees cannot afford them and cannot move to tertiary institutions. The GRZ's scholarships scheme currently does not cater for refugees, although according to Government, about 200 locally sponsored scholarships at 50% were



facilitated with the Cavendish University Zambia as well as 92 other scholarships. Vocational and entrepreneurship training programmes in TEVET institutions should be more inclusive and provide equitable access to vulnerable children such as CSENDs and refugees to create opportunities for attaining self-reliance.

**Discipline in schools.** Article 28 of the Education Act prohibits corporal punishment or degrading or inhuman treatment. The Children's Code Act contains provisions on Child Safeguarding that apply to all state and non-state actors directly interacting with children, to make schools safe learning environments and address violence against children in schools, through schools. However, reports of violations keep appearing on the media.<sup>96</sup> Among suggestions against corporal punishment, some sections of society have recommended that school management be trained and equipped with modern and alternative positive

strategies of dealing with indiscipline which include guidance and counselling, reward and punish strategies and strong school-community and other stakeholder partnerships. It would also be beneficial to raise awareness of the Act and its provisions, including at district level, in local languages and simplified form.





# 4

## DEBT EFFECTS ON MAXIMUM AVAILABLE RESOURCES FOR PROGRESSIVE REALIZATION OF RIGHTS

Zambia is a low-income country with a largely undiversified economy. It ranks amongst the countries with the highest levels of poverty and inequality globally – 60% of its overall population (80% of the rural population) earn less than USD 1.90 per day (2022); its GDP per capita was recorded at USD 1,258 in 2021, leading to its reclassification by the WB in 2022 from lower-middle income to low-income country status, due to the deterioration of its Gross National Income per capita in 2021; and its Gini coefficient stands at 0.69.

Zambia also ranks amongst the 54 developing countries with “severe debt problems” or who are “most debt vulnerable”.<sup>97</sup> This has bearing on its ability to implement its international human rights legal obligations, including those emanating from the ICESCR, and the Covenant’s articles 11 (right to adequate food) and 13 (right to education).

After 15 years of growth, Zambia’s economy slowed down in 2015 and further contracted in 2020 due to the COVID-19 pandemic. Between 2000 and 2014, its annual real GDP growth rate averaged 6.8%. GDP growth stood at a high of 10.2% in 2010 and the country achieved middle-income status in 2011. However, between 2015 and 2019, the GDP growth rate slowed to 3.1% annually and the economy further contracted by 2.8% in 2020 due primarily to the COVID-19 pandemic and the country’s debt crisis. Essentially, the country’s GDP growth plunged from 10.2% to 0.3% in a decade. With the economy shrinking, the fiscal deficit increased. For the period 2014-2020, the fiscal deficit increased from 5.7% of GDP to 14.4% of GDP while economic growth reduced from 7.1% to negative 2.8% during the same period (see figure XI below).

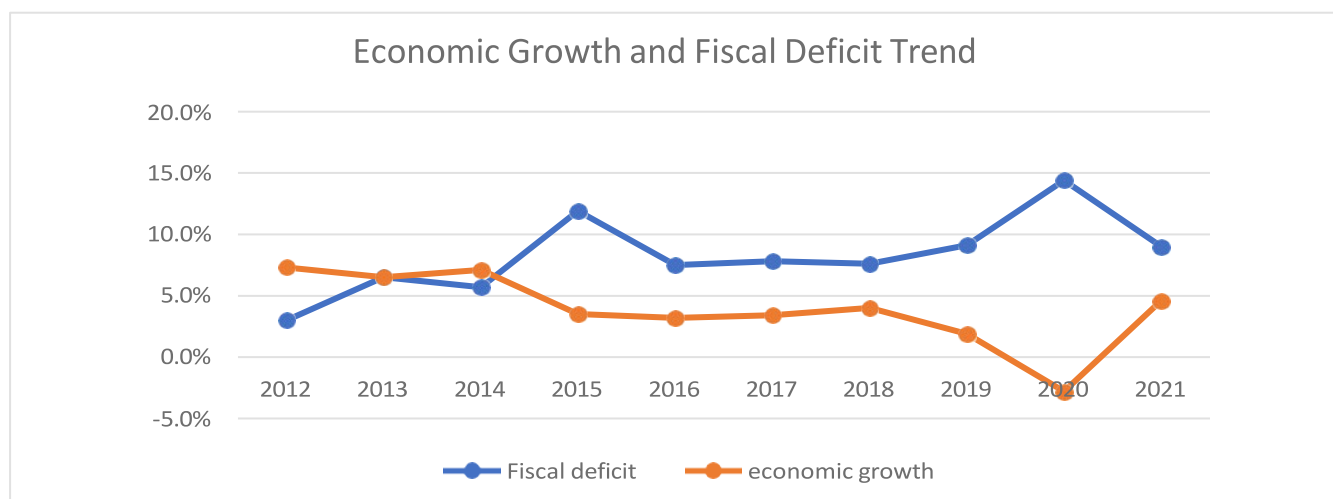
Increased fiscal deficit had implications on public debt accumulations and growth.

Nearly simultaneously, the country’s external debt increased from USD 1.98 billion in 2011 to USD 14 billion of central Government debt in 2022 plus USD 1.5 billion and USD 9 million in guaranteed and non-guaranteed loans, respectively.<sup>98</sup> The country’s total debt amounted to USD 32.8 billion in 2022, including interest. In 2020, the year that Zambia defaulted on its Eurobond payments, debt servicing had increased to 51.7%, from 9% of domestic revenues in 2011, essentially diverting resources away to repayment of principal and interest.

As the country’s Minister of Finance and National Planning has said:

For each Kwacha that was collected in revenue, the amount that was needed to service debt was 51.7 ngwee...With 51.7n out of each Kwacha of domestic revenues going towards debt service and another 39.4n going towards wages and salaries for public servants, this meant that 91.1n out of each Kwacha collected in domestic revenues was committed to debt service and payment of wages and salaries...[This meant] that the balance...was 8.9 ngwee, which remained for all other Government programmes, including buying medicines, provision of school requisites, Government operations, construction and rehabilitation of roads, supporting our small-scale farmers through the Farmer Input Support Programme (FISP), supporting Parliament and supporting constituencies through the Constituency Development Fund (CDF).<sup>99</sup>

Figure XI



Source: Ministry of Finance and Planning (2023)

On average from 2019 to 2023, Zambia spent about a third of its budget (36.4%) on debt servicing, reducing the fiscal space for investments to advance socio-economic rights. Table 3 below shows Zambia's increasing debt in that period and table 4 shows debt servicing in 2019 was slightly below 30% and rose steadily to a peak of nearly 50% in 2022 before positively abating in 2023 with a projected spend of 33%.

In 2023, as indicated in figure XII, allocations shifted towards settling domestic debts surpassing external debt servicing. Dismantling of arrears has also seen increased prioritization. The increased servicing of Government arrears is an attempt at easing the situation of local suppliers of Government goods and services and as such addressing what the Government in its 2023 budget speech referred to as an "injustice of Government impoverishing its people by delaying to pay for goods and services provided".<sup>100</sup>

In 2023, as indicated in figure XII, allocations shifted

Table 3  
Zambia's debt 2019-2023

	2019	2020	2021	2022	2023	%age change: base - current year
Government external debt	9,400,000,000	10,230,000,000	11,970,000,000	12,990,000,000	13,250,000,000	41%
Guaranteed debt	1,200,000,000	1,200,000,000	1,580,000,000	1,560,000,000	1,613,690,000	34%
Domestic debt	4,654,907,975	5,858,534,085	11,332,138,590	11,277,654,867	11,277,654,867	142%
Arrears		1,576,893,052		2,553,011,239	4,512,699,350	186%
Total Debt Stock	10,600,000,000	17,661,801,028	19,408,534,085	28,435,149,829	30,654,044,218	189%

Source: Authors construction from the budget speeches

Table 4  
Zambia's debt servicing 2019-2023

	2019	2020	2021	2022	2023
Total Debt Servicing Obligations ZMW	23,573,355,209	36,004,376,734	48,845,740,120	81,786,140,102	55,588,093,486
Debt servicing as share of Budget (Percentage)	27%	34%	41%	47%	33%

Figure XII

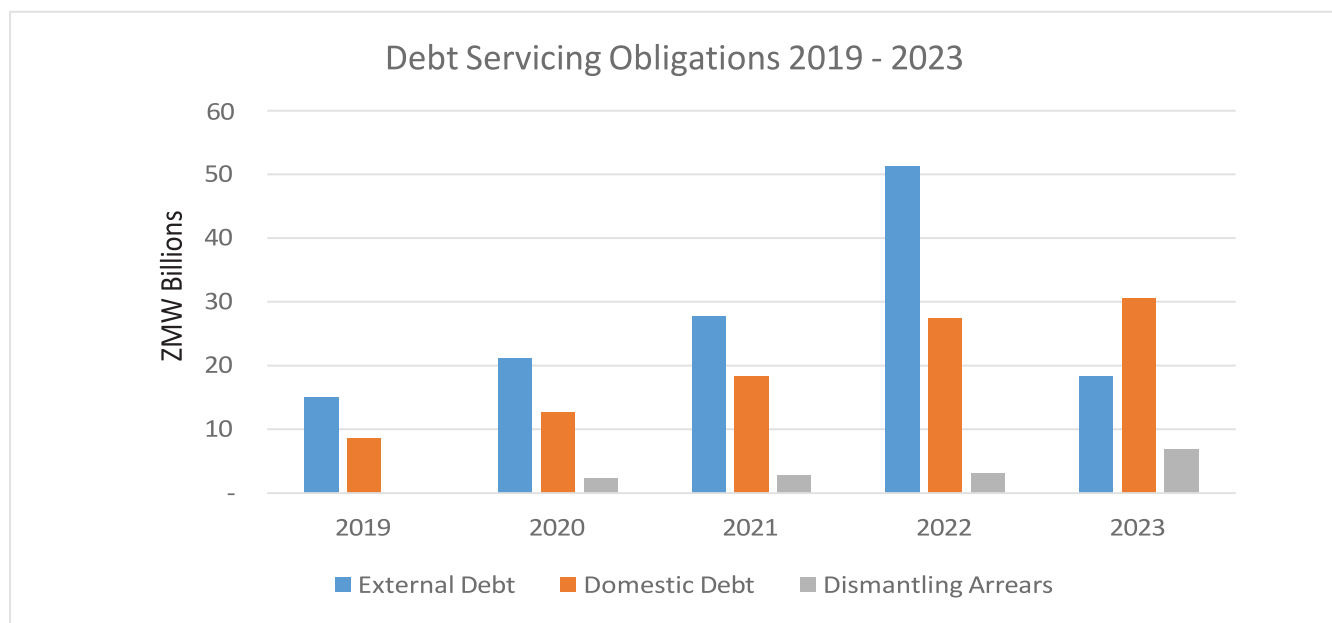
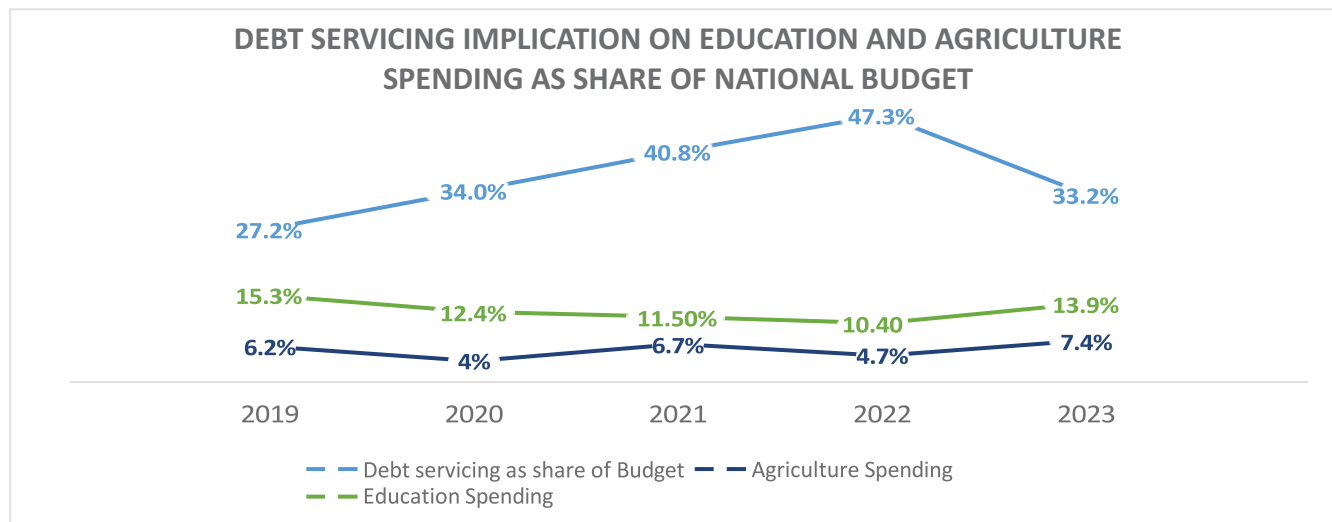


Figure XIII



Source: Researchers' construction

Zambia's economy and the rise in public debt have adversely reduced fiscal space resulting in low investments in priority sectors, including education and the right to food. For instance, despite a rise in the annual budget (in nominal terms), the education sector has grown slowly due to inadequate budget allocation. Figure XIII shows the relationship that has persisted between public debt servicing and education and food expenditures from 2019 to 2023. The graph indicates that where there have been increases in debt servicing obligations, there have been corresponding dips in spending on education and agriculture, although not necessarily commensurate, which points to the role of political will in the size of allocations to a particular sector.

Additionally, the taxation system has not been applied optimally to ensure MAR for both rights. In June 2023, Zambia secured a deal to restructure USD 6.3 billion in Central Government loans with its bilateral creditors represented in its Official Creditor Committee (OCC). As part of the deal, the GRZ will have a grace period until 2026, when principal repayments will restart at the rate of 0.5% annually until 2035. Existing claims will mature in the year 2043. Interest rates will be set at a very concessional rate until 2037 and will not exceed 2.5% thereafter. In 2026, the IMF and WB will review these parameters which are subject to change should the results show that Zambia's debt carrying capacity has improved from weak to medium.

In the next ten years, Zambia will be paying bilateral creditors USD 750 million compared to the USD 6.3

billion that it was liable to repay before the deal. This generates USD 5.8 billion in debt service savings which, according to the Minister of Finance and National Planning, and frees-up resources that can be utilised for development and ESC rights programmes. Additionally, as a result of the deal, both the IMF and the WB pledged to disburse USD 188.8 million and USD 75 million, respectively, by September 2023 providing additional resources for the country. Combined, this will translate into a positive cashflow, with the extra funds being available for development. In line with its international human rights legal obligations, actions are warranted to allocate part of these essential MAR to further realisation of ESCR, including the rights to food and education and coverage and quality of the school feeding programme, as such investments in education and other critical social sectors before 2026 are key to human capital development. Debt sustainability is also expected to improve the macroeconomic environment and attract more investments in Zambia. In November 2023, it was reported that Zambia had suffered a setback after the OCC rejected a deal that it had negotiated with its private creditors to restructure USD 3 billion of outstanding notes. This development has implications for the country's development objectives and human rights obligations, three years after it defaulted on its Eurobond payments in November 2020. According to the country's Finance Minister, "long delays in Zambia's debt restructuring have hamstrung much needed investments, curtailed economic growth, weighed on local financial markets and added to the living costs for its people"<sup>101</sup>. Already in April 2023, UN Human Rights Experts observed "debt relief will go

much further in creating the conditions and opportunities on which Zambia's population can capitalise" and "one of the major reasons for this delay in debt restructuring is the lack of a globally coordinated multilateral sovereign debt mechanism that places traditional and private lenders at an equal footing".<sup>102</sup> They "called for a multilateral sovereign debt mechanism under the UN guided by existing human rights frameworks and principles to ensure a rights-aligned recovery for countries suffering from debt distress and a reduced fiscal space."<sup>103</sup>

Additionally, key questions remain to be considered. For instance, if Government can demonstrate that borrowing was being allocated to the food and education sectors to comply with its obligations under Article 2 of the ICESCR to utilise MAR for progressive realisation of the rights in the Covenant, what process and steps would be needed to ensure that the amounts become eligible for cancellation, in whole or in part, in current and future debt restructuring negotiations? This reflection is important as calls to reform the international financial architecture and developing country financing grow.

### Debt Projections

According to the IMF, Zambia is projected to continue accumulating debt, albeit at a slower pace until 2027, at which point borrowing is expected to come to a halt, as shown in figure XIV. To mitigate this trend, the GRZ plans to reduce commercial borrowing and increasingly rely on grant financing, as seen in the relationship between debt accumulation and the grant element of new borrowing.

Measures by Government to institute borrowing oversight through for example, enactment of a Public Debt Management Act, are encouraging. In this regard, all Branches of Government would benefit from capacity-building on the State's international human rights obligations to ensure that debt and debt servicing do not trump enjoyment of ESC rights, including the human rights to food and education which as indicated earlier, merit Constitutional protection. The UN Guiding Principles on foreign debt and human rights provide useful context to orient debt management initiatives. The principles call for a framework to ensure transparency and accountability in debt management and debt negotiations. Human rights impact assessments in debt sustainability analyses are a key

Figure XIV

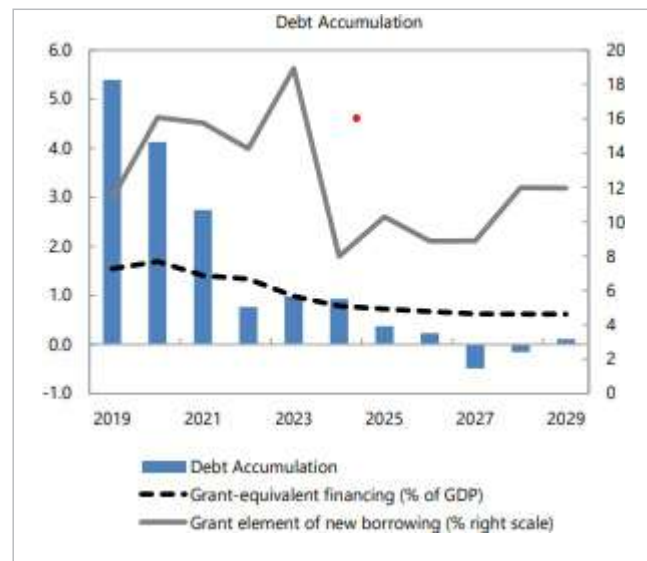
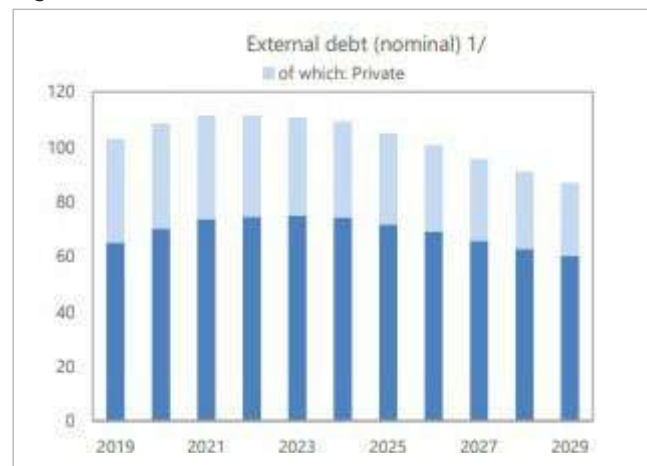


Figure XV



part of that process. In line with these obligations, borrowing Governments should ensure debt payments do not divert resources from social services essential for the realization of ESC rights.

### Austerity measures and their implications for human rights

At the height of the crisis, in August 2021, the IMF granted Zambia a Special Drawing Rights allowance of USD 1.33 billion and in August 2022, approved a further USD 1.3 billion, 38-month, Extended Credit Facility arrangement<sup>104</sup> to help restore macroeconomic stability and foster growth through fiscal adjustment and debt restructuring. This created room in the budget for much-needed social spending and strengthened governance and reduced the risk of corruption by improving public financial management.

The IMF programme<sup>105</sup>, however, includes fiscal consolidation and austerity measures which are likely to impact on human rights and attainment of the SDGs. In 38 months, the IMF proposes that the Government reduces the fiscal deficit from 6% of GDP to a surplus of 3.2%. This is to be achieved by significant cuts in spending and increasing domestic resource mobilization that could burden the poor and vulnerable groups.

On the expenditure side, the programme proposes removal of electricity and fuel subsidies, which is leaving people in Zambia, especially the poor and vulnerable, exposed to the volatile prices of fuel following the War in Ukraine. The FISP also is expected to be reformed, with potential effects yet to be determined.<sup>106</sup> The reforms have implications especially for the poor and vulnerable groups due to likely price increases. This is particularly the case for those who are not covered by social safety nets which only covers 994,000 people (about 25% covered against a poverty rate 54%). Thus, additional people risk being left behind in the medium term, hence affecting the attainment of the SDGs.

This can be seen through the cost of living in Zambia. Since August 2021 when inflation, i.e. a rise in the cost of goods and services, spiralled to 24.4% (with food inflation averaging 31% that same month), decreases have been seen. The Russian-Ukraine crisis which started in February 2022, however, contributed to high prices of agricultural commodities and fertilisers leading to supply-side disruptions and impacted on cereals, food, and fuel prices as well as other key import products. In February 2022, the inflation rate stood at 14.2% with the food inflation rate slightly higher at 16%, far exceeding the 2 to 3% inflation rate that is normally acceptable to countries. Annual non-food inflation for items such as diesel, petrol, and lubricants stood at 7.3% in December 2022.

On the revenue side, the IMF proposed increased revenues by broadening the value added tax (VAT) base and limiting VAT exemptions, one of the most regressive taxes as it impacts the poor and vulnerable groups, and in its regressivity, the VAT burden also falls disproportionately on women. In the IMF programme VAT is projected to increase to 2.2% of GDP and to be the main source of revenue increases over the medium term – much more so than mining corporate income taxes and mineral royalty taxes.

As per Zambia's legal obligations under the ICESCR, the principle of non-retrogression means that:

The adoption of fiscal consolidation programs, including austerity programs negotiated with States, international or regional organizations, the IMF, IBRD, development and regional development banks, regional integration organizations, as a condition for obtaining loans, should not adversely affect ESC rights<sup>107</sup>. **Both lenders<sup>108</sup> and borrowing States should carry out human rights impact assessments prior to the provision of the loans, to ensure that conditions attached to a loan do not reduce the borrowing States ability to respect, protect, promote and fulfil ESC rights, and take all measures possible to reduce negative impacts<sup>109</sup>.**

While the IMF has referred to the increased social spending for social protection programmes such as the SCT, recruitment of the additional 30,000 teachers and the free education policy, these are building blocks to combat the grinding poverty, inequality, hunger, and low educational outcomes. Continuous monitoring is needed over the medium to long-term or the life of the agreement and beyond to ensure that it does not adversely affect the financing of MELR to food and education.<sup>110</sup> The IMF and GRZ did not carry out any **human rights impact assessments**<sup>111</sup> prior to the Extended Credit Facility to ensure that conditions attached to it do not reduce Zambia's ability to respect, protect and fulfil ESC rights.<sup>112</sup> The IMF and World Bank are obligated to comply with principles of "do no harm". This means ensuring that loan agreements do not interfere with Governments' ability to invest in ESC rights, given the severe harms such measures can impose on progressive realization of rights. It is important that the omission of *ex ante human rights impact assessment* be addressed to avert further negative impacts on the realisation of ESC rights.





# 5

## NATIONAL MONITORING SYSTEMS



Strategic development outcome 1 “Improved Policy and Governance Environment” of Area 4 on Good Governance Environment focuses on the full implementation of decentralisation, including to strengthen national data and information systems; strengthen transparency/accountability mechanisms; and strengthen public service performance management systems. Established by the Statistics Act No. 13 of 2018, the Zambia Statistics Agency (ZamStats) is responsible for the publication of official **population, health, demographic and social statistics**, the development and coordination of the Integrated National Statistical System (INSS) and the promotion of the use of statistical data and information at individual, institutional, national and international levels. ZamStats, working with the Department of National Registration Passport and Citizenship and other stakeholders, produces **vital statistics** based on data from the Civil Registration System. It also compiles **migration statistics**: the 2019 Migration profile was the first comprehensively compiled overview of migration data in Zambia (to be updated every 3 years). The **Zambia Demographic and Health Survey (ZDHS)**, last conducted in 2018 and implemented every 4-5 years with the Ministry of Health (MoH), the United States Agency for International Development, ICF and other partners, provides up-to-date information on health indicators<sup>113</sup>. The **Zambia Population-based HIV Impact Assessment** monitors the HIV epidemic in Zambia and the impacts of the national HIV programme. The **Zambia National Disability Survey**, initiated by the Ministry of Community Development and Social Services, was implemented with the University of Zambia, SINTEF Technology and Society (Norway) and UNICEF, to estimate the national prevalence of disability, disaggregated by sex, age, severity of disability, province and rural/urban division.<sup>114</sup> Data on education are collected by the MoE including through the 2018 Educational Statistical Bulletin and National Assessment Surveys.<sup>115</sup>

ZamStats recently conducted the **census of population and housing**, and the various types of disability were among the variables collected. The survey collects data at ward, constituency, provincial, national levels, disaggregated by sex, age, rural/urban, and incorporates questions on literacy, education levels attained, but does not cover other prohibited grounds of discrimination or other specific vulnerable groups. ZamStats also conducted the **Living Conditions**

**Monitoring Survey**, down to provincial level. Additional funding would be necessary to systematize disaggregation down to the lowest administrative levels (ward), use bigger sample size, and include data on specific vulnerable groups.<sup>116</sup> An unclear number of undocumented migrants and nationals remain to be included in data and in identity documents. This priority should also be adequately funded to ensure everyone is included in data and identity.

Governmental action suffers from a lack of comprehensive data on food security, nutrition, food consumption at the lowest level, education based on socio-economic characteristics, and disability. Surveys are not conducted regularly and timely, resulting in the inability to have year-to-year nationwide and lower-level specific analysis on some indicators. Data collection should be better systematized through a standardized methodology including administrative levels, drawing bigger sample size, and collecting data on attributes of interest. In addition, the disaggregation of data by age, sex, disability, geographical location, ethnic/national origin and socioeconomic background should be strengthened. Coordination should be improved to ensure comprehensive data collection, analysis and reporting across key indicators of the rights to food and education to inform evidence-based policies and track progress. To address these challenges, it is necessary to build partnerships, increase funding for statistics, strengthen data collection systems, capacity-building and skills transfer on data collection, and leverage technology to enhance the quality and timeliness of data collection and analysis.

HRM made numerous recommendations on data.<sup>117</sup> In 2022, the CRC<sup>118</sup> highlighted the lack of disaggregated data on children, and the lack of resources, technical expertise and linkages between different sector-based management information systems. In response, the CRC recommended to strengthen the data-collection system, ensure that data cover all areas of the CRC, and are disaggregated by age, sex, disability, geographical location, ethnic/national origin and socioeconomic background to facilitate analysis of the situation of vulnerable children and improve quality assurance of the sector-specific management information systems. It also recommended to analyze and make available to policymakers data on children's rights to improve monitoring and legislation, policies and implementation

of children's rights, and to develop and systemize the collection of data on children living in poverty, children in street situations, children with disabilities, child laborers, children in conflict with the law, children suffering from ill treatment, abuse and neglect (including data on sexual abuse cases)<sup>119</sup>, taking into

account the Office of the United Nations High Commissioner for Human Rights (OHCHR) report *Human Rights Indicators: A Guide to Measurement and Implementation*

Table 5  
Zambia education statistics and data sources

Data sources	Report	Key statistics produced	Frequency	Responsible institution
Census	Census report	Zambia census of population and housing. It covers comprehensive statistics related to the population and includes the following <b>education statistics</b> : population categorisation by level of education, area of residence, age and access to education.	10 yearly	ZamStats
Surveys	ZDHS	Produces information on fertility; maternal care; maternal and child health; child health and nutrition; teenage pregnancy and motherhood; nutritional status of women and children; women's empowerment, and domestic violence among other health statistics relevant for children of school age.	5 yearly	MoH collaborating with ZamStats
	Living Conditions Monitoring survey	<b>Key sectors covered and key statistics produced include migration, health, economic activity, access to services and facilities. For education, the survey includes:</b> percentage of the population in pre-primary, primary, secondary and tertiary schools, and public, private and government aided schools; education by gender; and literacy rate among the population aged 15 years and above, disaggregated by sex.	3 yearly	ZamStats
Annual Reports	Education Statistical Bulletin	<b>In-depth education related statistics:</b> public, private and government aided schools; enrolment by sex, students/pupils with disabilities and type; student teacher ratio; pupil classroom ratio; dropout rate; promotion rate; etc.	Annual	MoE
	Ministerial Annual Reports	<b>Education:</b> Covers progress made over the year for pre-primary, primary and secondary education, with budget allocation and disbursement summaries. Other content includes support to vulnerable learners, disability support, etc.	Annual	MoE
	Education Statistical Year Book	<b>School feeding programme:</b> Number of students fed at school (pre-primary level, primary level and secondary level); <b>Universal education</b> for Primary and Secondary schools; <b>Other Statistics:</b> number of students with disability, early childhood students, number of students by sex at all levels.	Annual	MoE

For the right to food, other than the national surveys listed in table 5 above, several surveys and reports are produced under the Ministry of Agriculture, Ministry of Fisheries and Livestock, National Food and Nutrition Commission, other line ministries with a focus on food security and nutrition such as the MoH, the Ministry of Community Development and Social Services, and the MoE as well as ministries and agencies linked to the environment, water and trade, among others, and by CSOs.

In 2019, the CERD regretted the lack of updated disaggregated data on the situation of various groups, and recommended that Zambia collect and provide updated and comprehensive statistics on the demographic composition of the population, and disaggregated data on the socioeconomic situation of ethnic minorities, including Asians and Europeans, migrants, refugees and asylum seekers, in order to provide the Committee with an empirical basis to evaluate Zambia's enjoyment of the rights enshrined in the Convention.<sup>120</sup>





# 6

## CONCLUSIONS AND RECOMMENDATIONS

Although the Government is making tangible efforts to increase budgets in support of the realization of SDG 2 and 4 and accelerate the progressive realization of the rights to food and education, Zambia continues to lag behind in the implementation of its core obligations under the ICESCR, 38 years after its ratification. The country faces a structural crisis where a majority of the population (some groups and regions more than others) face nearly insurmountable challenges in securing their rights to education and food. There is a vicious circle where the lack of education makes it impossible to access decent employment and sustainable livelihoods, with direct consequences on the right to food and nutrition (especially for numerous children, adolescent girls, persons with disabilities and members of other vulnerable and marginalized groups); and the lack of income and food make it impossible for them to access and remain in education (as children are pushed into child labor or early marriages), achieve basic learning outcomes, or progress to secondary and higher education to access sustainable employment and livelihoods.

Government has made significant strides in safeguarding the right to education through the introduction of free education from early learning through to secondary schools and continued improvements to agriculture, food security and nutrition programs. Budgetary allocations towards the rights to food and education, however, show that the Government is still under-investing in both sectors against the targets of critical international instruments that prescribe optimal allocations and expenditure, given low budget execution to guarantee the minimum essential level of both rights.

Today, despite increased investments in agriculture, fisheries, livestock and social protection, a majority of Zambians continues to experience chronic undernourishment. High food prices, persistent income inequality, and reduced income and employment due to the COVID-19 pandemic put healthy diets out of reach for vulnerable or poor groups, especially children, adolescents and women, and other groups such as refugees. Food insecurity and malnutrition are also driven by low productivity among smallholder farmers, food loss and waste, insufficient safe and nutritious food, low dietary diversity and natural resource degradation, and the growing impacts of climate change.

While it has worked to promote equality in the rights to food and education, the GRZ's allocation of resources to vulnerable and excluded populations remains low. As a result, they do not achieve wide population coverage and thus are not adequate to ensure realization of the rights to food and education for all, especially considering the heightened levels of poverty and vulnerability in the country.

At the same time, despite the school feeding program, a reported 816,641 school-aged children remain out-of-school out of some 4,548,968 learners. The net enrolment rate in primary education declined from 90.4% in 2016 to 83.6% in 2018, with an increase of children dropping out of school between 2014 and 2018, due to economic problems leading to an increase in child labor. For those who manage to complete school, assessments show critically poor learning outcomes.

The investment in secondary (including TEVET) and tertiary education is also far from sufficient to guarantee non-discriminatory access as well as any sustainable outcomes in terms of further access to employment and sustainable livelihoods, with evident negative impacts on the development perspectives of the country. In addition, gender parity is yet to be guaranteed at all levels of the education system. Girls in secondary education face disproportionate challenges due to child marriage, early pregnancies and sexual abuse in schools. Disproportionate challenges also affect children with special education needs and disabilities (CSEND), refugee children and other children in vulnerable situations as highlighted by HRM.

Despite these challenges, Zambia has maintained efforts to progressively achieve the rights to food and education with increasing commitment over the years. Yet, the GRZ's budgets do not currently fully reflect its obligation to uphold the human rights to food and education. In sum, the recent budget increases, although commendable, do not currently ensure the realization of even MEL of the rights to food and education for considerable number of people in Zambia. The country continues to largely depend on international assistance and on the IMF and other lenders to finance its functioning and the social and economic measures and is impacted by the negative consequences of the COVID-19 pandemic and of the conflict in Ukraine.

Additionally, the sustainability of the current political focus and budget investment on ESCR, including on the rights to food and education and social protection is at stake, considering that Zambia, to date, has not enshrined the ICESCR (and other treaties) in its Constitution nor fully incorporated the rights to food and education in the domestic legal system. Consequently, their justiciability before Zambian courts remains, at present, arduous and sporadic.

The way the GRZ has been raising revenue also has had a considerable impact on people's enjoyment of their rights. As the analysis has shown, beyond allocations and expenditure, the rights to food and education are affected by the method applied by government to mobilize revenue, whether through the taxation system or the accumulation of debt. As demonstrated in the analysis, Government has not been meeting its obligation to allocate MAR to ensure that the rights to food and education are available, accessible and of sufficient quality and quantity, for all.

The potential impacts of loan agreements, debt restructuring policies and austerity measures on the ability of the GRZ to deliver on its ICESCR obligations and on the realization of at least MELR of the rights to food and education, particularly for women and vulnerable and marginalized populations in the most

disadvantaged peri-urban and rural regions of the country, also remains to be assessed. A deeper analysis of fiscal and budget policies is needed to evaluate whether Zambia is allocating the MAR to realize its core obligations under ICESCR and other applicable international human rights instruments, and how resources could be increased to meet the urgent and longer-term needs of all segments of the population, particularly women, girls and the most vulnerable and marginalized groups and individuals.

Furthermore, it will be necessary to see how the GRZ will effectively implement its current plans, execute budgets and monitor progress, in the context of the decentralization, taking into account capacity issues at local levels. In particular, the Government faces capacity challenges to monitor progress on ESCR especially for the most vulnerable and marginalized groups due to limited level of data disaggregation and insufficiently inclusive policy, planning and monitoring processes. Among others, with the assistance of the UNCT, the GRZ should invest more in strengthening its data systems, support line ministries, the NMIRF, the ZHRC and ZamStats, to set-up a rights-based data collection system, and increase the capacity to conduct inclusive ESCR monitoring and reporting to HRM and ensure follow-up on their recommendations.



## Key recommendations

### To the GRZ<sup>121</sup>:

- Hold a new referendum to amend the Constitution and ensure the inclusion of ESCR, including the rights to food, education, and social protection in the Bill of Rights, the domestication of ICESCR and the justiciability of ESCR.
- Adopt legislation to strengthen the NMIRF and enable it to use allocated resources for its functioning as of 2023. This would allow it to follow-up Zambia's UPR and other HRM recommendations and respond to overdue reporting obligations (in particular to CESCR and CEDAW), and implement HRM recommendations on ESCR, including on the rights to food and education.
- Strengthen human rights budgeting data systems and data disaggregation and collection to enable the tracking and estimation of government efforts in progressively realizing the rights to food and education and simultaneously track progress on SDGs 2 and 4 to reach those furthest behind first. To accurately discern the extent to which the government is investing or under-investing in the rights to food and education and related SDGs, regular and systematic collection of relevant and disaggregated data of allocations and expenditures is crucial to make evidence-based investment decisions.
- Conduct a detailed costing exercise, projected over a 10-year period, to fully understand the financing needs that would comprehensively secure the right to food and the right to education, for all. The costing and projections can include scenarios that show costing implications for universal programming or segmented, progressive investments to secure the rights to education and food for selected vulnerable groups, as the government continues to build capacity to go universal. To the largest extent possible, this costing should be ring-fenced in revenue generation negotiations and agreements.
- Where resource constraints limit the capacity to fully realize the rights to food and education for all, the government should prioritize vulnerable groups and provide corresponding financing for the implementation of special measures to secure their rights.
- Develop a model budget for the rights to food and education that is transparent and participatory; whose structure will be in alignment with different elements of both rights. The model budget should reflect Zambia's human rights obligations and enable the country to develop rights-based budgets to support the realization of the rights and ensure allocated budgets are fully utilized for their intended purposes. A key aspect of this budget should be allocations to extend and improve the quality of the school feeding program, ensuring universal coverage and human capital development in the country well before 2026 when Zambia's debt is reviewed and potential new conditions restrict investments for rights.
- Undertake regular impact analyses and conduct simulations to model the short and long-term impacts of taxation and debt on the rights to food and education.
- Contribute Zambia's experience with debt restructuring to calls for a globally coordinated multilateral sovereign debt mechanism that places traditional and private lenders at an equal footing.
- Explore the creation of an innovative funding mechanism for financing the two rights sustainably. This can include any financing arrangement outside the traditional funding basket that will provide a special vehicle to ensure consistent access to the rights to food and education in a predictable and sustainable fashion.
- Promote an inclusive human rights impact assessment (with the participation of women, youth and representatives of the most vulnerable/marginalized groups from disadvantaged peri-urban and rural areas in particular) of IMF and other funding agreements, to ensure that conditions attached to them do not impede Zambia's ability to respect, protect and fulfil ESCR rights, and to identify and take measures to minimize negative impacts on the poorest women and girls and the most vulnerable and marginalized groups. The assessment should (1) analyze fiscal policies and the National Budget and particularly allocations related to the realization of the rights to food, education and social protection, and verify whether they are adequate and sufficient to ensure access to adequate food and nutrition security for all

without discrimination, and (2) identify avenues to increase MAR to adopt increased allocations and additional measures to reach the proportion of the poor population that remains uncovered by current measures, and accelerate the realization of the right to adequate food and nutrition and education (at all levels including secondary, tertiary, vocational and adult learning) for all, prioritizing women, vulnerable and marginalized populations in rural and peri-urban areas.

- Develop and implement progressive taxation measures, strengthen the capacity to collect taxes, fight tax evasion and other forms of abuse, and tackle corruption to enable MAR to promote the realization of the right to food, education and other ESC rights. These measures would contribute to effectively redistributing resources and combating inequality and discrimination in the short and long term.
- Support the finalization and adoption of the National Action Plan on Business and Human Rights domesticating the UN Guiding Principles on business and human rights.
- Develop and adopt a human rights-based national framework law on the right to food, based on an inclusive assessment (with the participation of disadvantaged and poor women, youth and representatives of the most vulnerable and marginalized groups from disadvantaged peri-urban and rural areas in particular) of the NFSPP and the Food and Nutrition Strategic Plan 2022-2027 against the recommendation to prevent discrimination in access to food or resources for food, particularly for women. In addition, the GRZ should improve gender mainstreaming in institutional, legal, and legislative frameworks, including the adoption of a gender-sensitive, inclusive national land policy with an effective monitoring mechanism, and other recommendations by the Special Rapporteur on the right to food and other HRM.
- Reform the Refugee Act to remove legal and de facto restrictions to the freedom of movement, the rights to education and the rights to work/livelihoods, and extend social protection tools to refugees, facilitating their access to safety nets (SCT, FSP, FISP, and Village Savings and Loan Associations), to compensate for the reduction of the WFP food basket.

- Scale up the SFP and HGSF, the Public Welfare Assistance Scheme, and Child Welfare Programme to ensure child food and nutrition security, facilitate access to education, reduce school dropout, and fight child labor.
- Promote gender parity at all levels of education, including by increasing funding to KGS; strengthen the implementation of the comprehensive sexuality education program to address factors that lead to school dropout and gender disparities in education, such as early and unintended pregnancy and school gender-based violence; and implement CRC recommendations on sexual abuse in schools.
- Allocate adequate resources to ensure access to all levels of education of young learners in vulnerable categories, particularly CSEND, by developing inclusive education including through recruiting qualified teachers to ensure that the pupil-teacher ratio for LSEN is consistent with MoE norms, and refugee children and asylum seekers are able to access tertiary education and TEVET institutions.
- Increase budget allocations to step-up the capacity of ZamStats and relevant line Ministries (Agriculture, Fisheries and Livestock, Education, Health, Labour and Social Security), for disaggregated data collection, statistics and analysis in line with the Human Rights Based Approach to data<sup>122</sup>, and implement related CRC and other HRM recommendations.
- Allocate and execute adequate budgets to include the access of undocumented migrants and nationals to IDs, data and statistics so they can access rights and services.

**To the UNCT and UN agencies, programs and funds:**

- Assist the GRZ in constitutional and legal reform efforts to ensure adequate domestication of international instruments on ESCR and the adoption of related legislation.
- Ensure continuous monitoring of the implementation of Zambia's ESCR obligations and of the rights to food and education in particular and assist the GRZ and the NMIRF to respond to Zambia's overdue reporting obligations (in particular to CDESCR now that there has been progress on the CEDAW report through an Irish funded UN project),



and implementation of HRM recommendations on the rights to food and education.

- Support and facilitate inclusive processes at national and local levels and the participation of women, youth and representatives of the most vulnerable/marginalized groups from disadvantaged peri-urban and rural areas in particular in State reporting processes to HRM, as well as in UPR and budgetary processes.
- Support and assist the GRZ in the organization of an inclusive human rights impact assessment (or human rights due diligence) of IMF and other loan agreements and fiscal and budget analysis to promote investment of MAR to realize the rights to food and education for all without discrimination, ensuring the participation of women, youth and representatives of the most vulnerable/marginalized groups from disadvantaged peri-urban and rural areas in particular.
- Promote an ESCR legal aid and strategic litigation program with special focus on the rights to food and education, working with the ZHRC, the Bar Association and other litigation/legal aid and accountability organizations, as well as nongovernmental and community-based organizations working on the rights to food, education, women and youth organizations, etc. Adjudicators should be trained in human rights law. Strategic litigation should look at comparative experiences in other countries and focus, among other, on the protection of land rights of vulnerable communities to enable them to access land to grow their food. It is necessary to financially empower these communities so that they can maximize their food production output. Vulnerable groups should receive human rights training so that, when their rights are violated, they are able to claim recourse and fulfilment and protection of these rights.
- Encourage Government leadership and efforts to expedite development and adoption of a National Action Plan on Business and Human Rights in 2024 and provide assistance to this process.
- Strengthen the capacity of the GRZ (ZamStats and line ministries) to apply rights-based approaches to programming and data collection and to observe fiscal discipline, especially at the lower decentralized levels.

#### **To the IMF and other lenders and donors:**

- Collaborate with the UNCT to support and assist the GRZ in the organization of an inclusive human rights impact assessment of IMF and other loan agreements and fiscal and budget analysis to promote investment of MAR to realize the rights to food and education for all without discrimination, ensuring the participation of women, youth and representatives of the most vulnerable/marginalized groups from disadvantaged peri-urban and rural areas in particular.
- Maximize available resources from international cooperation and assistance to provide immediate responses to the urgent emergency needs of the most vulnerable populations deprived of MELR, as well as sustainable support to the progressive realization of the rights to food and education in Zambia.
- Abandon conditionalities that would penalize Zambia for allocating MAR for food and education, among other human rights.

#### **To CSOs:**

- Support regular budget monitoring and systematic tracking of government investments in the rights to food and education, and the design of an index or indices to objectively assess and improve Zambia's budget allocations and spending on the two rights. The Index should be designed in full consultation with relevant stakeholders to agree on the variables and parameters to be assessed and the ranking criteria for budget spend to show government's investment patterns. The index can be developed and maintained by a consortium of CSOs and used as a tool to encourage greater investment towards commitments to the rights to food and education.
- Develop a model budget for the rights to food and education; whose structure will be in alignment with different elements of both rights. The model budget should reflect Zambia's human rights obligations and enable the country to develop rights-conscious budgets to support the realization of the rights.
- Work with Government to undertake regular impact analyses and conduct simulations to model the short and long-term impacts of taxation and debt on the rights to food and education.



- Develop a three-year advocacy strategy and engage in legislative, budget and policy advocacy and lobbying to the government and other development partners to push the agenda of the rights to food and education for all, based on the findings of this study. Special consideration should be given to building the case law and legal precedents to advance the rights to food and education, amongst other ESC rights.
- Increase monitoring of State implementation, reporting and follow-up to the recommendations of the human rights mechanisms.
- Ensure regular and quality reports and submissions to the human rights mechanisms.
- Raise awareness on and advocate for the inclusion of ESC rights and other recommendations of the international human rights mechanisms pertaining to the Constitution in Constitutional Reform.



## ANNEX 1: HUMAN RIGHTS MECHANISMS' RECOMMENDATIONS

The GRZ **should** implement **35 recommendations/ observations** by three HRM on the right to food in Zambia.

In its Concluding **observations on the combined fifth to seventh periodic reports of Zambia (2022)**<sup>123</sup>, the CRC highlighted the right to nutrition of children living with incarcerated parents; high rates of undernutrition and malnutrition in adolescent girls, their impacts on health, and the fact that they continue to be disproportionately affected by HIV/AIDS; and the poor nutritional status of children, one of the main underlying causes of child mortality. In particular, the CRC recommended to:

1. Address underlying causes of undernutrition/ malnutrition in adolescent girls, strengthen preventive measures, including by raising awareness of nutrition and feeding practices;
2. Take measures to promote environmental health and resilience to climate change<sup>124</sup> and improve children's access to safe drinking water, sanitation and hygiene, and environmental protection, as well as access to and the availability and affordability of food, with assistance from UNICEF and the World Health Organization (WHO), among others.

The **Special Rapporteur on the right to food**<sup>125</sup> observed that despite policies and program, access to food is a challenge, with women and children in rural areas faring worst. An alarming 40 percent of children under 5 years of age are stunted. Turning export-oriented large-scale commercial agriculture into the driving engine of the national economy, in a situation where land protection is weak, risks pushing peasants off their land and out of production with a severe impact on their right to food. The Special Rapporteur recommended Zambia to:

1. **Ratify the Optional Protocol to the ICESCR and the Optional Protocol to the CRC;**
2. **Guarantee the inclusion of the explicit recognition in the Constitution of the right to adequate food;**
3. **Prepare and adopt a human rights-based national framework law on the right to food, with effective benchmarks and implementation plans for each region**<sup>126</sup>;
4. Enact impending legislation, including the **social protection bill, fast-track the bill on food and nutrition, and allocate resources for their effective implementation;**
5. Take urgent measures to **address the issue of child labor in the agricultural sector;**

6. Promote exclusive breastfeeding of infants for the first six months of their lives;
7. Take immediate action to protect the **livelihood of rural women** by (a) improving the **mainstreaming of the gender perspective in the institutional, legal and legislative framework;** (b) adopting a **gender-sensitive, inclusive national land policy** based on human rights principles, and establish an effective monitoring mechanism; and (c) supporting **women farmers** with access to credit and other agricultural resources;
8. **Ensure an effective land administration system** and enforcement of existing laws and regulations on the allocation, sale, transfer and assignment of land and **amend sections of the Lands and Deeds Registry Act** to afford State and customary land equal standing;
9. **Support small-scale food producers**, particularly women and young people, and increase incomes by ensuring fair access to land and other productive resources;
10. **Strengthen protection against forced evictions**, in accordance with the criteria established by the CESCR, by **ensuring the application of the basic principles and guidelines on development-based evictions and displacement**<sup>127</sup>;
11. **Extend the coverage of school meals to cover 100 per cent of children**, prioritizing rural areas, and adopt a simplified system for purchasing local agricultural produce;
12. **Develop properly financed comprehensive nutrition policies** to deal with stunting, wasting and malnutrition in children, including obesity and micronutrient deficiency;
13. **Establish an effective legal and institutional framework for environmental protection** to prevent soil degradation and water contamination as a result of intensive farming or large-scale animal husbandry;
14. **Legislate to limit the excessive and dangerous use of toxic agrochemical products**, providing for appropriate sanctions and implementation monitoring systems;
15. **Promote organic farming and agroecological methods**, and provide them with support, financial mechanisms, and training programs on agroecological agriculture;

16. **Implement the voluntary guidelines issued by FAO on national agricultural policies:** Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,<sup>128</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,<sup>129</sup> and Principles for Responsible Investment in Agriculture and Food Systems;<sup>130</sup>
17. Continue efforts to implement the SDG, particularly Goal 2 on ending hunger, achieving food security and improved nutrition, and promoting sustainable agriculture, and **establish a human rights-based national review supervision system.**<sup>131</sup>

The GRZ should implement 67 recommendations by six human rights mechanisms on different aspects of the right to education in Zambia.

In its **Concluding observations on the combined fifth to seventh periodic reports of Zambia (2022)** the CRC noted the rollout of free primary and secondary education, the 300% increase in the disbursement of school grants for primary schools, the expansion of early childhood community centres, the provision of funds for bursary support for vulnerable children for secondary school boarding facility fees, and free secondary education through compensatory grants to schools to compensate for school fees and parent-teacher association contributions.

The CRC expressed concerns about persistently **high dropout rates, particularly among girls**, due to teenage pregnancy, child marriage, discriminatory traditional and cultural practices, gender norms and harmful gender stereotypes, and poverty; the **enrolment and retention rate disparities between boys and girls in primary and secondary school, particularly in rural areas**; the **limited infrastructure and poor quality of education** and the low level of basic literacy and numeracy skills; reported **sexual abuse in schools** perpetrated by teachers; the **negative impact of the COVID-19 pandemic** on access to education, particularly for poor children and children with disabilities; and **disparities in access to and the quality and cost of early childhood education** and the **insufficient budgetary support** for the long-term development and expansion of early childhood education.

Reminding targets 4.1, 4.2, 4.5, 4.6 and 4.a of the SDG, the CRC recommended to:

1. **Ensure effective implementation of school grants** for primary education, bursary support for vulnerable children to attend secondary schools, the expansion of early childhood development through low-cost community centres and free secondary education;

2. **Strengthen support and assistance to pregnant teenagers and adolescent mothers** to continue their education in mainstream schools, including by overcoming discriminatory traditional attitudes impeding girls' education;
3. **Address the disparities between the enrolment and retention rates for boys and girls** in primary and secondary school;
4. **Strengthen the quality of education and learning outcomes**, through the review of the national curriculum in 2023, ensuring teachers professional development and that schools are safely accessible to all and equipped with adequate infrastructure and technologies;
5. **Investigate all cases of sexual abuse in schools, end impunity and sanction the perpetrators** accordingly, and ensure that children have accessible, confidential, child-friendly and effective reporting channels and they do not face reprisals for reporting abuse;
6. **Ensure recovery from setbacks due to the COVID-19 pandemic** and strengthen new methods of learning by providing better information technology infrastructure in schools and in homes, particularly for children from poor households and children with disabilities;
7. **Expand access to age-appropriate, quality, affordable and inclusive early childhood education** to meet demand and strengthen the use of qualified and licensed community-based volunteers for early childhood development.



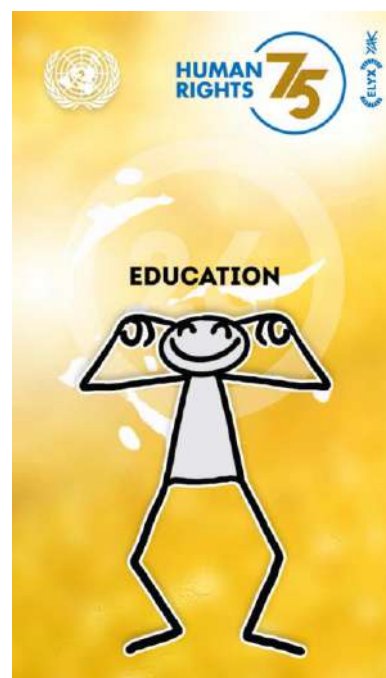
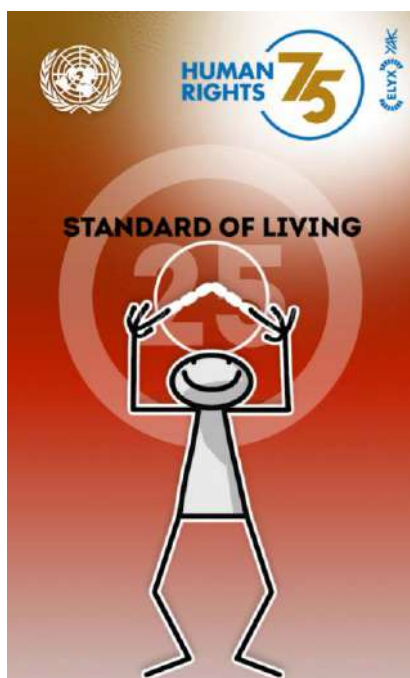
**Other CRC observations and recommendations** concern other aspects related to the right to education in Zambia, specifically regarding children, and in particular girls, as well as other vulnerable populations. These include children's rights and the business sector (mining); economic exploitation, including child labor; non-discrimination and

special protection measures for asylum-seeking and refugee children, children of incarcerated parents, and children in street situations; administration of child justice; respect for the views of the child; leisure, recreation and cultural and artistic activities; children with disabilities; basic health and welfare.

In 2019, the **CERD** recommended that Zambia “guarantee access to all levels of education and educational resources to all children, without discrimination; provide information on educational outreach programs targeted at ethnic minorities with the purpose of increasing their educational enrolment and matriculation; and allocate resources necessary to ensure a quality education for all children.”<sup>132</sup>

The **UPR** (2018, 2012, 2008) made 24 recommendations related to education, including 131.107: “Make efforts to reverse the downward budgetary allocations to the education and health sectors in order to meet the African thresholds on health and education, respectively set in the Abuja and Dakar Declarations”<sup>133</sup> (Namibia) that were supported by the Zambian government.

In 2016, the Special Rapporteur on the rights of persons with disabilities recommended that the GRZ adopt as a priority a plan to implement an inclusive education system across the country (with timelines/benchmarks for implementation and evaluation), through adjustments to the physical environment, adaptation of educational materials/learning methodologies, teacher training, and the provision of support and accommodation for all students with disabilities, including those with multiple disabilities.



## ANNEX 2: MONITORING FRAMEWORK FOR THE RIGHTS TO FOOD AND EDUCATION

### 1. RIGHT TO FOOD INDICATORS

	Nutrition	Food safety and consumer protection	Food availability	Food accessibility
Structural	<ul style="list-style-type: none"> <li>International human rights treaties relevant to the right to adequate food ratified by the State: ICESCR, ICCPR, CRC, CEDAW, CRPD</li> <li>Date of entry into force and coverage of the right to adequate food in the Constitution: Not recognized</li> <li>Date of EIF and coverage of domestic laws for implementing the right to adequate food: No rights-based national framework law on the right to food</li> <li>Number of registered and/or active NGOs (per 100,000 persons) involved in the promotion and protection of the right to adequate food: N/A</li> </ul>			
	Time frame and coverage of national policy on nutrition and nutrition adequacy norms: NFSPP & Food and Nutrition Strategic Plan 2022-2027.	<ul style="list-style-type: none"> <li>Time frame and coverage of national policy on food safety and consumer protection: Food Safety Act No. 7, 2019</li> <li>Number of registered and/or active CSOs working on food safety and consumer protection: Registrar of NGOs N/A (Competition and Consumer Protection Commission)</li> </ul>		<ul style="list-style-type: none"> <li>Timeframe and coverage of national policy on agricultural production and food availability: N/A</li> <li>Timeframe and coverage of national policy on drought, crop failure [13.2.1]<sup>134</sup> and disaster management [1.5.4]: NFSPP &amp; Food and Nutrition Strategic Plan 2022-2027.</li> </ul>
Process	<ul style="list-style-type: none"> <li>Proportion of received complaints on the right to adequate food investigated and adjudicated by the NHRI, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the Government: N/A</li> <li>Net official development assistance for food security received or provided as a proportion of public expenditure on food security or gross national income [16.6.1/17.3.1]: World Bank, GRZ Budget Documents</li> <li>Total official flows (official development assistance plus other official flows) to the agriculture sector [2.a.2]: World Bank, GRZ Budget Documents</li> <li>Agricultural export subsidies [2.b.1]: FAO, Centre for Trade Policy and Development (CTPD)</li> <li>Aid for Trade commitments and disbursements [8.a.1]: Ministry of Commerce, Trade and Industry, CTPD, Zambia Information and Communications Technology Authority, International Trade Administration</li> <li>Specialized support received, including finance, technology and capacity-building, and amount of support, for mechanisms to increase capacities for effective climate change-related planning and management, including a focus on women, youth and local and marginalized communities [13.b.1]:</li> </ul>			
	<ul style="list-style-type: none"> <li>Proportion of targeted population that was brought above the minimum level of dietary energy consumption in the reporting period: FAO</li> <li>Proportion of targeted population covered under public nutrition supplement programs: FAO</li> </ul>	<ul style="list-style-type: none"> <li>Disposal rate or average time to adjudicate a case registered in a consumer court: Competition and Consumer Protection Commission</li> <li>Share of public social sector budget spent on food safety and</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of total adult population with secure tenure rights to land, with legally recognized documentation, and who perceive their rights to land as secure, by sex and type of tenure [1.4.2]: FAO</li> <li>Arable irrigated land per person: 0,21 (World Bank 2020)</li> <li>Proportion of farmers using extension services: FAO</li> </ul>	<ul style="list-style-type: none"> <li>Share of household consumption of major food items for targeted population groups met through publicly assisted programs: FAO</li> <li>Unemployment rate (13.03%, 2021<sup>135</sup>) or average wage rate of targeted segments of labor force: ILO, WB</li> <li>Proportion of targeted population that was brought above the poverty line in the reporting period [1.2.1, 1.2.2]: UNDP</li> </ul>

	<ul style="list-style-type: none"> <li>• Coverage of targeted population under public programs on nutrition education and awareness: FAO</li> <li>• Proportion of targeted population that was extended access to safely managed drinking water sources [6.1.1] in the reporting period: WHO/UNICEF</li> </ul>	<p>consumer protection advocacy, education, research, and implementation of laws and regulations relevant for the right to adequate food: National Budget Yellow Book, Consumer Unity and Trust Society (CUTS), CTPD</p> <ul style="list-style-type: none"> <li>• Proportion of food producing and distributing establishments inspected for food quality standards and frequency of inspections: FAO</li> <li>• Proportion of cases adjudicated under food safety and consumer protection law in the reporting period: N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Share of public budget spent on strengthening domestic agricultural production (e.g. agricultural extension, irrigation, credit, and marketing): National Budget Yellow Book</li> <li>• Proportion of agricultural area under productive and sustainable agriculture [2.4.1]: FAO</li> <li>• The agriculture orientation index for Government expenditures [2.a.1]: FAO/ZCSD</li> <li>• Proportion of per capita availability of major food items sourced through domestic production, import and food aid: FAO</li> <li>• Volume of production per labor unit by classes of farming/pastoral/forestry enterprise size [2.3.1]: FAO/International Labour Organization (ILO)</li> <li>• Average income of small-scale food producers, by sex and indigenous status [2.3.2]: FAO</li> <li>• Cereal import dependency ratio in the reporting period: FAO</li> <li>• Proportion of fish stocks within biologically sustainable levels [14.4.1]: FAO</li> </ul>	<ul style="list-style-type: none"> <li>• Unemployment rate, by sex, age and persons with disabilities [8.5.2]: ILO, ZAPD</li> <li>• Estimated access of women and girls to adequate food within household: N/A</li> <li>• Coverage of programs to secure access to productive resources for target groups: N/A</li> <li>• Proportion of the rural population who live within 2 km of an all-season road [9.1.1]: N/A</li> </ul>
<p><b>Outcome</b></p>	<ul style="list-style-type: none"> <li>• Prevalence of stunting (height for age &lt;- 2 [2.2.1]: 35% (CCA 2021); and malnutrition (weight for height &gt;+2 or &lt;-2 [2.2.2] standard deviation from the median of the WHO Child Growth Standards) among children under 5 years of age: - 8.7% acute malnutrition among children under age five in drought prone districts (CCA 2021); by type: wasting 4%; overweight 5%</li> </ul>	<p>Number of recorded deaths and incidence of food poisoning related to adulterated food: N/A</p>	<ul style="list-style-type: none"> <li>• Per capita availability of major food items for local consumption: N/A</li> <li>• Global food loss index [12.3.1]: N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Prevalence of undernourishment [2.1.1]: 45%<sup>136</sup></li> <li>• Average household expenditure on food for the bottom three deciles of population or targeted population: N/A</li> <li>• Indicator of food price anomalies [2.c.1]: N/A<sup>137</sup></li> </ul>

	<ul style="list-style-type: none"> <li>Proportion of adults with body mass index (BMI) &lt;18.5: N/A</li> </ul>			
	<ul style="list-style-type: none"> <li>Death rates, including infant and under-five mortality rates associated with malnutrition and prevalence of malnutrition (including under-, over nutrition and inadequate intake of nutrients): N/A</li> <li>Prevalence of moderate or severe food insecurity in the population, based on the Food Insecurity Experience Scale [2.1.2]: The Global Hunger Index rated Zambia's hunger status as "serious" (2021).</li> </ul>			
All indicators should be disaggregated by prohibited grounds of discrimination [17.18.1], as applicable and reflected in metadata sheets.				

## 2. RIGHT TO EDUCATION INDICATORS

	Universal primary education	Accessibility to secondary and higher education	Curricula and educational resources	Educational opportunity and freedom
Structural	<ul style="list-style-type: none"> <li>International human rights treaties relevant to the right to education ratified by the State: ICESCR, ICCPR, CRC, CEDAW, CRPD, ICERD, UNESCO Convention on Technical and Vocational Education</li> <li>Date of entry into force and coverage of the right to education in the Constitution or other forms of superior law: Not recognized</li> <li>Date of entry into force and coverage of domestic laws for implementing the right to education, including prohibition of corporal punishment, discrimination in access to education, making educational institutions barrier-free, and inclusive education (e.g. children with disabilities, children in detention, migrant children, indigenous children): <u>Education Act (2011)</u> and other legislation in <u>Volume 10</u> of the Acts of Parliament and the Children's Code Act (2022)</li> <li>Date of entry into force and coverage of domestic law on the freedom of individuals and groups (including minorities) to establish and direct educational institutions: N/A</li> <li>Number of registered and/or active NGOs (per 100,000 persons) involved in the promotion and protection of the right to education: N/A</li> </ul>			
	<ul style="list-style-type: none"> <li>Time frame and coverage of the plan of action adopted by the State Party to implement the principle of compulsory primary education free of charge for all: MoE Education and Skills Sector Plan 2017-2021; Early Childhood Education and Skills Sub-Sector Plan, 2021-2025 (draft)</li> <li>Stipulated duration of compulsory education: (5 years); and minimum age for school admission: (7); 54% of grade 1 entrants were not age 7 (2020 Educational Statistics Bulletin [ESB])</li> </ul>	<ul style="list-style-type: none"> <li>Time frame and coverage of national policy on education for all, including provision for temporary and special measures for target groups (e.g. working children and children in street situations): 8NDP (2022-2026)</li> <li>Time frame and coverage of national policy on vocational and technical education: <u>Technical Education and Vocational Training Act</u></li> <li>Date of entry into force and coverage of regulatory framework including standardized curricula for education at all levels: <u>Education Act (2011)</u></li> <li>Proportion of education institutions at all levels teaching human rights and number of hours in curricula on human rights education: N/A</li> <li>Extent to which (1) global citizenship education, and (2) education for sustainable development, including gender equality and human rights, are mainstreamed at all levels in (a) national education policies; (b) curricula; (c) teacher education; and (d) student assessment [4.7.1]: N/A</li> <li>Proportion of education institutions with mechanisms (student council) for students to participate in matters affecting them: N/A</li> </ul>		



<p><b>Process</b></p>	<ul style="list-style-type: none"> <li>• Proportion of received complaints on the right to education investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the Government: N/A</li> <li>• Public expenditure on primary, secondary and higher education as proportion of gross national income; net official development assistance for education received or provided as proportion of public expenditure on education [1.a.2]: National Budget Yellow Book, UNICEF</li> <li>• Volume of official development assistance flows for scholarships by sector and type of study [4.b.1]: National Budget Yellow Book, Donor Reports and Country Strategy Documents</li> </ul>			
	<ul style="list-style-type: none"> <li>• Net primary enrolment ratio by target group, including children with disabilities: 87.9% (UNICEF) - 83.6% in 2018, 90.4% in 2016 – overall data on CWD missing- Children with disabilities account for 3% of total enrolment at primary</li> <li>• Dropout rate for primary education by grade for target groups: N/A</li> <li>• Proportion of enrolled children in public primary schools: N/A</li> <li>• Proportion of pupils (by target group) covered under publicly supported programs or incentives for primary education: N/A</li> <li>• Proportion of public schools with user charges for services other than tuition fees: Charges were removed</li> <li>• Proportion of teachers in (a) pre-primary; and (b) primary education who have received at least the minimum organized teacher training (e.g. pedagogical training), pre-service or in-service required for teaching at the relevant level [4.c.1]: The GRZ recruited over 30,000 teachers in 2022, more than 80% (26,594) were primary school teachers. 6% were ECE teachers</li> <li>• Proportion of children getting education in their mother tongue: N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Transition rate to secondary education by target group: 42.9% net secondary school enrolment (UNICEF)</li> <li>• Gross enrolment ratio for secondary and higher education by target group: Transition rates from primary to secondary school remain low at 67.5% (UNICEF). Other UNICEF data indicate G7 to G8 is 63.0%; G9 to G10 transition is 46.8% (ESB 2020)</li> <li>• Dropout rate for secondary education by grade for target groups: N/A</li> <li>• Proportion of students enrolled in public secondary and higher education institutions: N/A</li> <li>• Share of annual household expenditure on education per child enrolled in public secondary school or higher education: Education Sector PER, National Statistical Data</li> <li>• Proportion of pupils (by target group) receiving public support or grant for secondary education: N/A</li> <li>• Proportion of teachers in (c) lower secondary; and (d) upper secondary education who have</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of schools with access to (a) electricity; (b) the Internet for pedagogical purposes; (c) computers for pedagogical purposes; (d) adapted infrastructure and materials for students with disabilities; (e) basic drinking water; (f) single-sex basic sanitation facilities; and (g) basic handwashing facilities (as per the WASH indicator definitions) [4.a.1]: N/A</li> <li>• Periodicity of curricula revision at all levels: N/A</li> <li>• Number of educational institutions by level recognized or derecognized by regulatory body during the reporting period: N/A</li> <li>• Average salary of schoolteachers as percentage of regulated minimum wage: ZANEC</li> <li>• Proportion of teachers at all levels completing mandatory in-service training during reporting period: N/A</li> <li>• Ratio of pupils to teachers, in primary, secondary, public and private education: Teacher-</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of education institutions engaged in “active learning”: N/A</li> <li>• Proportion of adult population covered by basic education programs: N/A</li> <li>• Proportion of students, by level, enrolled in distance and continuing education programs: N/A</li> <li>• Number of institutions of ethnic, linguistic minority and religious population groups recognized or given public support: N/A</li> <li>• Proportion of labor force retraining or enhancing skills at public or subsidized institutions: N/A</li> <li>• Proportion of higher learning institutions enjoying managerial and academic autonomy: N/A</li> <li>• Participation rate of youth and adults in formal and non-formal education and training in the previous 12 months, by sex [4.3.1]: N/A</li> </ul>

	<ul style="list-style-type: none"> <li>• Proportion of children under 5 years of age who are developmentally on track in health, learning and psychosocial well-being, by sex [4.2.1]: N/A</li> <li>• Participation rate in organized learning (one year before the official primary entry age), by sex [4.2.2]: Only 37% of children have access to ECE according to ESB 2020 and ZDHS. (UNICEF)</li> </ul>	<ul style="list-style-type: none"> <li>received at least the minimum organized teacher training (e.g. pedagogical training), pre-service or in-service required for teaching at the relevant level [4.c.1]: Just 4% (1,435) of teachers hired in 2022 were for secondary school</li> <li>• Proportion of students enrolled in vocational education programs at secondary and post-secondary level: N/A</li> </ul>	<p>pupil ratio is 1:60 in primary schools, 1:80 for CSEND (UNICEF)</p>	
<b>Outcome</b>	<ul style="list-style-type: none"> <li>• Parity indices (female/male, rural/urban, bottom/top wealth quintile, and others such as disability status, indigenous peoples, conflict-affected, and other target groups for primary education by grade [4.5.1]: 1.0 Gender Parity Index at primary school (UNICEF) other info N/A</li> <li>• Proportion of pupils starting grade 1 who reach grade 5 (primary completion rate): primary school completion levels is 91.8% at grade 7</li> <li>• Proportion of school-age children not attending primary school: An estimated 816,641 school-aged children remain out-of-school: 27% (over 220.000) are of primary school age</li> </ul>	<ul style="list-style-type: none"> <li>• Parity indices (female/male, rural/urban, bottom/top wealth quintile and others such as disability status, indigenous peoples, conflict-affected, and other target groups in secondary or higher education by grade [4.5.1]: 0.90 Gender Parity Index at secondary school (UNICEF) other info N/A</li> <li>• Proportion of children completing secondary education (secondary completion rate): Grade 12 completion is 31.6% (girls) and 40.4% (boys)</li> <li>• Number of graduates (first-level university degree) per 1000 population: N/A</li> </ul>	<p>(Improvement in) Density of primary, secondary and higher education facilities in the reporting period: N/A</p>	<ul style="list-style-type: none"> <li>• Proportion of women and targeted population with professional or university qualification: N/A</li> <li>• Proportion of youth and adults with information and communication technology skills, by type of skill [4.4.1]: N/A</li> </ul>
<p>Proportion of children, youth and adult fixed level of proficiency in functional literacy and numeracy skills (i.e. reading, writing, arithmetic, problem-solving and other life skills) [4.1.1 and 4.6.1]: Assessments show very poor learning outcomes. A 2018 Program for International Assessment study indicates that only 5% of learners attained the minimum proficiency in reading and 2% the minimum proficiency in mathematics in primary school G1 and G2</p>				
<p>All indicators should be disaggregated by prohibited grounds of discrimination [17.18.1], as applicable and reflected in metadata sheets.</p>				

## ANNEX 3: METHODOLOGY AND CHALLENGES

### METHODOLOGY

This Study is a result of a commitment by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to expand its work on sustainable development and economic, social and cultural rights through OHCHR's "Surge Initiative" – a team established with sustainable development and ESC rights specialists as well as economists. The Surge Initiative provided expert support and financing to this project, which was conceptualized and led by OHCHR's Senior Human Rights Advisor, UN Zambia. In addition to the Surge Initiative Team, the project was also undertaken in close collaboration with the OHCHR's Regional Office for Southern Africa. The Analyses and Study were co-authored by a team of consultants composed of an International Human Rights Consultant (IHRC), the Zambia Council for Social Development and its partner, the Institute for Social Policy in Africa. The IHRC conducted background research and analysis of information in consultation, including a review of literature<sup>138</sup> and the organization of virtual consultations with key UN and national stakeholders, based on tailored questionnaires. The UN stakeholders included FAO, UNICEF, WFP, IOM and UNHCR<sup>139</sup> and non-UN stakeholders included the ZHRC, ZIPAR, Central Statistical Office and CSOs, including Mary's Meals International, Carter Center and The Chapter One Foundation<sup>140</sup>. Meetings served to deepen the understanding of gaps and opportunities for supporting the realisation of the rights to food and education in Zambia especially for those currently left behind and those at risk of being left furthest behind, in line with Agenda 2030's call to States to reach the furthest behind, first; respond to questions arising from the analysis of the literature; and identify gender and other inequalities, forms of vulnerability and marginalization.

A final draft of the Study informed consultations and a capacity-building exercise on the rights to food and education that was held on 9 and 10 October 2023 in Lusaka.

The monitoring framework was built based on core obligations as contained in the CESCR's General Comments, recommendations of Human Rights Mechanisms related to the rights to food and education in Zambia, OHCHR's Manual on Human Rights Monitoring - Monitoring ESC Rights; and Human Rights Indicators – a Guide to Measurement and Implementation.

### CHALLENGES

A number of challenges were encountered in conducting a rights-based budget analysis and would merit the attention of Government and other national stakeholders going forward, including:

1. **Availability of Budgets:** The main method of budget analysis was allocations analysis. To do this, the Yellow Books were required for a five-year period, from 2018-2023. While budgets for 2021 to 2023 were readily available on the National Assembly Website, budgets for 2018 to 2020 were not available and soft copies were difficult to source. To counter this challenge, it was necessary to use the 2018 and 2020 Yellow Books in hard copy.
2. **Format change:** The budget format changed from activity-based to output-based budgeting in the middle of the five-year period analysed by this study. As a result, the level of detail to which the budget was broken down and the budget narrative accompanying the allocations were different for the pre 2021 and post 2021 budgets. Consequently, some analyses capture only a three-year period where data was directly comparable at the same level of detail. In some cases, the budget format also limited the extent to which human rights specific interpretations could be made based on budget allocations.
3. **Level of detail for analysis:** Based on data availability and conforming to an acceptable level of analysis for rights-based budget analysis, allocations to relevant rights to food and education budget lines were used to try to understand Zambia's commitment to upholding the two rights.
4. **Access to disbursement data:** A second layer of comparing allocations to disbursements was somewhat constrained by difficulties accessing disbursement data. It will be important going forward that budget performance data is made easily accessible. This level of transparency will enable easier budget analysis for the rights to food and education as well as other ESC Rights.
5. **Basis of comparison:** This report is a first attempt at providing reference points for the budget lines in Zambia that correspond to rights elements. International practice was used to include as comprehensively as possible budget lines that are relevant to the specific rights and their composite elements.



## ANNEX 4: LITERATURE UTILIZED FOR THE REVIEW

Committee on Economic, Social and Cultural Rights. *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*. 14 December 1990. E/1991/23.

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Liebenberg, Sandra. *Austerity in the midst of a pandemic: Pursuing accountability through the socio-economic rights doctrine of non-retrogression*. *South African Journal on Human Rights*, 37. 1-24, (September). 2021.

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Sharma, Preya. IMF Resident Representative in Zambia. "Zambia's Fund-supported Program". Powerpoint presentation. September 2022.

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\_\_\_\_\_. *Laws of Zambia, Volume 12*.

\_\_\_\_\_. *Laws of Zambia, Volume 14*.

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## ANNEX 5: AUGMENTING THE SCHOOL FEEDING PROGRAMME

Allocation by Education Level	2022 budget allocation to ECE education	102,615,365
	2022 budget allocation to primary education	7,961,447,684
	2022 budget allocation to secondary education	3,959,641,117
	2022 Allocations ECE – secondary	12,023,704,166
Number of Learners by Education Level	ECE school children	222,065
	primary school children	3,415,770
	secondary school children	889,456
	Total number of learners ECE – secondary	4,527,291
SFP Allocations	Budget allocation to ECE SFP 2022	979,945
	Budget allocation to primary school SFP 2022	38,760,880
	Total allocation to ECE and primary school SFP 2022	39,740,825
	Number of children on SFP 2022	1,900,000
SFP Costs	Cost per child	20.92
	Cost Universal ECE	4,644,761
	Cost Universal Primary	71,445,009
	Cost Universal Secondary	18,604,061
	Cost of Universal SFP	94,693,831
SFP Costs as Share of Education Spending	Cost of Universal SPF share of ECE spending	4.53%
	Cost of Universal SPF share of primary education spending	0.90%
	Cost of Universal SPF share of secondary education spending	0.47%
	Cost of Universal SPF share of total education spending	0.79%
Additional Allocation for Universal SFP	<b>Additional Allocation required for Universal SFP – ECE</b>	<b>3,664,816</b>
	<b>Additional Allocation required for Universal SFP – Primary</b>	<b>32,684,129</b>
	<b>Additional Allocation required for Universal SFP – Secondary</b>	<b>18,604,061</b>
	<b>Additional Allocation required for Universal SFP – ECE and Primary</b>	<b>36,348,946</b>
	<b>Additional Allocation required for Universal SFP</b>	<b>54,953,006</b>

## ANNEX 6: SUMMARY OF CASE LAW ON THE RIGHTS TO FOOD AND EDUCATION

### AFRICA

#### ZAMBIA

1. Nkole v Council of the University of Zambia and Ors (2023)
2. George Peter Mwanza and Melvin Beene v Attorney General (2019)
3. Molosoni Chipabwamba and 12 Other Displaced Village Owners v Yssel Enterprises Limited (2022)

#### SOUTH AFRICA

4. Equal Education and Others v Minister of Basic Education and Others (2020)
5. Government of the Republic of South Africa. & Ors v Grootboom & Ors (2000)

### ASIA

#### INDIA

6. Mohini Jain v. State of Karnataka, 1992 AIR 1858, 1992 SCR (3) 658

### NORTH AMERICA

#### CANADA

9. Tanudjaja v. Canada (Attorney General) (2014)

### EUROPE

#### UNITED KINGDOM

10. R. (Adam and Limbuela) v. Secretary of State for the Home Department

#### BULGARIA

11. Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007

### SOUTH AMERICA

#### COLOMBIA

7. CASE 1 - T-025 of 2004

#### ARGENTINA

8. Indigenous Community Members of the Lhaka Honhat (Our Land) Association vs. Argentina

### OCEANIA

#### AUSTRALIA

12. Daniel Billy et al. vs. Australia (Torres Strait Islanders Petition) (2022)

## AFRICA

### ZAMBIA

#### 1. Nkole v Council of the University of Zambia and Ors (2023/HPF/206) [2023] ZMHC 6 (8 May 2023)<sup>141</sup>

##### **Brief Facts and Legal Arguments:**

The following is a summary of this case:

This is a ruling on an application for an interim order compelling the 1st Respondent [Council of the University of Zambia] to find suitable learning spaces for the University of Zambia Law Students. The applicant in his affidavit set out that he had commenced proceedings on behalf of the Law students at the University of Zambia by way of a petition seeking redress for the violation of their right to education. He stated that the violation arose from the failure or neglect to find enough learning spaces to accommodate the huge number of students that the 1st Respondent had enrolled. He averred that because of inadequate learning spaces at the 1st Respondent's institution, every lecture time presented risks of near stampede circumstances as students jostled for seats, a situation that threatened the students' safety, health and compromised the quality of legal training.

The deponent averred that some students who did not find seats, sat on the floor or stood throughout the duration of lectures while others helplessly stood and followed lectures from outside due to the lack of space. He averred further that there was a huge number of students who failed to keep up with the harsh learning environment and the indignity associated with legal training at the University of Zambia and decided to stay away from attending classes because they could not bear with the inhumane and degrading environment that the 1st Respondent had subjected them to.

It was deposed that the chronicled plight of the law students at the University of Zambia required urgent measures to arrest the state of continuing deprivation and violation of the right to education of the law students. He stated that if the interim order was not granted to halt and arrest the situation at the university, the concerned students would suffer irreparable damages that could not be atoned for by damages from the court, as they would be ill equipped to sit for their examinations. He also stated that the University was scheduled to commence mid-year examinations in the months of June and July while end of year examinations were in November 2023. He explained that failing a course or courses in the School of Law led to grave consequences of being sent on part-time and losing government sponsorship for those on loan schemes....

He stated that the plummeting of the standards of legal training at the University, which was the highest institution of learning in the country, was a matter of public concern

requiring urgent solutions which included the court granting the order sought. He said that the respondent would not suffer any prejudice if the Court granted the Order.

The 1st Respondent's affidavit was sworn by the 1st Respondent's registrar, Theresa Chipulu Chalwe. The deponent averred that in the 2020/2021 academic year, the University of Zambia saw an unprecedented enrolment of about 8,034 registered first year students with 751 students being admitted in the School of Law, and that the increase in the student numbers was a result of the introduction of the Remodeling Income Generation (RIG) Initiative whose drive was to grow students' numbers in an effort for the University to be self-sustaining. She averred that the introduction of RIG saw a change in the admissions system to on-spot admissions which resulted in the increase of students' admissions.

She averred further that the unprecedented numbers were attributable to the growing demand for education in Zambia and the pronouncement by the government of the Republic of Zambia to not leave anyone behind which was evident in the increase of government bursaries given to the universities and stated that the School of Law had 265 first year students, 413 second year students, 202 third year students and 103 fourth year students. She exhibited the registration statistics as exhibit "TCC1".<sup>142</sup>

##### **Ruling:**

The Court ruled as follows:

In light of these findings,...am of the considered view that if the interim order is not granted to remedy the situation, the concerned students are likely to suffer irreparable damage that could not be atoned for by damages as they will be ill equipped to sit for their examination....**am also satisfied that refusing of the interim relief would prick the conscience of the Court in that the best interest of the children with regard to access to education will not be adequately safeguarded** [emphasis added]....the injury complained of is pressing as well as immediate and could result in an injustice being perpetuated throughout the hearing. Thus, it is ordered that the application for an interlocutory relief to compel the 1st Respondent to secure suitable learning spaces for the affected law students at the University of Zambia, which learning spaces shall be inspected, approved and declared for learning by the 2nd [Higher Education Authority], 3rd [The Law Association of Zambia], and 4th respondents [Attorney General] is hereby granted.<sup>143</sup>



## **2. George Peter Mwanza and Melvin Beene v A eter Mwanza and Melvin Beene v Attorney General Appeal No. 153/2016 SC Selected Judgment No. 33 of 2019**<sup>144</sup>

### **Brief Facts and Legal Arguments:**

The following is a summary of this case by Katindo Mwale, Commonwealth Lawyers Association:

The Supreme Court of Zambia on 9th December 2019 delivered a landmark judgment in the case of George Peter Mwanza and Another v the Attorney General with respect to the advancement of human rights, and particularly the advancement of economic, social and cultural rights, which are not specifically recognised in the Zambian Bill of Rights.

The brief facts of the case are that the two Appellants were incarcerated at Lusaka Central Prison and were both HIV positive and on Anti-Retroviral Therapy (ART). The two Appellants launched a Petition in the High Court alleging that the meals that were being served at Lusaka Central Prison lacked a balanced diet in that lacked nutritional value both in terms of quality and quantity and as such constituted a violation of the Appellants right to life contrary to Article 12 of the Constitution of Zambia. The Appellants further contended that they were being kept in filthy, congested prison conditions which were meant to accommodate only fifteen prisoners but were now accommodating over seventy-five prisoners with the result that the Appellants could not sleep or slept in a standing position with no ventilation or flushing toilets. The Appellants argued that these conditions were fertile ground for the transmission of communicable disease such as pulmonary tuberculosis among other infectious diseases. The Appellants argued in the High Court of Zambia that these conditions constituted a violation of their right to life and a violation of their right to protection from inhuman and degrading treatment contrary to Article 13 of the Constitution of Zambia. The Appellants further argued the lack of bed space rendered it difficult for them to recover owing to the fact that the ART that the Appellants were taking was strong and made the Appellants weak thereby rendering the Appellants' chances of recovering from the effects of the ART unlikely and threatening their right to life as well as constituting inhuman and degrading treatment.

The High Court delivered its judgment, declining to grant the Appellants the relief sought and dismissed the petition in its entirety. Desolate with the decision of the High Court, the Appellants launched an appeal in the Supreme Court raising three grounds of appeal. The first ground of appeal was predicated on the grounds that the failure by the state to provide a balanced diet infringed on the Appellants' right to life contrary to Article 12 of the Constitution of Zambia. The second ground of appeal was predicated on grounds that the overcrowding of the prisons coupled with the failure to provide sanitary ablution facilities constituted inhuman and degrading treatment contrary to Article 15 of the Constitution of Zambia whilst the third ground of appeal was that the state

had a duty at common law as well as statutory law to provide for a special diet for prisoners living with HIV and Aids.

The Supreme Court in its landmark judgment interrogated the justiciability of economic, social and cultural rights within the Zambian context. The Supreme Court recognised that civil and political rights are separate and distinct from economic, social and cultural rights in that the civil and political rights had been widely construed by many jurisdictions as immediate rights which are enforceable whereas economic social and cultural rights have been interpreted as rights which are to be progressively realised. The conundrum therefore to be resolved by the Supreme Court was whether a justiciable right such as the right to life can be enforced through a non-justiciable right such as the right to adequate food.

**In answering this question in the affirmative, the Supreme Court recognised that the right to food is a universal right recognised and enshrined in numerous international instruments such as Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights. The Supreme Court took cognizance of the growing trend by other jurisdictions to recognise and enforce Economic, Social and Cultural Rights either directly or indirectly through Civil and Political Rights as well as the position endorsed by General Comment No 9 by the Committee on Economic Social and Cultural Rights on justiciability of Economic Social and Cultural Rights. [Emphasis added].** The Supreme Court therefore adopted a liberal interpretation of the right to life by drawing an interlinkage with the right to food and the right to health. Therefore, the Supreme Court recognised the right to food indirectly through the interconnected right to life.

Most importantly, the Supreme Court went on to recognize the right to life as that of the right to a dignified life. In this regard, the right to human dignity entails the recognition of the right to nutritious food adequate to sustain a dignified human life. The Supreme Court recognized the special category the Appellants were in as prisoners living with HIV and as such, the right to life was given a broader construction to take into consideration the peculiar health needs of the Appellants. Thus, the Supreme Court found in favor of the Appellants regarding the violation of the Appellants' right to life by indirectly recognizing the Appellants need for a balanced diet necessary for their survival.

As regards the second ground of appeal, the Supreme Court perused the literature on the right to protection from inhuman and degrading treatment recognized and enshrined in various international instruments. The Supreme Court recognized that inhuman and degrading treatment consist of deliberately causing severe mental or physical suffering inflicted on a person. In this regard, the Supreme Court found without hesitation that the conditions under which the Appellants were kept, namely in overcrowded cells with poor ventilation

and lack of flushing toilets constituted inhuman and degrading treatment and a violation of the Appellants' rights under Article 15 of the Constitution of Zambia.

Under ground three, the Supreme Court concluded that the state has an obligation to provide for the special dietary needs of the Appellants both under common law and statutory law.

In conclusion, the Supreme Court ordered that all prisoners with preferential dietary needs be given special diets in accordance with their needs in furtherance of their right to life. Further, the Supreme Court directed that the state immediately take measures to decongest the prisons at the Lusaka Central Correctional Facility and to render a report to the sessional judge on the opening day of every criminal session on the measures being taken by the state to decongest the facility so as to make it more humane. The Supreme Court further ordered the allocation of resources to the Lusaka Correctional facility to improve the dietary needs of the prisoners with special attention being given to prisoners with HIV.<sup>145</sup>

#### **Significance of the Case:**

The case is significant as it raises the following substantial issues; the concept of justiciability of the prisoner's right to food and health; the justiciability of socio-economic rights generally; clarifying the standard of treatment for incarcerated persons; and the role of the State and the judiciary in the realisation of socio-economic rights within the context of the first generation rights addressed in the Constitution.

### **3. Molosoni Chipabwamba and 12 Other Displaced Village Owners v Yssel Enterprises Limited Appeal No.104/2020 (ZMCA) 2022**<sup>146</sup>

#### **Facts and Legal Arguments:**

On 21 April 2022 the Court of Appeal of Zambia delivered a landmark decision in which the Court upheld the customary land rights of a community of villages (the petitioners) settled in chief Muchinda's chiefdom in the Serenje District of Zambia.

In 1996, the 1st respondent applied for a farm area and was approved by the relevant authorities for Serenje District without the authorisation of the senior chief. In December 1997, senior chief Muchinda gave his authorization for the 1st respondent to settle as a commercial farmer. In his authorization, the chief delineated the piece of land given to the 1st respondent but it did not include the customary land occupied by the appellants for several years. The certificate of title issued to the 1st respondent, however, did include the customary land of the appellants.

The property in question passed through several hands of ownership until 2013 when the new title holder (the 4th and 5th respondent) evicted the appellants from the land and the appellants settled in the Musangashi forest reserve

compelling them to live under undignified conditions. In December 2017, the appellants commenced an action in the High Court of Zambia by way of petition challenging the forced eviction and the taking away of their customary land with no consultation or compensation. The appellants sought the following relief (among others) from the High Court: 1) That the taking away of their customary land without adhering to the procedure was unconstitutional and therefore null and void; 2) An order that the affected community members be allowed to continue enjoying their land in accordance with the customary law of the area and its attendant rights; 3) An order that the certificate of title issued to the respondents covering the land occupied by the appellants under customary tenure be cancelled; 4) An order that the destruction of the appellant's homes, crops and forests by the respondents violated the appellants' rights to dignity, life, personal liberty and protection from inhumane treatments; and 5) Damages and compensation.

The High Court held that the conversion of the disputed land from customary tenure to statutory tenure was null and void and that the issuance of the certificate of title to the 1st respondent rendered the appellants squatters on the land and was a violation of their rights. The court further held that cancelling the certificate of title issued to the new owners would not be in the interest of the public because the new owners had settled on the land in dispute as commercial farmers in furtherance of government policy to create farm blocks beneficial to national development.

The appellants appealed the decision of the High Court to the Court of Appeal particularly regarding the lower court's refusal to cancel the certificate of title issued to the 4th respondent. The appellants contended that the lower court should have cancelled the certificate of title to enable the displaced community members to return to the land having found that the conversion of land from customary tenure to statutory tenure was null and void. The Court of Appeal agreed with the decision of the High Court that the conversion of the land in dispute from customary tenure to statutory tenure was null and void. The Court of Appeal further held that the certificate of title issued to the respondent should have been cancelled since it was concluded that the conversion of the land was null and void.

Over the years Zambia has become a leading destination for an assortment of foreign investment opportunities both from private individuals and countries seeking to acquire land for various purposes such as mineral exploration and agro investments and the state is willing to give such land concessions with the intention of fostering national development. The land subject to these concessions, however, is land occupied by vulnerable customary communities who are not in the position to oppose the granting of such land concessions by the state. The vulnerability of these communities is reinforced by the fact that they hold the land under customary law of land tenure

with no formal certificate of title to the land or any form of documentation to protect and/or justify their claim. Furthermore, most Zambians are governed by customary law which subsequently affects salient rights such as customary land rights. The decision of the Court of Appeal to affirm the customary land rights of the displaced community members who sought the intervention of the courts is a significant and commendable move towards fortifying and developing customary law of land tenure and customary land rights in Zambia. This is particularly important because the potential of exploitation and non-compliance with the law is high when converting from customary tenure to statutory tenure.

## SOUTH AFRICA

### 4. Equal Education and Others v Minister of Basic Education and Others (22588/2020) [2020] ZAGPPHC 306; [2020] 4 All SA 102 (GP); 2021 (1) SA 198 (GP) (17 July 2020)<sup>147</sup>

#### Background:

"The essence of this matter aptly can be captured as: 'For now I ask no more than the justice of eating.' [1]

[1] Pablo Neruda, Chilean poet and Nobel Prize winner."<sup>148</sup>

In the midst of the COVID-19 pandemic, schools in South Africa closed, limiting the delivery of the National School Nutrition Programme (NSNP) which provides a daily meal to all learners in South Africa who qualify based on economic need. The Minister of Education announced that schools would be reopened and the NSNP restored on June 8, 2020, but when schools reopened to some students, the NSNP meals were not delivered as promised. The applicants sued the Department of Basic Education for a violation of constitutional and statutory duties and sought declaratory relief with court oversight to achieve full implementation of the NSNP as soon as possible.

**Date of the Ruling:** 17 July 2020

**Forum:** High Court of South Africa, Gauteng Division, Pretoria

**Type of Forum:** Domestic

#### Summary:

The issue in this case was whether the Minister of Education and eight South African provinces had constitutional and statutory duties to provide daily NSNP meals to learners. The plaintiffs included Equal Education, a nonprofit legal education advocacy organization and the school governing bodies of both Vhulaudzi Secondary School and Mashao High School. The parties sued the Minister of Basic Education of South Africa and the Members of the Executive Council (MEC) of Education for the eight provinces of Eastern Cape, Free State, Gauteng, Kwazulu-Natal, Limpopo, Mpumalanga, Northern Cape, and North West. The plaintiffs sought declarations that the respondents had breached their duties and orders that the NSNP should be implemented without delay to all qualifying learners. Additionally, the plaintiffs

sought a supervisory interdict that called for the Minister and the MECs to provide reports on the progress of the NSNP implementation every 15 days until the judiciary discharged the order.

The NSNP provides approximately nine million schoolchildren in South Africa who are in economic need with at least one nutritious meal every school day. During the COVID-19 lockdown, the South African school system was shut down for 12 weeks, two of which were prior-scheduled school vacation weeks and ten of which were regular school weeks. At public meetings and by public statements throughout March, April, and May, the Minister of Education announced that the NSNP would again be available to all learners as soon as schools reopened. The initial date for school reopening was scheduled for June 1, 2020, but it was postponed to June 8, 2020. On June 1, 2020, the Minister of Education walked back her repeated statements that the NSNP would be fully implemented when schools reopened, stating that the Government would first begin by providing meals to learners in grades 7 and 12.

When the applicants asked the Department to clarify these statements, the Department stated that they would begin by using a "phased-in approach". That approach, as implemented when learners in grades 7 and 12 returned to school, did not provide meals to learners in any other grades. The applicants challenged the Minister and MECs' phased-in approach as a breach of the Government's duties under three provisions of the South African Constitution: section 27(1)(b), which protects the right to have access to sufficient food and water; section 28(1), which provides that every child has the right to basic nutrition, shelter, health care, and social services; and section 29(1)(a), which provides the right to basic education. The court relied on the argument that the Government has a "negative" obligation not to impair a right protected in the Constitution to conclude that the Minister and the MECs had diminished the rights protected by sections 27(1)(b), 28(1), and 29(1)(a) by stalling the NSNP implementation.

Further, the case referred to **South Africa's Initial State Report to the Committee on Economic, Social and Cultural rights that included the following connection between the NSNP and CESC Article 11 on the right to an adequate standard of living:**

*'Addressing challenges of malnutrition and stunting amongst children require a concerted effort between government, civil society and development partners. Daily meals are provided to 9 million learners in 20 000 schools through the National School Nutrition Program. The program aims to foster better quality education by enhancing children's active learning capacity, alleviating short-term hunger, providing an incentive for children to attend school regularly and punctually; addressing certain micro-nutrient deficiencies. School feeding is part of the Integrated Food Security*

### *Strategy for South Africa.[17]*

[17] South African's Initial State Report to the Committee on Economic, Social and Cultural rights (2017) par 106.<sup>149</sup>

To illustrate the impact of the impaired rights, the court included compelling affidavits from several learners in grades 7 and 12 in its discussion of the case. These learners expressed guilt for receiving a meal every day while their siblings at home experienced hunger. Additionally, the court detailed the dismal conditions of child hunger in South Africa even during the normal operation of the NSNP, and concluded that without a restoration of the program, the health of millions of learners would likely suffer.

The court concluded that all qualifying learners are entitled to a daily meal from the NSNP. The court held that as the NSNP was explicitly introduced to address both the right to basic education under section 29(1) (a) of the Constitution and the right of children to basic nutrition under section 28(1)(c), the Minister of Basic Education and the MECs have a constitutional duty to provide basic nutrition to learners, that learners have a basic right to nutrition, and that the suspension of the NSNP had infringed upon that right.

#### **Enforcement of the Decision and Outcomes:**

The court ordered the Minister and the eight MECs to produce a progress report every 15 days on the NSNP implementation situation. As of the first reporting period, however, only the Minister had filed a report to the court. No MECs filed reports with the court at the 15-day deadline, although many of them filed a day late. After reviewing the reports, the applicants contended that the programmes and reports were insufficient, and they provided the respondents with notices that if these defects were not remedied in the next reporting period, they would seek further relief from the courts.

#### **Significance of the Case:**

In times of national and international crisis, the right to food and the necessity of nutrition remain paramount even as food may become more difficult to disseminate. Schools are an obvious touchpoint for food access in nations with universal education. Cutting back on such a programme at a time of crisis breaches the social and economic rights to food, nutrition and education. The court made an order that the school meals programme be fully implemented without delay. It also made a detailed order requiring regular reports to provide accountability and to ensure that the programme is actually implemented in accordance with the court's order.

#### **5. Government of the Republic of South Africa. & Ors v Grootboom & Ors 2000 (11) BCLR 1169. (CC)**<sup>150</sup>

The following is a summary of this case from the caselaw database of the International Network of Economic, Social and Cultural Rights (ESCR-Net):

Challenge to failure of governments to provide adequate housing under s.26 (right to adequate housing) and s.28 (Children's right to shelter) of the South African Constitution; Failure of housing programme to address needs of those in desperate situations; Reasonable measures and allocation of resources; Whether there is a right to minimum shelter; Minimum core content of right to housing; Extent of judicial deference to government policy choice; Appropriate remedy.

**Date of the Ruling:** Dec 17 1999

**Forum:** Constitutional Court of South Africa

**Type of Forum:** Domestic

#### **Summary:**

A community of squatters, evicted from an informal settlement in Wallacedene had set up minimal shelters of plastic and other materials at a sports centre adjacent to Wallacedene community centre. They lacked basic sanitation or electricity. The group brought an action under sections 26 (the right of access to adequate housing) and 28 (children's right to basic shelter) of the South African Constitution for action by various levels of government. The High Court, relying on the principles of judicial deference outlined by the Constitutional Court in the Soobramoney case, found that the respondents had taken "reasonable measures within available resources to achieve the progressive realization of the right to have access to adequate housing" – as required by s. 26(2) of the Constitution. However, because the right of children to shelter in article 28 was not subject to available resources, the High Court held that the applicants were entitled to be provided with basic shelter. On appeal to the Constitutional Court, the Court found no violation of s. 28 but found instead a violation of the right to adequate housing in s.26. The Court held that article 26 obliges the state to devise and implement a coherent, co - ordinated [sic] housing program and that in failing to provide for those in most desperate need the government had failed to take reasonable measures to progressively realize the right to housing. The Court ordered that the various governments "devise, fund, implement and supervise measures to provide relief to those in desperate need." The South African Human Rights Commission agreed to monitor and if necessary report on the governments' implementation of this order.

#### **Enforcement of the Decision and Outcomes:**

The decision had a major impact on housing policy in South Africa. Most municipalities put in place a "Grootboom allocation" in their budgets to address the needs of those in desperate need. The applicants were provided with basic amenities as a result of a settlement reached prior to the hearing of the case by the Constitutional Court, but the results of the decision for the community have been disappointing. Further legal action was taken to enforce the remedy against the local government.

#### **Groups involved in the case:**

Human Rights Commission of South Africa, Community Law

Centre, Legal Resources Centre.

#### Significance of the Case:

This is probably the most cited ESC rights case, laying the foundation for subsequent successful ESC rights claims in South Africa and elsewhere. The Court lays the foundation for the justiciability of the obligation to progressively realize ESC rights, which the Court will review on the basis of the “reasonableness” test, and exercise deference, where appropriate, at the stage of remedy. The ruling places the adjudication of ESC rights within a familiar framework to courts in all jurisdictions and modifies the rationality review standard adopted in the earlier *Soobramoney* case. [Emphasis added].<sup>151</sup>

## ASIA

### INDIA

**6 Mohini Jain v. State of Karnataka, 1992 AIR 1858, 1992 SCR (3) 658**<sup>152</sup>

The following is a summary of this case by Legal Vidhiya:

#### Introduction

*Mohini Jain v. State of Karnataka* was a landmark case that was heard in the Supreme Court of India in 1992. The case was brought before the court to challenge the constitutional validity of the capitation fee charged by private educational institutions for admission to professional courses. This case was significant as it addressed the issue of access to education as a fundamental right and brought to light the problems faced by economically weaker sections of society in accessing higher education.

#### Background

In the early 1990s, there was a rapid growth in the number of private educational institutions in India. These institutions charged exorbitant fees for admission to professional courses such as engineering, medicine, and law. The fees charged by these institutions were beyond the reach of economically weaker sections of society, who were unable to pay the high fees.

In 1983, the government of Karnataka passed a law that allowed private educational institutions to charge a capitation fee for admission to professional courses. The capitation fee was an amount charged over and above the regular tuition fees and was based on the principle of demand and supply. The higher the demand for a course, the higher the capitation fee charged by the institution.

#### Facts of The case

- The Karnataka Legislature passed the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, aimed at eliminating the practice of collecting capitation fees from students at the time of admission.
- Subsequently, the Karnataka Legislature issued a notification (the “impugned notification”) under Section 5(1) of the Act, to regulate the tuition fees charged by Private Medical Colleges in the State. The notification was dated June 5, 1989, and stipulated the tuition fees, as well as other fees and deposits that students would be charged.
- The impugned notification stated that students joining through “Government seats” were to be charged Rs.2,000, while those from Karnataka (except for those entering through Government seats) would be charged no more than Rs. 25,000 per year, and those from outside Karnataka would be charged no more than Rs. 60,000 per year.
- The petitioner, Ms. Mohini Jain, a resident of Meerut, was informed via post that she could enroll in the MBBS program at Sri Siddharatha Medical College, Agalokote, Tumkur, Karnataka, with the session starting in February/March 1991. The respondents claimed that she was asked to pay an amount of Rs. 60,000. However, the petitioner’s father subsequently called the management and declared that he did not have the means to pay the amount.
- The petitioner claimed that she was asked to pay an additional amount of about Rs. 4.5 lakhs as capitation fee, which the respondents denied vehemently. Ms. Jain filed a petition under Article 32 of the Indian Constitution challenging the notification of the Karnataka Legislature that allowed for demanding such exorbitant amounts from students in the name of tuition.
- The petition contended that the notification violated Articles 12, 14, 21, and 41 of the Indian Constitution, as it denied the right to education to Indian citizens on an arbitrary basis. The fee charged could easily be identified as a capitation fee and was thus violative of Section 3 of the Act and against the principles of the right to equality and the right to education.

#### Issues Raised

1. Whether the right to education is guaranteed to the citizens of India in consonance with Fundamental Rights, and whether charging a capitation fee infracts the same?
2. Whether the charging of a capitation fee is violative of the equality clause enshrined in Article 14?
3. Whether the impugned notification permitted the charging of a capitation fee under the guise of regulation?
4. Whether the notification is violative of the provisions of the Act prohibiting the charging of such fees?

### Contention of petitioner

In *Mohini Jain v. State of Karnataka* (1992), the petitioner raised several contentions in relation to the constitutional validity of the policy of collecting capitation fee by private educational institutions. These contentions can be summarized as follows:

- The policy of collecting capitation fee violates the fundamental right to education guaranteed under Article 21 of the Constitution of India. The petitioner contended that education is a fundamental right and a necessary condition for the full development of an individual's personality. The policy of collecting capitation fee, which effectively restricts access to education on the basis of economic status, is therefore violative of this right.
- The policy of collecting capitation fee is arbitrary and unreasonable. The petitioner contended that there is no rational nexus between the collection of capitation fee and the quality of education provided by private educational institutions. The policy is therefore arbitrary and unreasonable, and violates the right to equality guaranteed under Article 14 of the Constitution of India.
- The policy of collecting capitation fee is discriminatory. The petitioner contended that the policy discriminates against students from economically weaker sections of society, who are unable to pay the exorbitant fees demanded by private educational institutions. This violates the right to equality guaranteed under Article 14 of the Constitution of India.
- The policy of collecting capitation fee violates the Directive Principles of State Policy. The petitioner contended that the policy is in direct conflict with the Directive Principles of State Policy enshrined in Articles 38 and 39 of the Constitution of India, which mandate that the state shall strive to promote the welfare of the people and ensure equal access to opportunities for all citizens.
- The policy of collecting capitation fee is against public policy. The petitioner contended that the policy is against the public policy of promoting education as a public good, and instead promotes education as a commodity to be bought and sold in the market. This is against the larger public interest, and therefore, violates the principles of public policy.

Overall, the petitioner argued that the policy of collecting capitation fee is unconstitutional, arbitrary, discriminatory, and against public policy.

### Contention of Respondent

*Mohini Jain v. State of Karnataka* is a landmark case in India, which dealt with the issue of discrimination against female students in the admission process of medical and dental colleges. The case was heard by the Supreme Court of India and the following are the key contentions made by the respondent:

- The respondent, in this case, was the State of Karnataka and it argued that the system of granting admission to medical and dental colleges based on merit was necessary to ensure the quality of education and the standards of the medical profession.
- The State of Karnataka argued that the reservation of seats for women would lead to a compromise in the quality of education and the standards of the medical profession, as women candidates may not have the same level of merit as male candidates.
- The respondent further argued that the reservation of seats for women would be discriminatory against male candidates, who may be more meritorious than the female candidates and may lose out on admission due to the reservation policy.
- The State of Karnataka also argued that the reservation policy for women would not be consistent with the constitutional principles of equality and non-discrimination, as it would lead to discrimination against male candidates.
- The respondent further contended that the reservation of seats for women would be contrary to the provisions of the Indian Medical Council Act, 1956, which did not provide for any reservation of seats for women.
- The State of Karnataka also argued that the reservation policy for women would not be in the larger interest of society, as it would lead to a shortage of doctors and dentists, and would adversely affect the health care services provided to the people.
- The respondent further contended that the State government had the power to regulate admission to medical and dental colleges, and the reservation policy for women was a policy decision made by the State government, which was within its purview.

### Judgment

The Supreme Court of India, in its verdict, upheld the right to education as a fundamental right and ruled that the capitation fee charged by private educational institutions was unconstitutional. The court held that the right to education is a fundamental right guaranteed under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

The court also held that the capitation fee charged by private educational institutions violated the right to equality as enshrined in Article 14 of the Indian Constitution. The court observed that the capitation fee was a fee charged by private educational institutions for the purpose of making profits and was not related to the quality of education provided by the institution. The court held that the capitation fee discriminated against economically weaker sections of society who were unable to pay the high fees and thus denied them equal access to education.

The court also directed the Government to take steps to regulate the fees charged by private educational institutions and ensure that they did not charge capitation fees. The court held that the Government had a duty to ensure that education was accessible to all and that it was not monopolized by the rich and the powerful.

### Conclusion

The Mohini Jain v. State of Karnataka case was a landmark case that had far-reaching implications for education in India. The case highlighted the issue of access to education as a fundamental right and brought to light the problems faced by economically weaker sections of society in accessing higher education. The case also established the principle that education is not a commodity that can be sold for profit but a fundamental right that must be accessible to all. The verdict in this case set an important precedent and paved the way for the Government to regulate the fees charged by private educational institutions and ensure that education is accessible to all.<sup>153</sup>

## SOUTH AMERICA

### COLOMBIA

#### 7. CASE 1 - T-025 of 2004<sup>154</sup>

The following is a summary of this case from the caselaw database of ESCR-Net:

This seminal case concerns displaced persons in Colombia, whose rights were found to be violated in a systematic manner by the state and armed actors, thus leading the Constitutional Court to declare an unconstitutional state of affairs. In this decision, the Court addresses the humanitarian and human rights emergency caused by forced displacement and structural state policy failures, as well as the duty to progressively improve the material living conditions of the most disadvantaged sectors of society.

**Date of the Ruling:** Jan 22 2004

**Forum:** Republic of Colombia Constitutional Court Third Review Chamber

**Type of Forum:** Domestic

#### Summary:

The Constitutional Court of Colombia ('the Court') used its judicial review powers to assess the situation of displaced persons in Colombia. Around 1,150 family groups filed tutela or protection claims with their respective municipalities regarding the state's duty to protect them due to their status as displaced persons. They requested housing, access to productive projects, healthcare, education and humanitarian aid, but the State denied aid or gave it for an incomplete

amount of time, citing budgetary constraints.

The Court outlined its task in seven steps: (1) summarize the doctrine of the rights of displaced persons; (2) examine the State response to the phenomenon of internal displacement; (3) analyze the insufficiency of resources and its impact on the implementation of the public policy; (4) verify whether such State actions or omissions amount to an unconstitutional state of affairs; (5) indicate the authorities' constitutional duties in regard to human rights obligations; (6) determine the minimum levels of protection that must be guaranteed to the displaced population; and (7) issue orders regarding the actions that must be adopted by the different authorities to protect the rights of the displaced population.

First, the Court discussed the rights of displaced persons, enshrined in Law 387 of 1997, which 'established a level of comprehensive protection for internally displaced persons, and ordered to secure the resources required to fulfil [sic] such comprehensive assistance.' Citing this law, the Court rejected the State's Decree 2569, which established a fixed maximum level of resources, arguing that the law states that the resources must be 'comprehensive' in their protection. Additionally, the Court rejected the argument that budget laws could modify the scope of Law 387, finding that:

From a Constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialization of the fundamental rights of displaced persons. The State's constitutional obligation to secure adequate protection for those who are experiencing undignified living conditions by virtue of forced displacement may not be indefinitely postponed. This court's case-law has reiterated the priority that must be given to the appropriation of resources to assist this population and thus solve the social and humanitarian crisis generated by this phenomenon.

Second, the Court analyzed the status of internally displaced persons in the context of State action to ameliorate their situation. The Court found that in that year (2004), 92% of displaced persons had unsatisfied basic needs, 80% of the displaced population was living in poverty, 63.5% had insecure housing, and 49% lacked access to appropriate public utilities. In terms of education, 25% of displaced children between 6-9 years of age did not attend school and more than half (54%) of displaced youth between the ages of 10-25 did not attend school. In terms of health, persons experiencing displacement have six times higher mortality rates than the national average. The Court found the state lacking in its budgetary appropriations to mitigate this crisis. Additionally, the Court found the state had failed to properly inform displaced persons of the various legal avenues of relief they could pursue and, consequently, that persons experiencing displacement were not involved in the process of the tutela proceedings, did not know of them, lacked information about their rights, and did not know who the

relevant authorities were.

Third, the Court found that the insufficiency of resources severely impacted the implementation of the public policy. For example, despite the recommendation to appropriate 45 thousand million pesos for 2001, and 161 thousand million pesos for 2002, the resources allocated to manage the situation of displaced persons, added up to 126.582 million, which the Court notes was 'an amount that is quite inferior to the one required by the aforementioned documents.' The lack of appropriate funding worsened in 2003, when the money allocated was decreased by 32% when compared to the previous year.

Fourth, the Court clearly found that the State's lack of appropriate funding to advance and protect the rights of displaced persons created an unconstitutional state of affairs. To make this determination, the Court relied on five factors: (1) the gravity of the violation of constitutional rights; (2) the high volume of tutela actions filed by displaced persons; (3) the mounting evidence from the tutela proceedings, confirming that the violation of rights affected a large part of the displaced population as well as the failure from State authorities to adopt the required solutions; (4) the continuous violation is not attributable to one single State entity; and (5) the continued violations of the rights of displaced persons is due to structural factors. The Court highlighted that it had found an unconstitutional state of affairs only in seven other occasions, where violations were also structural, continuous, and affecting large swaths of the population. In similar reasoning, because the tutela actions had become a prerequisite for any type of Government aid for displaced persons, the violations were continuous, and many entities were contributing to the ongoing violations, this case also merited the status of 'unconstitutional state of affairs.'

**Fifth, the court outlined the State authorities' constitutional duties in regard to international human rights obligations. The Court emphasized that the International Covenant on Economic, Social and Cultural [Rights] (ICESCR) requires that States design and implement public policies that are conducive to the progressive realization of Covenant rights, emphasizing that inaction is not permissible; that States must utilize 'all appropriate means', including not only legal, but also administrative, financial, educational and social means; and that measures must be targeted at advancing the enjoyment of rights, making 'full use of the maximum available resources.'** [Emphasis added].

Sixth, the Court found that State authorities had to conduct a balancing test and establish priority areas in which timely and effective assistance was provided to displaced persons. While the Court recognized the challenges in coordinating emergency aid amongst different affected territories and the restraints caused by limited State resources, it identified positive obligations that must always be satisfied by the State

in relation to displaced people. The State has an obligation to guarantee a displaced person's minimum rights to (1) life; (2) dignity and physical, psychological and moral integrity; (3) family and family unity; (4) basic subsistence and the right to a minimum subsistence income, which guarantees safe access to essential food and water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation – this includes emergency humanitarian aid and special assistance to persons not in a condition to assume their own self-sufficiency, such as children, older adults, and women caretakers; (5) the right to health; (6) protection from discriminatory practices based on the condition of displacement; and (7) the right to education until the age of fifteen. The Court also found that the State had an affirmative duty to provide support in a person's re-establishment and socio-economic stabilization, identifying and addressing specific conditions of each displaced person or family and incorporating responses to their circumstances into national or territorial development plans. These obligations may not be unduly delayed. Finally, the State must abstain from implementing or developing retrogressive policies.

Finding that the actions adopted by State authorities to guarantee the rights of the displaced population and the current resources allocated to guarantee those rights were not in accordance with the constitution, the Court tasked the National Council for Comprehensive Assistance to the Population Displaced by Violence (the Council)--the body charged with formulating policy and securing the budget regarding the displaced population--with designing and implementing a plan of action to overcome insufficiency of resources and flaws in institutional capacity. The Council was given two months to define the dimension of the budgetary effort needed, as well as to establish how the State, territorial entities and international cooperation will contribute to this effort. In the event that the Council, in evaluating the required budgetary effort and mechanisms to procure such resources, finds it not possible to comply with the commitments set forth in the State Policy, it may re-define the state's commitment. Such re-definition must be conducted publicly, offer sufficient opportunity for the participation of displaced persons or their representatives and be justified by specific reasons. If the re-definition leads to a reduction of the scope of displaced persons' rights, the decisions may not be discriminatory and must be temporary and conditioned on a future return to the path of progressive advance in the rights of displaced persons [sic]

As for the individual tutela actions filed by plaintiffs due to a lack of institutional response to the requests for provision of various aid afforded to displaced people, the Court ordered the relevant administrative agencies to comply with the aid requests, without delay, so long as plaintiffs meet the definition of a displaced person under Article I, Law 387 of 1997.



### Enforcement of the Decision and Outcomes:

After the Court determined that a state of unconstitutional affairs did exist with regards to the displaced population, it set up additional procedures to ensure the gradual overcoming of the unconstitutionality. One of the structures that the Court created were those of autos de seguimiento. These autos were intended to give the Court, with the help of civil society and affected displaced persons, the space to address how vulnerable groups experienced differentiated and disproportionate impacts from the internal conflict and displacement. From 2004 until 2020, the Court issued autos addressing women, sexual violence, women human right defenders (HRDs), HRDs more broadly, children and adolescents, Indigenous Peoples, afro-Colombians, persons with disabilities, and displaced persons during the COVID-19 pandemic. Additionally, these autos had their own follow-up procedures by which the Court evaluated the government's progress on the measures ordered by the Court during the initial autos. The evaluative mechanism for these autos consisted of four dimensions of compliance: high, medium, low, or non-compliance. The majority of the follow-up orders reported low compliance characterized by lack of information on the results derived from the various actions ordered by the court, or planning and design of programs without any actual implementation.

Nonetheless, a ten-year general review by the Court found that there have been some improvements in reducing institutional roadblocks towards accessing aid, as well as an increased allocation of resources. Where there have been shortcomings in the implementation of necessary policies, the Court has entertained subsequent claims that provide additional protections to especially vulnerable groups within the displaced community.

### Significance of the Case:

This decision represented a significant advance within Colombia and internationally in judicial oversight of States' positive obligations to progressively realize the economic, social and cultural rights, particularly of groups at greater vulnerability [emphasis added]. It demonstrates the Court's commitment to reviewing compliance of multiple state agencies, to addressing structural factors leading to systemic violations of socio-economic rights and to ensuring effective, progressively implemented remedies, relying on ongoing court supervision and participation by affected individuals and communities. In addition, it establishes concrete requirements and timelines for the implementation of coordinated policies that fulfil the constitutional and statutory rights afforded to displaced people.<sup>155</sup>

## ARGENTINA

### 8. CASE 2 - Indigenous Community Members of the Lhaka Honhat (Our Land) Association vs. Argentina<sup>156</sup>

The following is a summary of this case from the caselaw database of ESCR-Net:

The Inter-American Court of Human Rights held that Argentina violated its obligations under Article 1.1 of the American Convention on Human Rights and related Articles 2, 8.1, 21, 23.1, 25.1, and 26, by denying the Indigenous communities their right to communal property, a healthy environment, adequate food, water, cultural identity, and judicial protection within a reasonable time. The ruling marked the first time the Court found violations of Article 26 of the Convention regarding the rights to a healthy environment, adequate food, water, and cultural identity.

The communities, united under the association Lhaka Honhat ('our land'), contain over 10,000, and began their struggle for their ancestral lands in 1984. The international case was litigated by member Centro de Estudios Legales y Sociales for over 20 years.

**Date of the Ruling:** Feb 6 2020

**Forum:** Inter-American Court of Human Rights (IACHR)

**Type of Forum:** Regional

#### Summary:

Indigenous community members from the Lhaka Honhat Association sued Argentina on behalf of 132 Indigenous communities belonging to the Wichí (Mataco), Iyjawaja (Chorote), Komlek (Toba), Niwackle (Chulupí), and Tapy'y (Tapiete) peoples who live on lots with the cadastral registrations 175 and 5557 in the Province of Salta (previously known as and referred to in the case as lots 14 and 55). The Indigenous communities sued Argentina for violating their right to communal property by failing to provide legal security to their territory and allowing Creole settlers to reside on their lands; they also sued to protect their rights to a healthy environment, adequate food, participation in cultural life, and judicial protection.

After residing on the land for centuries the Indigenous, claims to the land were first formalized in 1991 through Decree No. 2609/91, which required Salta to unify the lots and allocate a part of the property to them as communal property (title as a single deed of communal ownership as opposed to individual deeds). In 1992, Lhaka Honhat formed to obtain the title they still had not received. In 1993, the State created an Advisory Commission, and in 1995 they recommended assigning two thirds of the land of the lots to the Indigenous communities, which they accepted. However, in 1995, without consulting the Indigenous communities, the State built an international bridge on the Indigenous peoples' land. In 1999, Salta,

through Decree 461 made allotments of parts of lot 55 to a few individual Indigenous communities settled there. In 2000, the Province presented a proposal for awarding lot 55, but the Lhaka Honhat rejected the offer because it did not include lot 14, and it did not include communal title. In response to an amparo action filed by Lhaka Honhat in 1999 against Decree 461, the Court of Salta in 2007 annulled Decree 461 because the Indigenous peoples did not have an adequate opportunity to make their opinions known. Lhaka Honhat then reduced their claim from 643,000 ha to 400,000 and to give 243,000 ha to the Creole families of lots 14 and 55; Salta adopted Decree 2786/07 to endorse the revised claim. Following the Decree, a Salta team held meetings aimed at reaching agreements between the Creole and Indigenous communities. In 2012, Salta issued Decree 2398/12 to assign 243,000 ha of lots 14 and 55 to Creole communities and 400,000 ha for Indigenous communities. Then in 2014, through Decree 1498/14, Salta transferred the property as a shared property between 71 Indigenous communities and the Creole families. To date, the State has not provided a communal title for all of the communities that form Lhaka Honhat, which now are 132. In the meantime, Creole settlers' activities, such as illegal logging, raising livestock, and fencing installations, have taken place on the Indigenous communities' lands. These activities have led to loss of forest resources and biodiversity and have grossly impacted the traditional ways in which Indigenous communities access food and water.

The Court looked at (1) the right to community property, (2) the rights to a healthy environment, adequate food, water, and cultural identity, and (3) the right to judicial guarantees.

The Court stated that Article 21 of the American Convention includes Indigenous peoples' right to their communal property. The State must give legal certainty to this by providing a legal title that the Indigenous communities can enforce against the Government and third parties. Though Decrees 2786/07 and 1498/14 constituted acts of recognition of communal ownership, due to inadequate title, the process to finalize the ownership was incomplete. The Court stated that Argentina's current regulations to guarantee the community's property rights are inadequate and therefore they violated Article 21 of the Convention and related Articles 1.1, 2, 8, and 25. The Court also noted that, despite the relevance and importance of the international bridge that Argentina built, the State had violated the property rights by not consulting the Indigenous communities and therefore breaching Articles 21 and 23 of the Convention.

For the first time, the Court analysed the rights to a healthy environment, adequate food, water, and cultural identity under Article 26 of the Convention. The Court found that activities like illegal logging carried out by the Creole settlers detrimentally affected the Indigenous communities' way of life and access to water, food, and a healthy environment. The

detrimental effect on the communities' traditional diet and lifestyle impacted their cultural way of life and the Indigenous communities' cultural identities. The State was aware of these harmful activities and their impact on Indigenous way of life and did not effectively stop them. Because the detrimental activities were not consensual, as the Indigenous communities did not permit them, Argentina failed to guarantee the Indigenous communities the right to determine activities done on their property and violated Articles 26 and 1.1 in connection with the rights to a healthy environment, adequate food, water, and cultural identity.

Regarding the right to judicial guarantees, the Court found that Argentina violated Article 8.1 and 1.1 by not providing judicial guarantees to the Indigenous communities. Specifically, the Argentine Supreme Court ordered the Court of Salta to issue a decision regarding Decree 461/99 in 2004, but the Salta Court did not issue a decision for another three years and provided no justification for the delay.

The Inter-American Court ordered Argentina, within the next six years at most, to complete all necessary actions to grant title to the 132 Indigenous communities and resettle the Creole populations, along with their fences and livestock, away from the Indigenous lands. Furthermore, the Court ordered that the State (1) refrain from doing anything on Indigenous property that might affect the property's value or use without prior consultation; (2) submit a study to the Court identifying critical instances of lack of access to drinking water or food, and create an action plan to address the situations and start implementation; (3) prepare, within a year, a study on actions to take for water conservation and to remedy contamination, and to avoid loss of forest resources and recover lost food sources; (4) create a fund for community development and implement its execution within four years; (5) within six months, publicize the Court's decision and summary including its translation in Indigenous languages; (6) adopt legislative measures or take other actions to ensure legal certainty to the rights of Indigenous communal property; and (7) pay a sum for reimbursement of expenses and costs.

**Eight members—the Asociación Civil por la Igualdad y la Justicia, Amnesty International, Asociación Interamericana para la Defensa del Ambiente, Comisión Colombiana de Juristas, Dejusticia, FIAN International, International Women's Rights Action Watch - Asia Pacific, and Minority Rights Group International—filed an amicus to the Court discussing the derivation, adjudication, and content of the rights to a healthy environment, adequate food, water, and cultural identity. Member Due Process of Law Foundation (DPLF) also presented, along with several allies, an amicus concerning 'international standards and comparative jurisprudence on the demarcation of indigenous territories and economic, social, cultural and environmental rights.'** [Emphasis added].

### Enforcement of the Decision and Outcomes:

In the judgment, the Inter-American Court ordered Argentina to (8) submit semi-annual reports on the restitution measures for the property right; and (9) inform the Court, within a year, about measures adopted to comply with the ruling.

### Groups involved in the case:

- Centro de Estudios Legales y Sociales

### Significance of the Case:

This case both expands and clarifies State obligations under Article 26 of the American Convention on Human Rights to protect Indigenous Peoples' rights and emphasizes that States must take measures to protect against infringements of Indigenous rights by non-Indigenous settlers. By ordering the resettlement of the Creole populations, the Court laid out the importance of Indigenous lands to their cultural survival, leading the way to address other non-Indigenous populations currently detrimentally affecting and residing on Indigenous lands.<sup>157 158</sup>

## NORTH AMERICA

### CANADA

#### 9. Tanudjaja v. Canada (Attorney General), 2014 ONCA 852 (CanLII)<sup>159</sup>

#### Background to the case:

This case was brought by a number of individuals who experienced homelessness and inadequate housing in Ontario and Canada. They argued that the provincial and federal governments' failure to devise and implement a strategy to reduce homelessness and inadequate housing violated their rights to life, personal security and equality under the Canadian Charter of Rights and Freedoms.

Before the case could make it to trial, the governments of Ontario and Canada brought a motion to dismiss the case, arguing that the challenge did not have a basis in Canadian law, and that it therefore had no reasonable prospect of succeeding. The basis of the governments' claims was that the Charter only protects individuals against state actions that violate rights, not against state inaction – i.e. failure to proactively address homelessness and inadequate housing. This reflects a longstanding position advanced in the courts by governments across Canada that economic, social and cultural rights such as the right to housing are not justiciable.

#### Amnesty International's Interventions:

Amnesty International co-intervened with ESCR-Net at both the Ontario Superior Court and the Court of Appeal in this

case. In the interventions, Amnesty International and ESCR-Net argued that under international law, Canada has an obligation to ensure access to courts and effective remedies for violations of human rights guaranteed by the international treaties it has ratified. Homelessness and inadequate housing are recognized in international law as violations of human rights. Therefore, rights claims against governments for failing to reduce and eliminate homelessness have a proper place in the Canadian courtroom. They argued that the application should not be dismissed and that the homeless and inadequately housed should be provided their day in court.

#### Status of the Case:

The Ontario Superior Court agreed with the governments of Ontario and Canada that the case should be dismissed before even making it to trial on its merits. In coming to its conclusion, the Superior Court found that the right to life under section 7 of the Charter does not contain a fundamental right to affordable, adequate, and accessible housing. The court also held that homelessness and inadequate housing do not form grounds for discrimination under section 15 of the Charter. Finally, the court was of the opinion that it was not its role to order governments to enact particular policies and programs, making the matter not suitable to be heard in a courtroom.

The Court of Appeal for Ontario upheld the Superior Court's judgment, highlighting that the matter was "not a question that can be resolved by application of law, but rather it engages the accountability of the legislatures. Issues of broad economic policy and priorities are unsuited to judicial review."<sup>160</sup> In a dissenting opinion, Feldman J.A., asserted that the case "has been brought...on behalf of a large, marginalized, vulnerable and disadvantaged group who face profound barriers to access to justice. It raises issues that are basic to their life and well-being. It is supported by a number of credible intervening institutions with considerable expertise in Charter jurisprudence and analysis."<sup>161</sup> In her opinion, the case deserved a full hearing, and should not have been dismissed in its early stages.

The applicants sought leave to appeal the Court of Appeal judgment to the Supreme Court of Canada. Amnesty International Canada's Secretary General, Alex Neve, provided an affidavit in support of the leave application. However, the application was denied by the Supreme Court. Denying this group of marginalized and vulnerable Canadians access to a hearing of their rights claims is a severe denial of access to justice and runs contrary to the calls of UN bodies that Canada must bring itself in line with international human rights law by implementing a comprehensive strategy to reduce and ultimately eliminate homelessness.<sup>162</sup>

## EUROPE

### UNITED KINGDOM

#### 10. CASE 1 - R. (Adam and Limbuela) v. Secretary of State for the Home Department<sup>163</sup>

The following is a summary of this case from the caselaw database of ESCR-Net:

Appeal on behalf of asylum seekers who were denied support by the Secretary of State. Refusal of support. Risk of deprivation with regard to overnight accommodation, food and other basic rights (Article 3 of the European Convention on Human Rights 1950).

**Date of the Ruling:** Nov 3 2005

**Forum:** House of Lords, UK

**Type of Forum:** Domestic

#### **Summary:**

The claimants in this joined action were asylum-seekers who had sought asylum after their initial entry to the UK. The defendant, Secretary of State for the Home Department, refused support under Section 55 of the Nationality, Immigration, and Asylum Act 2002 ("the Act") with regard to accommodation. Section 55 allowed refusal of support to asylum seekers who failed to make their claim as soon as reasonably practicable. However, Section 55(5) of the Act created an exception by providing that support should be provided if failure to do so would result in violating the asylum seeker's human rights. Several judges awarded Mr. Adam, Mr. Limbuela and other claimants interim relief for the case duration, and the issue was subsequently adjudicated by the Court of Appeal and by the House of Lords.

The Law Lords applied the standard set out in *Pretty v. United Kingdom* [2002] 35 EHRR 1 to determine whether the refusal of support would rise to a violation of Article 3 of the European Convention on Human Rights 1950, which prohibits torture or inhuman or degrading treatment or punishment of individuals. The court noted that asylum seekers were prevented from working while their application was being processed, and concluded that a failure to provide support would therefore expose the claimants to the risk of being homeless or without access to adequate food, creating an Article 3 violation. The Law Lords granted relief under Section 55(5) of the Act.

#### **Enforcement of the Decision and Outcomes:**

Asylum seekers who apply late may now receive support under Section 55 of the Nationality, Immigration, and Asylum Act 2002 if they can demonstrate that failure to provide support would expose them to a real risk of destitution. The decision in *Adam* has therefore ensured that many asylum seekers receive support that they would not otherwise have

received.

#### **Significance of the Case:**

The significance of this case lies in the recognition by the UK House of Lords that a failure by the State to provide social support which exposes an individual to a real risk of becoming destitute will in certain circumstances constitute 'inhuman and degrading treatment', and therefore will be contrary to Article 3 of the ECHR. It is an important example of how a civil and political right can be used as the basis to bring a claim to enforce socio-economic rights.<sup>164</sup>

### BULGARIA

#### 11. CASE 2 - Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007<sup>165</sup>

The following is a summary of this case from the caselaw database of ESCR-Net:

Complaint by MDAC alleged a violation of the right to education of children living in homes for children with intellectual disabilities. This case includes a range of issues, including, provision of education based on availability, accessibility, acceptability and adaptability, and State obligation to progressively realize rights.

**Date of the Ruling:** Jun 3 2008

**Forum:** European Committee of Social Rights

**Type of Forum:** Regional

#### **Summary:**

The Mental Disability Advocacy Center brought a complaint before the European Committee of Social Rights (which judges compliance of State parties with the European Social Charter) alleging that children living in homes for mentally disabled children (HMDCs) in Bulgaria received little to no education.

Citing the Bulgarian national child protection agency's 2005 report, the Committee found an extremely low percentage of children with intellectual disabilities attending mainstream schools, that teachers lacked the training to competently instruct children with intellectual disabilities, and that the HMDCs did not qualify as schools. The Committee determined that Article 17(2) (the right of children and young persons to social, legal, and economic protection) had been violated because children with intellectual disabilities residing in HMDCs did not have an effective right to education. The Committee further ruled that there had been a violation of Article 17(2) of the European Social Charter (revised) (ETS No. 163) (non-discrimination) since children with mental disabilities were discriminated against as a result of the low number of such children receiving any type of education when compared to other children. **This decision clearly considered the progress made by Bulgaria towards**

achieving the right to education insufficient and unjustifiable. The Committee noted that all education provided by States must fulfil the criteria of availability, accessibility, acceptability and adaptability as defined within General Comment 13 on the right to education by the Committee on Economic, Social and Cultural Rights. In this context, it was found that Bulgaria had failed to meet the criterion of accessibility and adaptability (to special needs). [Emphasis added].

The Committee also held that Bulgaria's legislation and action plans related to children with intellectual disabilities were insufficient, particularly due to ineffective implementation.

For Bulgaria to meet its obligations under the Charter, the Committee stated that measures to ensure the right to education for children living in HMDCs must show measurable progress in a reasonable timeframe, utilizing maximum available resources [emphasis added].

#### Enforcement of the Decision and Outcomes:

Following MDAC, Bulgaria passed Regulation No 1/2009 for the Education of Children and Pupils with Special Education Needs and/or Chronic Diseases. This provided education in mainstream schools and trained resource teachers. However, MDAC has stated in a 2010 report, that the only real educational option for institutionalized children with intellectual disabilities was schooling within the institution. Citing an imprecise enrolment system and outdated teaching programs, organizations have emphasized that these children remained deprived of the right to mainstream education in 2011.

In January 2012, Bulgaria ratified the Convention on the Rights of Persons with Disabilities, though not its Optional Protocol. In 2014, Bulgaria stated it was working toward a goal of achieving greater social inclusion, including deinstitutionalization of children with disabilities and integrated education, and that it has created both a biennial plan to implement the Convention on the Rights of Persons with Disabilities, and a unified management system to ensure greater integration of persons with disabilities.

#### Groups involved in the case:

Mental Disability Advocacy Centre (MDAC)

#### Significance of the Case:

The decision recognized that legislation or policies alone are insufficient. The Committee reiterated the international obligations related to the fulfilment of economic, social and cultural rights, which require States to take measures within a reasonable timeframe, show measurable progress and ensure financing consistent with the maximum use of available resources. Importantly, the Committee also reaffirmed that financial constraints cannot be used to justify the fact that children with intellectual disabilities in HMDCs do not have

access to education. Further, this case demonstrated that the right to education in the context of children with intellectual disabilities requires inclusion within the mainstream educational system. [Emphasis added].<sup>166, 167</sup>

## OCEANIA

### AUSTRALIA

#### 12. Daniel Billy et al. vs. Australia (Torres Strait Islanders Petition)<sup>168</sup>

The following is a summary of this case from the caselaw database of ESCR-Net:

**Date of the Ruling:** Sep 22 2022

**Forum:** United Nations Human Rights Committee

**Type of Forum:** International

#### Summary:

The authors, Indigenous Peoples of the Torres Strait Islands, brought a petition against Australia for violations of the International Covenant on Civil and Political Rights (ICCPR). The petitioners argued that Australia's insufficient climate action violated their human rights, under ICCPR Articles 6 (right to life), 17 (right to privacy, family and home life) 24(1) (right of the child to protective measures), and 27 (right to culture).

The petitioners right to life centered on impacts on livelihood and access to food. High temperatures and ocean acidification linked to climate change threaten the islanders' food production: 'Seagrass beds and dependent species have disappeared. While crayfish is a fundamental source of income for the authors, they no longer find crayfish in areas where coral bleaching has occurred.' This is also true of other 'culturally important marine species.' Further, erosion has increased flooding into agricultural lands, and the salt of the ocean water kills crops so 'areas previously used for traditional gardening can no longer be cultivated.' For example, saltwater from flooding had killed coconut trees, 'such that they do not produce fruits or coconut water, which are part of the authors' traditional diet.' This increases the islanders' financial precarity, as it makes them 'reliant on expensive imported goods that they often cannot afford.'

The petitioners claimed a violation of Article 17, the right to be free from arbitrary or unlawful interference with privacy, family, and home life, as they belong to one of the most vulnerable populations to the impact of climate change. Sea-level rise threatens to inundate the low-lying islands, making them uninhabitable. Indeed, 'approximately one metre of land

is lost every year.' Petitioners claim that Australia has 'failed to prevent a foreseeable loss of life' and permanent displacement within the petitioners' lifetimes: sea-level rise threatens to make the islands 'completely inundated and uninhabitable' within 10-15 years.

The petitioners also claimed a violation of Article 27, right of minorities to their cultural enjoyment. For one, unpredictable weather patterns due to climate change make it 'harder for the authors to pass on their traditional ecological knowledge' to younger generations. Additionally, sea-level rise threatened family graves and ancestral burial grounds and reduce the ability to practice their traditional culture and pass it onto the next generation. For some of the authors, 'upkeeping ancestral graveyards and visiting and feeling communion with deceased relatives is at the heart of their cultures, and the most important ceremonies are only culturally meaningful if performed on the native lands of the community whose ceremony it is.'

The petitioners also claimed a violation of Article 24(1), right of the child to protective measures; however, the Committee did not address this right in its discussion of the merits.

The Australian Government argued: (1) specific adaptation and mitigation measures are being taken to address climate change, making petitioners' claims moot; and (2) Australia cannot be solely to blame for climate change impacts on its population as it is a global phenomenon. With respect to Article 6, Australia argued the harm was based on speculations of future harm which has not occurred, as opposed to an existing injury due to Australia's actions or omissions.

The Human Rights Committee did not find an Article 6 violation. The Committee first defined the right to life under the Convention. It stated that 'the right to life cannot be properly understood if it is interpreted in a restrictive manner.' Instead, it '[sic] requires States parties to adopt positive measures to protect the right to life, including 'reasonably foreseeable threats and life-threatening situations that can result in loss of life.' This 'may include adverse climate change impacts.' However, the Committee agreed with Australia that the purported harms are too in the future and too tenuous to establish a 'foreseeable risk of being exposed to physical endangerment or extreme precarity that could threaten their right to life.' Further, the Committee acknowledged the various infrastructure programs designed to mitigate submergence and inundation of the Torres Strait islands to address the effects of climate change on petitioners.

The Committee found Australia violated Article 17, right to be free from arbitrary or unlawful interference with privacy, family, and home life. The Committee attributes responsibility to the State to prevent such interference where it is

'foreseeable and serious,' including when this disruption is caused by climate change. Additionally, the dependence on marine life, land crops, trees and overall 'surrounding ecosystem' are core components of this right and thus protected under it. While the Committee noted the extensive programs cited by Australia on how they are addressing climate change, the Committee found that delay in implementing these projects still constituted a violation of Article 17.

The Committee found Australia violated Article 27, right to cultural enjoyment. The Committee defined the purpose of the right as 'ensuring the survival and continued development of the cultural identity,' as well as 'the right of Indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.' Here, the Committee also found that Australia's delay in implementing adaptation measures— regardless of their existence— constituted a violation of Article 27. Specifically, the Committee noted that climate change impacts have 'eroded their traditional lands and natural resources that they use for traditional fishing and farming and fort cultural ceremonies that can only be performed on the islands.' Australia's 'failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture.'

#### **Enforcement of the Decision and Outcomes:**

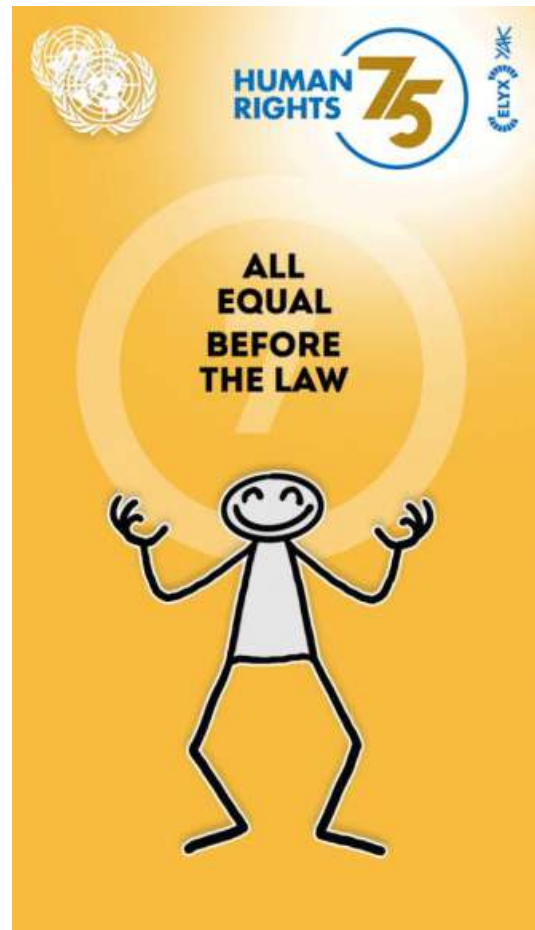
The Committee determined that Australia should (1) provide the islanders with adequate compensation for the harm suffered; (2) begin consultations with the islanders in order to conduct needs assessments; (3) continue implementing adaptation measures against climate change; and (4) prevent similar violations in the future. Australia has 180 days to inform the Committee of steps taken to implement the decision.

#### **Significance of the Case:**

This is a case of many firsts for the advancement of environmental protection at the international law level, as well as for the advancement of Indigenous Persons' rights. It represents a successful legal action grounded in human rights brought by climate-vulnerable inhabitants of low-lying islands against a nation state. It also represents the first time that a United Nations body has found a State violated international human rights law through inadequate climate policy, establishing that human rights law applies to climate harm. It is also the first ruling recognizing that Indigenous Peoples' culture is at risk from climate change impacts.

The Committee notably rejected Australia's efforts to skirt responsibility for climate change by attributing it to a 'global'

and broader international phenomenon, setting a precedent barring States from hiding behind the drop-in-the-ocean argument and failing to take charge of their own responsibility for climate mitigation. Essentially, each State has a responsibility to mitigate the impacts of climate change.<sup>169</sup>



## ANNEX 7:

# CONSULTATIONS AND CAPACITY-BUILDING EXERCISE ON ADVANCING THE RIGHTS TO FOOD AND EDUCATION IN ZAMBIA

Dates and venue: 9-10 October 2023, The Urban Hotel, Lusaka  
Agenda \*\*\*<sup>170</sup> Day 1 – Monday, 9 October 2023

TIME	AGENDA ITEM	AGENDA ITEM OBJECTIVE	LEAD
8:30-8:45	Registration		
8:45-9:00	National Anthem and Prayer		<ul style="list-style-type: none"> <li>TUH</li> <li>Fr. Alexander Muyebe, Director, JCTR</li> </ul>
9:00 – 9:15	Opening Remarks	<ul style="list-style-type: none"> <li>To welcome participants</li> </ul>	<ul style="list-style-type: none"> <li>Beatrice Mutali, Resident Coordinator, UN Zambia</li> </ul>
9:15-9:30	Objectives of the Consultations and capacity-building exercise	<ul style="list-style-type: none"> <li>To explore the purpose of the consultations and capacity-building exercise</li> <li>Background on the Seeding Change Project and process</li> <li>Aims</li> </ul>	<ul style="list-style-type: none"> <li>Dutima Bhagwandin, Senior Human Rights Adviser, OHCHR</li> </ul>
9:30-9:50	International Human Rights Law and State obligations	<ul style="list-style-type: none"> <li>To enhance understanding of the ICESCR in particular, and its core obligations, including progressive realization, maximum available resources, non-discrimination and the doctrine of non-retrogression</li> </ul>	<ul style="list-style-type: none"> <li>Professor Liebenberg, Former CESCR Member, Chair in Human Rights Law, Faculty of Law, University of Stellenbosch</li> </ul>
9:50-10:00	Q & As on IHRL, ICESCR and ICESCR obligations <i>Facilitator: Dutima Bhagwandin</i>		
10:00-11:00	Normative content of the rights to food and education v. national actions	<ul style="list-style-type: none"> <li>To enhance understanding of the normative content of these rights</li> <li>To examine national actions on food and education, how they satisfy the norms, progress and regress</li> <li>Key findings from UNICEF's 2023 budget briefs on nutrition, education and social protection</li> </ul>	<ul style="list-style-type: none"> <li>Enrico Muratore, Consultant, OHCHR (30 mins)</li> <li>Leah Mitaba, Executive Director, ZCSD (15 mins)</li> <li>Claude Kasonka, UNICEF, Policy Specialist (15 mins)</li> </ul>
11:00-11:15	Break		
11:15-12:30	Discussion <i>Facilitator: Domingos Mazivila, Economics Advisor, UNDP</i>		
12:30 – 13:30	Lunch Break,		
13:30-14:30	Debt restructuring: opportunities to advance the rights to food and education	<ul style="list-style-type: none"> <li>Enhancing understanding of the debt's impacts on human rights</li> <li>Historical perspectives and the BNNB</li> <li>UN position on the global financial architecture</li> </ul>	<ul style="list-style-type: none"> <li>Maryann Lwandamina, Acting Director, Ministry of Finance and National Planning (15 mins)</li> <li>Fr. Alexander Muyebe (15 mins)</li> </ul>
		<ul style="list-style-type: none"> <li>Debt restructuring and augmenting MAR to reach key targets on the rights to food and education</li> <li>Human rights impact assessments: fiscal consolidation programs and austerity measures, debt, taxation</li> </ul>	<ul style="list-style-type: none"> <li>Emmanuel Chinyama, RCO Economist (15 mins)</li> <li>Martin Mulwa, OHCHR Surge Economist (15 mins)</li> </ul>
14:30-15:00	Pathways to scale up realization of the rights to food and education	<ul style="list-style-type: none"> <li>Enforcing Constitutional protection of ESC rights through emblematic cases and outcomes: global good practices</li> <li>Foundational Zambian caselaw</li> <li>SADC: strategic litigation and caselaw</li> </ul>	<ul style="list-style-type: none"> <li>Christian Curtis, ESC Rights Specialist, OHCHR (10 mins)</li> <li>Lungowe Matakala, University of Zambia Law School (10 mins)</li> <li>Brigadier Siachitema, Consultant, Southern Africa Litigation Center (10 mins)</li> </ul>
15:00-15:15	Break		
15:15-16:00	Institutional and social mobilization to secure greater realization of the rights to food and education	<ul style="list-style-type: none"> <li>Role of the ZHRC: complaints mechanisms, remedy and recourse</li> <li>Scaling up ESCR legal aid, with focus on the rights to food and education</li> <li>Sustaining advocacy for rights</li> </ul>	<ul style="list-style-type: none"> <li>Foster Hamuyube, Head, Research and Planning, Human Rights Commission (10 mins)</li> <li>Humphrey Mweemba, Legal Aid Board, Director (10 mins)</li> <li>Carol Mweemba, Advocacy Director, World Vision International, representing the Joining Forces Alliance Zambia (10 mins)</li> </ul>
16:00-16:45	Discussion <i>Facilitator: Hope N. Chanda, Director, ZLDC</i>		
16:45-17:00	Wrap-up of Day 1	<ul style="list-style-type: none"> <li>Reflection on key points for joined-up advocacy and action</li> </ul>	<ul style="list-style-type: none"> <li>Hope N. Chanda, Director, ZLDC</li> </ul>



## Day 2 – Tuesday, 10 October 2023

TIME	ACTIVITY	ACTIVITY OBJECTIVE	LEAD
9:00 – 10:15	Session 1: Rights-based budgeting	➤ To increase capacity to carry out human rights budgeting looking at the mind-sets component of RBB	• Allison Corkery, Director of Strategy and Learning, CESR (45 mins)
10:15- 11:15	Plugging the data gaps and monitoring on ESC rights and applying the principle of LNOB in budgeting	<ul style="list-style-type: none"> <li>➤ Budget analysis toolkit: integrating RBA and RB methodology</li> <li>➤ Data for RBA/B, costings, model budgets, disaggregation</li> <li>➤ Presentation of a monitoring framework for the rights to food and education</li> <li>➤ Budget analyses: practical examples from Kenya</li> <li>➤ The case of Persons with Albinism</li> </ul>	<ul style="list-style-type: none"> <li>• Miselo M. Bwalya, Research Fellow, ZIPAR</li> <li>• Sheila Mudenda, Assistant Director, ZAMSTATS</li> <li>• Enrico Muratore/Leah Mitaba</li> <li>• Emmanuel Kilio, Head of M&amp;E, WFP</li> <li>• Mabvuto Zulu, FAO M&amp;E Specialist</li> <li>• Martin Mulwa, OHCHR Surge Economist</li> <li>• Muluka-Anne Miti-Drummond Independent Expert, PwA</li> </ul>
11:15- 11:30	Break		
11:30- 12:00	Discussion: <i>Facilitator: Martin Mulwa</i>		
12:00 – 13:00	Session 2: Rights-based budgeting	➤ To increase capacity to carry out human rights budgeting looking at the tool-sets component of RBB	• Allison Corkery, Director of Strategy and Learning, CESR
13:00 – 14:00	Lunch Break		
14:00- 15:30	Session 3: Rights-based budgeting	➤ To enhance skills, through case studies and group work, to undertake RB analyses and budgeting	➤ Allison Corkery, Director of Strategy and Learning, CESR
15:30- 17:00	Group work and wrap-up	➤ Conclusions, wrap-up and the way forward	➤ Dutima Bhagwandin, Enrico Muratore, Leah Mitaba, Martin Mulwa



## ANNEX 8:

### SYNTHESIS OF THE CONSULTATIONS AND CAPACITY-BUILDING EXERCISE ON ADVANCING THE RIGHTS TO FOOD AND EDUCATION IN ZAMBIA

9-10 October 2023, The Urban Hotel, Lusaka

#### Introduction

The consultations and capacity-building exercise on the final draft of the Seeding Change "Study on advancing the rights to food and education in Zambia" took place with the participation of government officials, national institutions, experts, academia, and NGOs, 9-10 October 2023.<sup>171</sup>

The intense two-day discussions focused on inter alia, how international human rights law and norms are implemented, and on ways to make further progress, including through enhanced fiscal space for rights, legal protection, and rights-based analyses and budgeting. The meeting was instrumental in reinforcing the message that the international human rights framework is a resource and can be used to catalyze change for good.

The diverse audience showed commitment to the conversation and enthusiasm for follow-up on key recommendations. The Study and the consultations were situated in the context of the UDHR 75 commemoration and pledges, flagging recommendations such as advancing the Constitutional Reform to include ESC rights and a universal (nutritious) school feeding program to Government as examples of UDHR 75 pledges that it can make.

#### Day – Monday, 9 October 2023

##### 1. Opening Remarks Beatrice Mutali, Resident Coordinator, UN Zambia

The RC welcomed participants in the consultative meeting. In 2023 we commemorate the 75<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly in 1948, through the "UDHR 75 initiative", launched one year ago on Human Rights Day. The UDHR enshrined a vision of equality and civil, cultural, economic, political and social rights for all, without distinction as to race, color, religion, sex, language, political or other opinion, national or social origin, property, birth or other status. It gave rise to the global human rights system and many of its provisions have entered into customary international law. *We must recommit to it and let its vision for a better world inspire us today and for the future.*

In 2015, UN Member States agreed to 17 Sustainable Development Goals to be achieved by the year 2030. 2020 was declared the Decade of Action to deliver the

SDGs. However, on the occasion of the SDG Summit three weeks ago in New York, UN Human Rights Experts observed: "Halfway to the 2030 benchmark, it has become apparent that the world has missed the majority of SDG targets, as highlighted in the [2023 report of the UN Secretary-General](#). Despite repeated pledges for action, inequalities have not been reduced and the lives of those furthest behind have not improved." And they added: As the UN Human Rights experts have said "A fundamental shift is needed in how the world tackles existing crises – from climate change to conflicts, from poverty to polarization, from food security to financialization of human rights, from shrinking civic space to social security gaps, from debt to the digital divide, from gender backlash to growth obsession." Also, Zambia's 2023 Voluntary National Review (VNR), concluded that "most of the targets for the SDGs are off-track, in part, due to the COVID 19 pandemic".

Against this backdrop, UN Zambia and UN Human Rights carried out a "Study on advancing the rights to food and education in Zambia", to leverage International Human Rights Law to catalyze change, and contribute to closing the gaps in implementation of the SDG targets, including SDGs 2 and 4 on zero hunger and quality education, prioritizing the most vulnerable and marginalized amongst us. The Study is the subject of these consultations. Its findings and conclusion are intended to assist all stakeholders involved, from Governments to UN Agencies to civil society to rights-holders themselves.



It is a tool for awareness-raising and capacity development on legal obligations and the normative content of the rights to food and education and can be used for policy and public advocacy, including with respect to safeguarding fiscal space for rights and rights-based budgeting. It can also be adopted as a framework to inform future Constitutional and law reform processes, including with respect to including economic, social and cultural rights and other rights and prohibitions in an expanded Bill of Rights as well as explicitly recognizing the right to adequate food in national legislation and adopting a human rights-based framework law on the right to food. These are the 4<sup>th</sup> cycle Universal Periodic Review recommendations that the Government has positively supported. It will be finalized and disseminated after these consultations have concluded.

The UN HCHR reminded that:

Human rights are a global public good...Fifty-seven years ago, when the **International Covenant on Economic, Social and Cultural Rights** was adopted, this principle was cemented. Member States expressed their firm conviction that the basic necessities of life – education, health, decent work, social security, an adequate standard of living, freedom from hunger, and enjoyment of science and culture – are not services or commodities, but human rights to be enjoyed by all. Countries have agreed, just as they did when the UDHR was adopted, that **without economic, social and cultural rights, people cannot fully participate in civil and political life**. That all rights – civil, cultural, economic, political and social – are obligations of equal status and are **universal, indivisible and interdependent**. And that having one without the other fractures, and divides.<sup>172</sup>

## 2. Objectives of the Consultations and Capacity-building Exercise: Dutima Bhagwandin, Senior Human Rights Adviser, OHCHR

2023 is a pivotal year for human rights, being the 75th birthday of the UDHR. In the lead-up to the 75th anniversary, OHCHR launched this study as a way to try to push the envelope on enjoyment of the rights to food and education in Zambia. At the global like at national levels, we are falling behind on key targets to improve people's lives.

Zambia's Voluntary National Review (VNR), which was completed this year, concluded that "most of the targets for the SDGs are off-track, in part, due to the COVID 19 pandemic". The VNR covers several SDGs, including SDG 4, on quality education. So, it is necessary to find new ways of securing greater progress on rights.

A few years ago, the former High Commissioner for Human Rights called on the Office of the High Commissioner for Human Rights to scale up work on sustainable development and economic, social and cultural rights. Out of this call, came "the Surge Initiative" a team of economists working alongside specialists on sustainable development and ESC rights. Country and regional OHCHR presences could apply for funding and technical support through implementation of "Seeding-change projects". This project is amongst the projects selected under the Surge Initiative. The results are in the study object of the consultations.

This project was undertaken in two parts. Zambia is a State party to eight of the nine core human rights treaties. OHCHR is assisting the government to implement its obligations under the treaties, and the first part of the project looked at treaty law, the normative content of the rights and how they are given effect in Zambia. A second big part of the exercise was the analysis of budget allocations to the social sector and particularly the financing of the rights to food and education; as well as the analysis of how the country's debt and external financing impact on its legal obligations.

Our thanks go to the team that worked on the Study – Enrico Muratore Aprosio, human rights and legal expert, Leah Mitaba of ZSCD and her team, who worked on the budget analysis, with support from Martin Mulwa, economist, and the OHCHR teams in Geneva and Pretoria, and Allison Corkery, who helped with the capacity-building exercise.

## 3. International Human Rights Law and State Obligations. Professor Liebenberg, Former CESCR Member, Chair in Human Rights Law, Faculty of Law, University of Stellenbosch.

Based on the ICESCR, article 2(1), each State party has the obligation to take steps, individually and through international assistance and cooperation, to the maximum of its available resources, to achieve progressively the full realization of the rights recognized in the ICESCR by all appropriate means, including the adoption of legislative, executive, administrative, financial, educative measures.

Article 2(1) prohibits discrimination of any kind and Article 3 requests States Parties to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set. Essential basic levels of rights should be secured to all: essential food, primary health care, shelter, minimum amount of water for personal hygiene and domestic use and to prevent

disease. States must prioritize their resources and make “every effort” to meet basic human needs, even in case of resource constraints. Particular attention to vulnerable and disadvantaged groups through social protection safety nets.

Retrogressive measures (cutting back on social programs) must be considered and justified “by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”, and must be temporary, necessary, proportional and non-discriminatory. The State must demonstrate that the decision was based on the most thorough consideration possible and was justified in respect of all the rights under the Covenant and that all available resources were used.

To determine if the maximum of available resources was utilized, the CESCR considers:

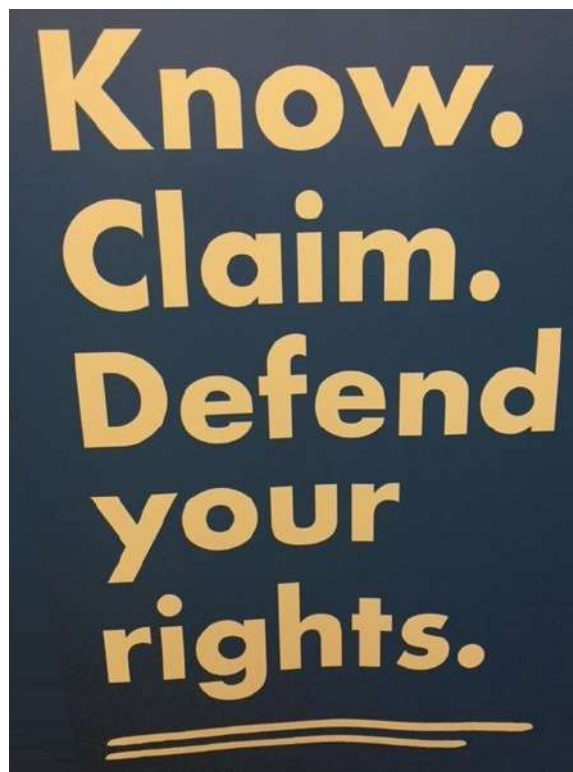
- (1) the proportion of the population falling below the international poverty line (outcome);
- (2) the way resources are mobilized: proportion of public revenue financed through taxes; personal income tax rates vs. corporate tax rates; VAT; whether the tax structure is progressive or regressive; the efficiency of the tax-collection system; royalties on exploitation of national resources; import/export tariffs; development aid; loans;
- (3) public expenditure as a percentage of GDP and the proportion of public expenditure devoted to social spending (health, food, education, water and sanitation, housing...); and
- (4) the wastage of resources (corruption, tax evasion, maladministration, incapacity).

To measure the realization of economic, social and cultural rights, specific indicators include availability, accessibility, non-discrimination (physical accessibility, economic accessibility or affordability, information accessibility), acceptability (cultural appropriateness), quality. Professor Liebenberg provided examples of domestic, regional and international litigation cases related to economic, social and cultural rights.

#### 4. Normative content of the rights to food and education v. national actions

##### 4.1. Presentation of the “Study on advancing the rights to food and education in Zambia”. Enrico Muratore Aproso, Consultant, OHCHR; Leah Mitaba, Executive Director, ZCSD.

The authors of the study gave an overview of the normative content of the rights to food (Article 25 UDHR, Article 11 ICESCR) and education (articles 26



UDHR, 13 and 14 ICESCR) as interpreted by CESCR in General Comments No. 12 (right to food), 11 (Plans of action for primary education), and 13 (right to education), and presented legal, policy, financial, resource mobilization and budget measures adopted by Zambia to realize those rights, existing gaps, as well as the key conclusions and recommendations of the report. Zambia introduced free education from ECE to secondary school and improved agriculture, social protection, food security and nutrition programs, but investment remains insufficient, and budget execution too low, to guarantee minimum essential levels of rights. The allocation of resources to vulnerable populations remains insufficient. A majority of Zambians face challenges in accessing sustainable jobs and livelihoods, with direct impacts on the right to food and nutrition, especially for vulnerable groups, children, adolescents, women, persons with disabilities and refugees, especially in peri-urban and rural regions. Food insecurity and malnutrition are also driven by low productivity of smallholder farmers, natural resource degradation, and climate change.

Poverty, child labor, early marriages, affect learning outcomes, and progress to secondary/ higher education to access decent jobs and livelihoods. 816,641 school-aged children are out-of-school (out of 4,548,968 learners). The net enrolment rate in primary education declined from 90.4% (2016) to 83.6% (2018), school drop-out increased between 2014–18. Assessments show critically poor learning outcomes. Investment in

secondary, TVET and tertiary education is insufficient. Gender parity is yet to be guaranteed in the education system: girls face disproportionate challenges due to child marriage, early pregnancies and sexual abuse in schools. Disproportionate challenges affect CSEND, refugee and other children in vulnerable situations. Despite increased allocations, budgets do not yet ensure realization of minimum essential levels of the rights to food and education for many. The country continues to depend on international assistance.

Zambia has not constitutionalized ICESCR nor fully incorporated the rights to food and education in domestic law. Their justiciability before courts remains sporadic. Beyond allocations and expenditure, the rights to food and education are affected by the method applied by government to mobilize revenue, through taxation and the accumulation of debt. The potential impacts of loan agreements, debt restructuring policies and austerity measures on the realization of minimum essential levels of the rights to food and education, particularly for women and vulnerable groups in disadvantaged peri-urban and rural regions, remains to be assessed. It will be necessary to monitor the implementation of GRZ plans and budgets in the context of decentralization, considering local capacity issues. The GRZ faces capacity challenges to monitor progress on economic, social and cultural rights, especially for vulnerable groups due to limited data disaggregation and insufficiently inclusive policy, planning and monitoring processes.

Key recommendations to the GRZ include to (1) hold a referendum to include economic, social and cultural rights, the rights to food and education and social protection, in the Bill of Rights, domesticate ICESCR and ensure justiciability of economic, social and cultural rights; (2) adopt legislation to enable the NMIRF to use allocated resources for its functioning; (3) strengthen human rights budgeting data systems and data disaggregation; (4) prioritize vulnerable groups and provide financing for the implementation of special measures to secure their rights.

The GRZ should (5) develop a transparent and participatory model budget for the rights to food and education, aligned with the content of both rights, enabling the country to develop rights-based budgets; (6) undertake regular impact analyses of short/long-term impacts of taxation and debt on the rights to food and education; (7) promote an inclusive human rights impact assessment of funding agreements; (8) adopt progressive taxation, strengthen tax collection, fight tax evasion, tackle corruption and combat inequality; (9) support finalization/adoption of National Action Plan on Business and Human Rights, domesticating the UN

Guiding Principles on Business and Human Rights; (10) develop and adopt a human rights-based national framework law on the rights to food and education, based on inclusive assessment of the NFSP & Food and Nutrition Strategic Plan 2022-2027, to prevent discrimination in access to food or resources, particularly for women; (11) improve gender mainstreaming in institutional/legal frameworks, adopt gender-sensitive, inclusive national land policy; (12) reform the Refugee Act to remove legal/de facto restrictions, and extend social protection safety nets to refugees. The GRZ should also (13) scale up SFP, HGSP, Public Welfare Assistance Scheme, Child Welfare Program to ensure food and nutrition security, access to education, fight school dropout and child labor; (14) promote gender parity in education by increasing funding to KGS; strengthen implementation of comprehensive sexuality education to address school dropout, gender disparities (early pregnancy and school GBV); implement CRC recommendations on sexual abuse in schools; (15) allocate adequate resources for access to all levels of education of CSEND, by developing inclusive education, recruiting qualified teachers to improve pupil-teacher ratio (MoE norms), and enable refugee children/asylum seekers to access tertiary education and TVET.

The GRZ should finally (16) increase budget allocations to step-up capacity of ZamStats and line Ministries for disaggregated data collection, statistics and analysis; and (17) allocate and execute adequate budgets to include the access of undocumented migrants and nationals to IDs, data and statistics so they can access rights and services.

The UNCT and UN agencies, program and funds should (1) assist the GRZ in constitutional and legal reform efforts; (2) monitor implementation of Zambia's obligations related to the rights to food and education; (3) assist the GRZ and NMIRF to respond to reporting obligations (especially overdue reporting to CESCR) and implementation of the recommendations of human rights mechanisms on the rights to food and education; (4) support/facilitate inclusive processes at national and local levels and participation of women, youth and most vulnerable groups from peri-urban and rural areas, in State reporting processes to human rights mechanisms, as well as in UPR and budgetary processes; (5) support and assist the GRZ in the organization of an inclusive human rights impact assessment of IMF and loan agreements and fiscal and budget analysis to promote investment of maximum available resources to realize the rights to food and education for all; (6) promote an ESCR legal aid/strategic litigation program with focus on the rights

to food and education, with ZHRC, the Bar Association, NGOs and CBOs, women and youth organizations, etc.; (7) provide assistance to the ZHRC in the development of the National Action Plan on Business and Human Rights; and (8) strengthen GRZ capacity (ZamStats and line ministries) to apply HRBA to programming and data collection.

The IMF, lenders and donors should maximize resources from international cooperation to respond to urgent needs of vulnerable populations deprived of minimum essential levels of rights and support progressive realization of the rights to food and education.

CSOs should (1) monitor budget and track GRZ investments in the rights to food and education, and design an index to assess/improve budget allocations and spending with relevant stakeholders; (2) develop a model budget for the rights to food and education, reflecting Zambia's obligations, to develop human rights-based budgets to support the realization of the rights to food and education; (3) work with the GRZ to undertake regular impact analyses and assess short/long-term impacts of taxation and debt on the rights to food and education; (4) develop a 3-year advocacy strategy and engage in legislative, budget and policy advocacy with the GRZ and development partners in favor of the rights to food and education for all, based on the findings of this study. Special consideration should be given to building the case law to advance the RFE, amongst other ESC rights.

#### 4.2. Rapid Analysis of the 2024 Budget: Nutrition, Social Protection and Education. Claude Kasonka, UNICEF Policy Specialist.

From 2015 to 2022, poverty has increased from 54% to 60%, with some provinces (Muchinga, Eastern, Central) registering the highest increase. Urban poverty also shows a significant increase based on the 2022 Poverty Assessment in Zambia. The analysis of inequality based on the Gini Coefficient shows that many people are slipping back into poverty. Multidimensional Poverty is high: affecting 70.6% of the children in Zambia, especially in provinces where nutrition indicators are poor (Luapula, Northern province, North-Western and Western provinces).

The macro-economic context in 2023 has shown a slowing GDP growth (2.7% in 2023 vs 5.2% in 2022), which is expected to impact revenues; inflation edged up (12% in September 2023 vs 9.9% in December 2022). The Kwacha was depreciated by 10.9% against the USD to ZMW 20.05 between January and August, leading to a higher cost of imports; the cost of debt is high, leading to a projected under expenditure of about

10 billion in 2023 compared to initial target, which means that expected services may not be delivered. The 2024 Budget has declined in real terms compared to the previous year: it is funded by ZMW 141.1 billion/22% of GDP domestic revenue, ZMW 3.4 billion/0.6 % of GDP of grants from Cooperating Partners, ZMW 33.3 billion/5.2% of GDP of financing (ZMW 16.3 billion will be domestic and ZMW 17.0 billion external financing), ZMW 114.5 billion will be tax revenue while ZMW 26.5 billion will be non-tax revenue.

Debt restructuring led to a decline in the general service budget. An overview of the Social Sector budget shows that education continues to be a priority (18% and 4% nominal and real increase respectively; ~ 15.4% of the 2024 budget, up from 14% in 2023, and ZMW 1.9 billion on grants to schools). The School Feeding Program budget increased from ZMW 39.4 to ZMW 111.7 million. ZMW 338.3 million were allocated for continued construction of schools (202 secondary schools to be constructed). ZMW 356.1 million were allocated for the recruitment of 5,400 personnel. One million desks remain to be procured. ZMW 1.2 billion went to the Higher Education Loans and Scholarship Board. ECE remains not prominent.

As to social protection, the budget declined in real terms, as pensions and LA fund are prioritized. Beneficiary households on Social Cash Transfer will remain at 1,100,998. Beneficiaries for the Public Welfare Assistance Scheme are to be increased from 16,000 to 40,000. Beneficiaries of the Food Security Pack Program will remain at 242,000. Beneficiaries of the Girls' Education and Women's Empowerment and Livelihoods Project are supposed to increase from 116,891 to 129,400.

The difference between nominal and real budgets should be noted. The value of SCT has been eroded by increasing inflation/cost-of-living, and the current SCT value of ZMW 200 is not adequate to meet nutritional needs. The budget for FISP decreased in nominal and real terms; the Government is introducing CASP (Comprehensive Agricultural Support Program), the details of which are not shared yet.

Nutrition spending is largely invisible in the national budget (less than 3% of the total budget in 2023). In the 2024 Budget Statement, only "school feeding" is clearly visible; there is no mention of nutrition and nutrition spending is skewed towards "sensitive" rather than "specific" interventions<sup>173</sup>.

Fiscal Decentralization. The CDF Budget increased to ZMW 4.8 billion: each constituency will receive ZMW 30.6 million (from the current ZMW 28.3 million). Other grants have also increased: the LGEF (Local Government Equalization Fund) turned into a recurrent grant (ZMW 1.4bn). Advocacy is ongoing to ensure 1% of CDF is ring-fenced for nutrition specific interventions (Guidelines are currently being revised).

In conclusion, although poverty levels have soared, especially urban poverty, social protection programs were not as prioritized as education and health. Several actions are now envisaged, including a social sector analysis (deep dive) into the 2024 budget; the engagement with sectors and Committees of Parliament; continued evidence-based advocacy with MoF for increased spending on social assistance and other neglected areas; perform diagnostics to improve evidence base, Nutrition Expenditure Review, Local authority budget briefs and Social Service Workforce Investment Case.

## 5. Debt restructuring: opportunities to advance the rights to food and education.

### 5.1. Zambia's Debt Restructuring Experience. Maryann Lwandamina, Acting Director, Ministry of Finance and National Planning.

The country's ambitious Infrastructure Development Program contributed to the rapid accumulation of external debt, to which other factors (economic challenges, rising inflation, slow economic growth, insufficient revenue collection, limited fiscal space) also contributed. The outbreak of COVID-19 worsened the already precarious economic situation.

Zambia suffers from high debt service burden. The accumulation of non-concessional debt increased the cost of debt service; the depreciation of the local currency worsened debt service costs as most of debt is denominated in foreign currency. Zambia's debt has been rising over the years: public debt includes Central Government domestic debt and external debt, as well as guaranteed and non-guaranteed SOE debt. The evolution of Zambia's debt shows a striking correlation between the slowing down of economic growth and the increase of fiscal deficit. In its debt restructuring efforts, the government requested in 2020 for the IMF Extended Credit Facility; this move was followed by the 2021 application for debt treatment under G20 Common Framework, the 2022 Formation of Official Creditor Committee (OCC) and the approval of 38-month (USD 1.3 billion) ECF; and, in June-July 2023, the Debt restructuring agreement with OCC and the approval of second ECF disbursement (USD 189 million). The engagements with creditors followed three levels: first,

with the Official Creditor Committee (agreement in principle reached, awaiting signing of MoU); then with bondholders (discussions are ongoing) and other Commercial Creditors (discussions are ongoing with a number of individual commercial creditors).

The government set several expected outcomes of the restructuring. In terms of debt service burden, the expectation is that debt restructuring will reduce Zambia's debt service burden and free up resources for investment in critical areas such as healthcare provision, education, agriculture and infrastructure development. In terms of credit rating, successful debt restructuring should bring about an improvement in the country's credit standing. In terms of foreign investments, successful debt restructuring should create positive momentum for foreign investment. Zambia's experience in debt restructuring shows that public investments planning is essential to maximize the gains from borrowing as it will ensure that the type of borrowing (commercial or concessional) relates to the type of investment. Zambia recently launched its inaugural Public Investments Management Strategy and the 2023 Public Investment Plan, to support the Public Investment Management Guidelines. Countries should regularly review/update legislation and regulations relating to public debt management. In 2022, Zambia replaced the 1969 Loans and Guarantees (Authorization) Act and the 1931 General Loan and Stock Act with the Public Debt Management Act. This establishes the Debt Management Office; mandates parliamentary approval of public borrowing, improving oversight and accountability; and promotes transparency through mandated timely reporting. Aside from increased revenue mobilization efforts, countries should proactively take fiscal adjustment measures when faced with economic downturns. This requires sufficient early warning systems and prompt reactions

to slow the adverse impacts and avoid situations of debt distress. This may be achieved through institutional reforms and continued capacity-building in the relevant stakeholders within the Ministry responsible for Finance and Central Bank.

Through the 2024 National Budget, the government intends to create a macroeconomic environment that supports sustained economic growth. Debt restructuring should improve fiscal sustainability, reduce debt service burden, rebuild Zambia's creditworthiness and stimulate economic growth. The government wants to prioritize investment to the priority sectors to sustain economic growth; provide an investment friendly environment and increase private sector participation; and continue to provide support to the poor and vulnerable in the midst of economic reforms to cushion them from the impact of the reforms.

The historical budget trajectory from 2015 to 2021 shows reduced budget allocation to the priority sectors (agriculture went down from 10.2% in 2016 to 2.2% in 2021, health from 9.6% in 2015 to 8.1% in 2021 and education from 20.2% to 11.5%). The projected trajectory improves budget allocation to these priority areas: in 2024 education will reach 15.4% of the budget, the infrastructure development share will increase from 9% in 2022 to 14.2% in 2024, the health sector will move up from 9% in 2022 to 11.8% in 2024, and agriculture will move up from 4.2% in 2022 to 7.8% in 2024. Focus is placed on specific high impact areas and interventions: growing mining, agriculture, manufacturing, tourism sectors; economic growth; increased trade –higher exchange rate earnings; job creation; increased resource mobilization; better public services and livelihoods; improved collaboration with local authorities, and the use of cost-effective means of public service delivery. The 2024 Budget aims at unlocking the potential of the country and building resilience through inclusiveness and partnerships, revamping the economy to create opportunities for all, and strengthening social protection to cushion the vulnerable from the effects of the reforms being undertaken. These efforts are supported by concessional and grant financing from cooperating partners including the International Monetary Fund, African Development Bank, European Investment Bank, European Union, USAID, and UN agencies among others.

## 5.2. Debt Restructuring for the Advancement of the Rights of the People. Emmanuel Chinyama, UN RCO Economist.

Debt issues have been on the global agenda for decades. Various initiatives were implemented, but debt continued to grow, impacting on the government's fiscal space. COVID-19, the Russia-Ukraine war, and soaring inflation have increased the pressure on African countries to take more debt to supplement domestic resources. The debt of African countries is owed, about 39% to multilateral organizations; 35% to private creditors; and 12% to China (WB). At least 21 low-income countries in Africa are currently at risk of debt distress. The COVID-19 pandemic pushed for a quicker implementation of pre-existing debt restructuring initiatives, namely through the UN, IMF and WB Debts Service Suspension Initiative – DSSI. In 2020, the impact of COVID-19 pushed many countries into recession and forced more than 100 million people into extreme poverty. About 65% of eligible countries benefited from DSSI (48 countries), for a total value of USD 12.9 bn. The IFIs played an important role to ensure that resources were available under the DSSI (i.e. IMF emergency lending of USD 650 bn for SDRs out of which USD 21 bn was allocated to low-income

countries). Currently, there is a collective campaign asking for the G20 Common Framework to be improved, beyond DSSI, as countries are struggling to pay back their loans (Zambia defaulted).



In 2022, debt service repayments for many poor countries skyrocketed by 35%. High debt servicing led to a lower allocation of resources to SDGs priorities. A radical transformation of the global financial system is needed to tackle pressing global challenges. The UN Secretary-General called for G20 countries to agree on a USD 500 billion annual stimulus package for developing countries, and the extension of maturity period of debts for poor countries, at lower interest rates. Globally, the world's public debt fell from 100% of GDP in 2020 to 96% of GDP in 2021, due to the strong real GDP growth, high inflation, and the withdrawal of COVID-19 fiscal support measures. Public debt for LIDCs remained close to 49% of GDP in 2020-21. Extensive evidence shows that debt servicing significantly diminishes the capacity of countries to create the necessary conditions for the full realization of economic, social and cultural rights, through the diversion of resources from basic social services, and through policy conditionalities imposed by creditors, which undermine country ownership of national development strategies. Zambia's debt increased from USD 4.7 bn in 2014 to about USD 14.7 bn in June 2023, putting more pressure on fiscal space for the purposes of loan repayment, and resulting into a lesser allocation of resources to key sectors (health, education, agriculture).

In turn, debt restructuring should lead to a lower spending on external debt servicing (as the maturity time is expanded), resulting into a bigger fiscal space for other development program and activities; improved credibility on the international market and enhanced restoration of confidence with commercial and private



creditors, and improved sovereign credit rating, leading to reduced borrowing costs. It will also generate enhanced stability of the national currency and of the exchange rate, reduced interest payment and extended period of loan repayment. This should create a positive cash flow for the country, where resources can be reallocated towards pressing national needs.

Conditions imposed by the creditors may produce negative impacts on the economy, and a careful negotiation with commercial creditors is critical. Debt management needs to be enhanced to avoid further accumulation of debt. Debt transparency is fundamental in achieving and promoting sustainable debt and supports accountability for the use of public resources. It is necessary to build human resources capacities to improve debt management and be better equipped to negotiate with creditors.

### 5.3. Human Rights Impact Assessments: Austerity, Debt, Taxes. Fr. Alexander Muyebe, Executive Director, Jesuit Center for Theological Reflection (JCTR).

In April 2023, UN experts expressed concern about delays in Zambia's debt restructuring, hindering Zambia's ability to "mobilize and maximize resources for the full realization of human rights, as per its obligations under international human rights law". In June 2023, Zambia reached a debt restructuring agreement on a USD 6.3 billion debt owed to external bilateral creditors, under the G20 Common Framework. Debt relief is achieved through a significant maturity extension of existing debt, with the final maturity being realized in 2043. Interest rates will be cut for 14 years, and after, they will not exceed 2.5%. For a grace period of three years, principal repayments will not take place; after 2026, repayments will be made for 0.5% of the debt stock per annum. Zambia should have a debt service saving of 5.8 billion. What use will be made of these resources, given Zambia's obligations under articles 11, 13, 14 of ICESCR and the African Charter on Human and Peoples Rights?

Based on the UN Guidelines on debt restructuring and human rights, the renegotiation and restructuring of external debt does not suppress the State obligation to progressively realize human rights. States must avoid any retrogressive measures when agreeing to debt repayments and pursuing economic measures aimed at debt repayment. Zambia has eliminated fuel subsidies and plans to reduce agricultural subsidies to 1% of GDP by 2025. The government plans to enhance domestic revenue mobilization by broadening the VAT base, limiting VAT exemptions and improving tax administration, and to strengthen the legal framework to fight corruption. However, removing fuel subsidies raises transport costs, and prices of commodities. Increases in electricity tariffs may lead to higher costs

for hospitals and clinics to provide care, and for households having to choose between food, electricity, and medicine, due to diminishing income because of inflation. Transport costs to schools will also increase, negatively impacting the poor's right to access education. The 2024 budget aims at reducing the fiscal deficit to 4.8% of GDP by increasing revenue gains, broadening the tax base, sealing loopholes in the VAT system and other transactional tax types through enhanced taxpayer compliance and efficient tax administration systems. The high cost of farming inputs raises prices for goods and services, including food, disproportionately affecting low-income households.

An increase in social spending should counterbalance the negative impacts of austerity measures and tax adjustments. The 2024 national budget projected a ZMW 4 billion increase for education, including to hire 4,200 additional teachers. This is just 15.4% of the budget (versus 20% recommended by the Education 2030 Incheon Declaration). 3% of this expenditure will come from the CDF, which is struggling with a 19% absorption rate. To ensure access to education for all, a more efficient CDF management is needed, as well as a higher portion of the national budget spent on education.

The 2024 budget increases the allocation to the school feeding program to ZMW 111.7 million. However, support to the Food Security Pack Program is inadequate, and the Social Cash Transfer cannot really help households cope with rising costs. The allocation to Social Cash Transfer increased from ZMW 3,720,898,131 to ZMW 4,118,237,220 for the 2024 budget period, but beneficiaries increased by just over 70,000 households and the increase is limited to an extra ZMW 117 to each household.

### 5.4. Public Debt and its Linkages with Human Rights. Martin Mulwa, OHCHR Surge Economist.

Public debt remains a key policy concern in a significant number of African countries. According to the IMF, sub-Saharan Africa's public debt ratio stood at 56% of GDP in 2022: 6% higher than the pre-pandemic period. At least 19 of the 35 low-income African countries are already in debt distress or facing high risk of debt distress in 2022. The debt vulnerabilities are exacerbated by the fact that African countries borrow on average at rates that are four times higher than advanced economies, due to the inherent inequalities in the global financial architecture. High interest rates increase debt service costs, reduce the available fiscal space impacting social spending, essential for progressive realization of ESC rights, and the attainment of the SDGs. Between 2019 and 2021, 25 African countries spent more on interest payments than on health and seven spent more on interest payments

than on education. In front of debt vulnerabilities, the default policy advice from IFIs has been fiscal consolidation and austerity measures.

Zambia is classified as a low-income country amongst those with the highest levels of poverty and inequality. 60% of the population is poor, 79% in rural areas (2022). Zambia's external debt drastically increased from USD 1.98 B. in 2011 to USD 14 B. in 2022. From 2019 to 2023, Zambia spent 36.4% of its budget on debt servicing, reducing the fiscal space for investments to advance the ESC rights. Since 2020, Zambia negotiated the debt restructuring with IMF, leading to the 2021 IMF Special Drawing Rights allowance (USD 1.33 B.) and 2022 IMF Extended Credit Facility (USD 1.3 B.). As part of the deal, in the successive 38 months, the GRZ should reduce fiscal deficit from 6% of GDP to 3.2% through spending cuts and increased domestic resource mobilization. The program entails the removal of electricity and fuel subsidies, which will impact especially on the poor and vulnerable groups not covered by social safety nets (currently, 25% are covered – 994,000 people – against the 58% poverty rate). The IMF also requested to broaden the VAT base and limit VAT exemptions, to increase VAT to 2.2% of GDP. To compensate, the plan also foresees an increase of the SCT; the recruitment of 30,000 teachers as part of the free education policy; nonetheless, continuous monitoring is needed over the medium to long-term impacts on the financing of MELR to food and education.

Based on the principle of non-retrogression, the adoption of fiscal consolidation and austerity program should not affect human rights: lenders and borrowing States should carry out human rights impact assessments (HRIA) prior to the provision of the loans. Obligation of States to respect human rights in economic policy making, States are obliged to manage their fiscal affairs and to adopt economic policies to ensure that they respect, protect and fulfil all human rights at all times, including during times of economic crisis. Economic reform policies and measures must not be discriminatory, and the proposed measures should not affect the human rights of the population, particularly the individuals and groups most disenfranchised or at risk. The HRIA should identify retrogressive measures and alternative policy options; and establish a (non-exhaustive) list of preventive and mitigating measures to ensure conformity of the economic reform policies considered with the State's human rights obligations. Debt sustainability analysis (DSA) should incorporate human rights impact assessment and findings in debt relief programs and or restructuring negotiations; in Zambia, such assessment did not take place. A comprehensive definition of debt sustainability should incorporate economic, social, and environmental sustainability. The UN Secretary-General

called for the transformation of international financial architecture and the reform of DSA to incorporate SDG financing requirements and risks associated with climate change.

Human rights impact assessments should form a regular part of decision-making processes with respect to economic reform policies or loan conditionality, and should be carried out at regular intervals: *ex ante* – to assess the foreseeable impacts of proposed policy changes – and *ex post*, looking back to assess the actual impacts of policy change and implementation, in order to address negative impacts, especially for women and vulnerable groups, usually excluded from decision making. Economic reform programs should be evaluated in accordance with whether they have ensured a fair and equitable distribution of social adjustment burdens, and not only whether they have reduced budget deficits and restored debt sustainability or economic growth. HRIA should not be limited to considering potential or actual adverse human rights impacts: they should also identify steps to advance the enjoyment of human rights and opportunities for the State to further the realization of human rights within the implementation of economic reforms.

The GRZ should therefore promote an inclusive HRIA (with women, youth & vulnerable groups from disadvantaged peri-urban/rural areas) of IMF and other funding agreements; redirect the debt restructuring savings towards key sectors to promote the rights to food and education and other ESCR, and combat inequality. The GRZ should consider and adopt progressive forms of taxation, strengthen tax collection, reduce tax expenditures, fight tax evasion, redistribute resources and combat inequality. In case of resource constraints, the GRZ should prioritize vulnerable groups and provide financing for the implementation of special measures to secure their rights. The GRZ should finally develop a transparent and participatory model budget for the rights to food and education, aligned with the content of both rights, enabling the country to develop rights-based budgets.

The UNCT should support and assist the GRZ in the organization of an inclusive HRIA of IMF and loan agreements to promote investment of MAR to realize the rights to food and education for all, with the participation of women, youth and vulnerable groups; the IMF and other lenders and donors should collaborate with the UNCT to support GRZ in the organization of an inclusive HRIA of IMF and other loan agreements and fiscal and budget analysis. They also should abandon austerity measures that have the potential to impact key sectors and define social spending floors in line with human rights standards; and review the IMF-World Bank Debt Sustainability Analysis to incorporate SDG financing requirements, in line with

the human rights framework, with particular focus on ESCR. CSOs should work with the GRZ to undertake regular impact analyses and assess short/long-term impacts of taxation and debt on the rights to food and education.

## 6. Pathways to scale up realization of the rights to food and education.

### 6.1. SADC: Strategic Litigation and Case Law. Brigadier Siachitema, Consultant, Southern Africa Litigation Center.

Farming communities and families in Southern Africa have been stripped of their land, becoming landless, homeless and extremely poor, ending up in refugee camps, squatter camps or slums in peri-urban areas where they struggle to feed their families and send their children to school. The High Court of Zambia described this reality in *Molosoni Chipabwamba and 12 Others. Displaced Village Owners v Yssel Enterprises Limited and 7 Others 2017/HP/2201 (30<sup>th</sup> April 2020)*:

[T]he Petitioners are now squatting in the Musangashi Forest Reserve....The allegations with regard to the violations of their rights have not been challenged in any way. The Petitioners were living on the disputed land, where they had access to housing, and grew sufficient food for their nourishment, and were able to hunt and rear animals like chickens and goats from which they earned income to survive. Their children had access to education as schools were nearby, and they had access to health care services from the clinics....To take away these rights as a result of the alienation of the land...without following the procedure prescribed by the law, infringed on the Petitioner's rights, and they are now IDPs (Internally Displaced Persons).

The High Court ordered the State to compensate the community for the violation of their rights and the investor for the destruction of their properties, including their graves.

This case shows the effectivity of strategic litigation, used as a pathway for an incremental realisation of the right to food and education in the context of land displacements. Strategic litigation means taking carefully selected cases to court to bring about significant changes in the law, practice or public awareness. The parties involved in strategic litigation have been victims of human rights abuses that many others suffer: hence, the case has the potential to have an impact beyond the effect on the parties to the case. Strategic litigation focuses on cases likely to establish legal precedents or bring about broader social or policy changes beyond the immediate outcome of the case.



Its contributes to raise public awareness about important issues and injustices, hold institutions and individuals accountable for their actions, protect fundamental rights and freedoms of individuals and groups of persons using national, regional and international human rights mechanisms; promote legislative reforms aimed at changing or abolishing laws or policies not in line with the constitution and internationally recognised state obligations; strengthen enforcement of existing laws or policies, and clarify them; close the gap between stated policy and implemented policy. Strategic litigation has been successfully used in some SADC countries, to promote gender equality, protect the rights of minorities, persons with disabilities, rural communities, and indigenous peoples; defend the environment and advocate for access to health care, food, housing and education.

In *Governing Body of the Juma Masjid Primary School & Others v Ahmed Asruff Essay N.O. and Others CCT 29/10*, South Africa's Constitutional Court dealt with a case where a private property owner evicted a public school from its property. The Court held that the eviction order could not be enforced where it had an impact on the learners' right to a basic education under section 29(1) of the Constitution and on the learners' best interests under section 28 of the Constitution. The government has a primary positive obligation to provide access to schools in fulfilling the right to a basic education under Article 29 of the Constitution; the Trustees, a private landowner and non-state actor, had a negative obligation not to infringe that right under section 8 of the Constitution.

In *Swaziland National Ex-Miners Workers Association and Another v The Ministry of Education and Others (335 of 2009) [2009] SZHC104 (16 March 2009)*, the High Court held that the constitutional obligation placed upon the Government to provide free primary education

was to do so at no cost or charge to the children so entitled. The provision of free education does not of essence include the provision of school uniforms. It, however, includes tuition at no cost, provision of textbooks and where possible, exercise books and stationery. The Court further held that the commencement of the provision of free education to all Swazi children of all grades was to be during the three years following the date of the coming into force of the Constitution. This gives a right of suit to an aggrieved entitled person immediately after the three-year period if there is no such implementation.

In *Swaziland National Ex-Miners Workers Association and Another v The Ministry of Education and Others (2 of 2010) [2010] SZSC 35 (May 2010)*, the High Court held that the enforcement of the right to primary education depends ultimately on the availability of resources. To hold the Government accountable for abdicating its constitutional obligation to provide free primary education, the applicant must prove on a balance of probabilities that the resources for doing so are available at the disposal of the government, but the government does not want to utilize them. The Court of Appeal agreed with the High Court.

In *ON & 13 Others v Child Protection Team , Miscellaneous Civil Cause No. 116 of 2016, (HC) (MZ)*, the High Court of Malawi stated at page 14 para 6.1 that:

While the Constitution...protects the right to education as a fundamental right in Section 25, it also provides for the promotion of education and the eradication of illiteracy...in various other sections and incorporates the right to education as part and parcel of the right to development....under Section 13(f) of the Constitution..., it is provided that the State shall promote the welfare and development of the people of Malawi by adoption and implementation of policies and legislation aimed at achieving, among other things, education.

On 8 May 2023, the High Court of Malawi delivered a judgment declaring that the unwritten or written policy of the Government requiring all learners, including children of the Rastafari community, to cut their hair before admission into government schools is unlawful and constitutes a violation of the right to education and of freedom of religion, and amounts to discrimination on grounds of religious affiliation. It ordered the Government to abolish the said policy on the ground that it is unlawful, unconstitutional, unreasonable and unjustified.

In *Sesana and Others v Attorney General (52/2002) [2006] BWHC 1*, the Court found that the Government's refusal to allow the applicants, who were permanent

residents of the Central Kalahari Game Reserve (CKGR) to enter the CKGR unless they are issued with permits, was unlawful and unconstitutional because it violated their right of freedom of movement guaranteed by Section 14(1) of the Constitution. The Court also found that the Government's refusal to issue special game licenses to the Basarwa, San or Bushmen (necessary to ensure they could pursue their traditional lifestyle – hunting and gathering) and the refusal to allow them to enter the reserve without a permit, were unlawful and unconstitutional. The stoppage of the supply of food rations and the issuing of special game licenses amounted to condemning residents of the CKGR to death by starvation, in violation of the right to life set out in Section 4(1) of the Botswanan Constitution.

In *Matsipane Moselelhanyane & Others v The Attorney-General of Botswana, Court of Appeal, CALB-074-10*, a follow-up to the case *Sesana*, the applicants challenged the Matsipane refusal by the Government to allow the community to restore the borehole in the CKGR at their own expense. The Court of Appeal adopted a purposeful interpretation of civil and political rights to arrive at a conclusion that the Basarwa community have a right to access to water and that to accept otherwise would be a legitimization of inhuman and degrading treatment. The Court indirectly considered the ICESCR and the reference to the right to safe and clean drinking water as a fundamental human right that is essential for the full enjoyment of life and all human rights.

In *George Peter Mwanza and Another v The Attorney General: Selected Judgment No. 33 of 2019*, the Zambia Supreme Court dealt with the rights of HIV-positive prisoners to treatment, adequate food and improvements to prison conditions. The Supreme Court held that failure to provide prisoners with a balanced diet, and exposing them to congested prison conditions, violated their right to life and to protection from inhuman and degrading treatment; and ordered that the State immediately take measures to decongest the Lusaka Central Correctional facility and increase the allocation of resources to Lusaka Central Prison for purposes of improving the dietary needs of prisoners, special attention being paid to HIV positive prisoners on ART, and ensure that the dietary needs of the inmates comply with the prescriptions in the Prison Rules.

## 6.2. Foundational Zambian Caselaw. Lungowe Matakala, University of Zambia Law School.

It is crucial to amend the Zambian Constitution to include economic, social and cultural rights including the rights to food and education. Litigation may be used as an avenue for the realization of ESCRs, as demonstrated by the *Mwanza v A.G case*. Adjudicators should be trained in human rights law. A key area for

litigation relates to the protection of land rights of vulnerable communities to enable them to access land to grow their food. It is necessary to financially empower these communities so that they can maximize their food production output. Vulnerable groups should receive human rights training so that, when their rights are violated, they are able to claim recourse and fulfilment and protection of these rights.

### 6.3. Judicial Protection of ESCR, International and Comparative Developments. Christian Curtis, ESC Rights Specialist, OHCHR.

The conceptual discussion about the justiciability of economic, social and cultural rights went on for decades, but since the 1990s, there is expanding recognition that ESCR can be adjudicated by courts and quasi-judicial bodies (CESCR General Comments 3 and 9).

Today, there is a wealth of comparative national experiences, particularly in middle income countries (India, South Africa, Latin America, Eastern Europe). The adoption of the Optional Protocol to ICESCR in 2008 (entered into force 2013), establishing complaint and inquiry mechanisms for the ICESCR, is the international recognition that remedies for the violation of economic, social and cultural rights are possible, and there also are examples of this in the case-law of regional human rights systems (in the Americas, Europe and Africa). The legal basis for litigation can be the recognition of economic, social and cultural rights in constitution (as it is the case in countries of Latin America, Eastern Europe, as well as in South Africa or Kenya). Constitutions can also grant international treaties special hierarchy and consider them self-executing (including ICESCR, CRC, ILO conventions and regional treaties). Another approach can be based on the interdependence and indivisibility of civil and political rights and economic, social and cultural rights, through an expansive interpretation of civil and political rights to encompass economic, social and cultural rights dimensions (India); or through the application of equality/non-discrimination or due process clauses to economic, social and cultural rights (as to some extent happened in the US); or through statutory recognition of economic, social and cultural rights (common in Europe, US, Canada, Australia).

The legal standards to adjudicate economic, social and cultural rights include reasonableness (South African constitutional court); equality and non-discrimination; minimum core obligations/vital minimum (Colombian constitutional court); non-retrogression (i.e. assessing austerity measures); due process and procedural safeguards (in case for instance of forced evictions, cancellation of social benefits); proportionality of

limitations; standards regarding specific rights (for example, availability, accessibility, adaptability, quality for right to health or education).

The procedural avenues available to claim economic, social and cultural rights reflect different legal systems and traditions; it is important to distinguish individual vs collective violations affecting large groups of right-holders. It's necessary to adjust procedure and design adequate remedies (collective orders, guarantees of non-repetition, follow up of complex decisions). In the Zambian context, it would be necessary to amend the constitution to include economic, social and cultural rights (like in South Africa, Kenya, African francophone countries), make use of international law and standards by judges (training may be needed) and of comparative case law, or develop a statutory law as a basis for ESCR adjudication (e.g. right to education in the Children's code) and adequate procedural avenues (including broad standing, complex remedies and follow up by courts).

## 7. Institutional and social mobilization to secure greater realization of the rights to food and education.

### 7.1. Role of the Human Rights Commission: Complaints Mechanisms, Remedy and Recourse. Foster Hamuyube, Head, Research and Planning, Human Rights Commission.

Based on the Paris principles, a national human rights institution (NHRI) may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, NHRI may (a) Seek an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality; (b)



Inform the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them; (c) Hear any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law; (d) Make recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

The Zambia Human Rights Commission (HRC) is a NHRI established in 1996 (Article 230 (1) of the Constitution, Amendment, Act No. 2 of 2016). Its mandate is to ensure that the Bill of Rights is upheld and protected as provided for under Article 230 (2) of the Constitution. Its functions are to (a) investigate human rights violations; (b) investigate any maladministration of justice; (c) propose effective measures to prevent human rights abuse; (d) visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems; (e) establish a continuing program of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; (f) do all such things as are incidental or conducive to the attainment of the functions of the Commission. The HRC is a quasi-judicial remedy mechanism which handles complaints and can engage in negotiation, mediation and conciliation or make recommendations to appropriate bodies.

### 7.2. The role of the Legal Aid Board in the fight for human rights. Humphrey Mweemba, Legal Aid Board (LAB), Director.

The LAB was created under the Legal Aid Act No. 1 of 2021 of the Laws of Zambia. Its purpose is to offer legal aid to individuals who cannot afford private legal services in both civil and criminal cases. Act No. 20 of 1967 established the provision of Legal Aid in Zambia. The 1967 Act was repealed and replaced by the 2021 Act which expanded the scope and mandate of LAB. The LAB has ten Provincial offices, seven district offices and seven Legal services units (LSUs) located at Subordinate Courts<sup>174</sup>. The LAB offers legal advice, information, education and representation in human rights related cases in civil and criminal matters. It developed a mixed legal aid service delivery approach to provide services at community, district, provincial and national level through provincial and district LAB offices, community legal aid desk, police legal desks, correctional facility legal desks, LSUs at subordinate courts, university law clinics, pro bono legal services.

The LAB also recognized the services of paralegals to provide legal services on non-court/trial related matters, and recently conducted a mini survey on the implementation of the Children's Code Act of 2022 in relation to legal representation and disposal of cases at subordinate level in Western and North-Western provinces of Zambia. The preliminary results showed that the presence of Legal Aid Board is vital to expedite the trial and disposal of cases at subordinate court level as there are no private lawyers to represent juveniles or adults in rural parts of Zambia.



### 7.3. Joining Forces Alliance Collaborative Interventions. Carol Mweemba, Associate Director - Advocacy, Reports and Campaigns, World Vision Zambia.

In 2017, Child Fund Alliance, Plan International, Save the Children International, SOS Children's Villages International, Terre des Hommes International Federation, and World Vision International joined forces to advocate for the strengthening of the legal and policy framework for child rights in Zambia; create platforms for meaningful child participation in decision-making processes on issues of national interest; and influence and support interventions toward ending violence against children.

Among other, JFA held Policy dialogue with four Parliamentary Committees on child rights, focusing on budget allocation for children, child participation; engaged four committees on Ending Violence Against Children and ending child marriages; in 2022, JFA hosted the first-ever "African Children's Parliament". JFA also support the simplification of the law and formulation of the Child-Friendly Version. JFA works with UN agencies and the Zambian Government through the Department of Child Development, which is under the Ministry of Community Development and Social Services, and other line ministries such as the Ministry of Homes Affairs, and Ministry of Justice to ensure that laws and policies are correctly interpreted and applied for a conducive child environment.

The African Children's Parliament is a child-friendly space created to give children an opportunity to participate in continental, regional, and national level planning, legislative and policy processes. For the inaugural African Children's Parliament, over 100 children took part from across 14 countries with over 70 children taking part in person while others joined online. The children's parliament aimed to include the most marginalized and those most affected by inequality such as children with disability and those from rural and poor communities. Children called on duty bearers to invest more to make child participation more meaningful, and for increased budget allocation to Social Protection interventions.

JFA engaged with 36 Parliamentarians and four clerks representing four Parliamentary Committees (Education, Science and Technology, Legal Affairs, Human Rights and Governance, Youth, Sport, and Child Matters, and Gender Matters); made submissions during the Internal Legislation for Children's Code Bill with a focus on the harmonization of children's age and guidelines on Child Adoption and Foster Care Homes. JFA also published policy papers on key issues such as Children's Rights in the Digital Space and issued Press Statements and featured in the mainstream media like ZNBC TV and Radio to talk about and call for action from law enforcers on key events affecting children. In the area of food, nutrition and education, JFA is a member of the Sun II Project in Western province (Mongu, Shangombo, Kaoma and Kalabo districts), Lusaka and Luapula, and North-Western. In partnership with the National Food & Nutrition Commission (NFNC), JFA uses a multi-sectoral approach to improving food and nutrition by focusing on a child's first 1000 days and works with community structures such as Nutrition support groups to improve access food and hygiene.

## Day 2 – Tuesday, 10 October 2023

### 8. Rights-based budgeting: Mindsets, toolsets, skillsets. Allison Corkery, Director of Strategy and Learning, CESR.

This session was meant to strengthen the capacity of participants and entailed exercises for group work. Budget decisions should reflect the human rights obligation of a country: the goal of the budget should be the realization of human rights, ensuring everyone can lead a life of dignity, achieve wellbeing, realize their potential, and have the opportunity to find happiness and fulfilment. Human rights create obligations both of conduct and result. In terms of conduct, governments' actions should be reasonably calculated to realize the enjoyment of a right: for instance, adopting and implementing a plan of action to reduce unemployment.

In terms of result, States should achieve specific targets to satisfy a detailed substantive standard, for instance, reducing unemployment to agreed levels. In relation to the obligation to fulfil, *results can generally be achieved progressively, but conduct is an immediate duty.*

Obligations of conduct include to (1) take "concrete" and "targeted" steps, using all appropriate "policy levers"; (2) ensure steps taken protect people from the harms caused by business activity; (3) ensure steps taken improve goods and services; (4) use the criteria such as availability, accessibility and quality; (5) ensure steps taken are properly funded (obligation to invest "maximum available resources", generating and spending public revenue in an "equitable" and "effective" way; (6) make sure policymaking (including budget making) is transparent, participatory, and accountable; (7) avoid harms overseas, including by cooperating internationally (States' extraterritorial obligations).

Obligations of result include: (1) eliminate extreme deprivation (obligation to achieve the "minimum core" of each right. This means that sufficient revenue should be generated to invest in realizing basic levels of rights for all; allocations should prioritize the achievement of basic levels of rights for all; and that financial management systems should ensure efficient management of funds allocated; (2) make sure things are getting better over time, as quickly as possible (progressive realization) and are not getting worse (non-retrogression): this means that allocations should grow; reductions should be justified in human rights terms; financial management systems should be improved over time; (3) Leave no-one behind (non-discrimination and substantive equality): meaning that resource generation should not unjustly impact particular groups and that allocations should prioritize closing the gaps in human rights enjoyment between different groups.

Budget analysis is the analysis of how resources are generated, allocated and spent. Budget figures are always relative. To determine if figures are high or low, we need to put them in relation to concrete situations. For example, doubling the budget for ECE in a given country must be put in relation to the overall budget increase (to assess the ECE increase as percentage of the budget); the increase of operational costs etc. It is necessary to make budgetary figures comparable. For example, in terms of resource allocation, it is necessary to analyze expenditure ratios (percentage out of a total) by sector; expenditure ratios by sub-sector; per unit or per capita expenditure by sector and sub-sector; Open Budget Survey results (on participation, oversight, transparency)<sup>175</sup>. In terms of resource generation, it is necessary to analyze government revenue as percentage of GDP; tax revenue as percentage of government

revenue; different tax types (e.g. income, corporate, VAT) as % of total tax revenue; tax (by type) as a share of a taxpayer's total income; and average illicit financial flows. In terms of resource expenditure, it is necessary to analyze the variance between budgeted amounts and actual budget outturns; budget turnaround time in relation to policy commitment; efficiency of spending, including transaction costs and leakages.

## 9. Plugging the data gaps and monitoring on ESC rights and applying the principle of LNOB in budgeting.

### 9.1. Budget Analysis Toolkit: Integrating RBA and RB methodology. Miselo M. Bwalya, Research Fellow, ZIPAR.

The 8NDP pursues the provision of free education from early childhood to secondary school, the continuous recruitment and placement of teachers in needy areas, the provision of bursaries, using a decentralised approach, the review of the education curriculum, and increased support to Learners with Special Educational Needs (LSEN) at all levels. The Medium-Term Expenditure Framework (MTEF) 2023-2026 has the objectives to expand education infrastructure and teaching resources at existing and new schools; ensure continuous teacher recruitments; prioritise the completion of the existing infrastructure for TEVET; reduce bursary loan repayment amounts and increase the payment period; re-instate meal allowances. The education sector does not have a sector wide policy or strategic plan. The 2023 budget puts emphasis on the continued implementation of free education, an additional recruitment of 4,500 teachers, and the provision of bursaries for vulnerable learners through CDF. The analysis of expenditure trends shows that the percentage share of expenditure by function for education spending has been declining from 16.5% in 2017 to 10.4% in 2022, to restart growing (13.9%) in 2023. The 2023 budget allocated 60% to primary education, 24% to secondary education, 8% to university education and 2% to ECE, for a per capita expenditure of ZMW 30,536.12 for university, ZMW 5,591.88 for secondary education, ZMW 3,557.44 for primary education, and ZMW 1,787.17 for ECE.

In order to achieve progress, many data-related issues remain to be addressed, including the lack of updated data and statistics in the social sectors to guide the formulation of the development plans; the Detailed Census and the Living Conditions Monitoring Survey (LCMS) are yet to be unveiled (and were both conducted later than scheduled). Also, the Comprehensive administrative Data on Education is not yet available. Hence, the 8NDP was developed and is being

implemented without key statistics and monitoring is a challenge. Primary data collection is expensive and can be affected by external factors, such as COVID-19. Besides prioritising funding for data collection for routine surveys, the government can leverage on administrative data. Large programmes like the CDF and the SCT must be designed with strong monitoring and evaluation (M&E) systems. The M&E function must be decentralised, M&E officers must exist at local level.

### 9.2. Presentation of a Monitoring Framework for the Rights to Food and Education. Enrico Muratore Aprosio, Consultant, OHCHR.

To build a monitoring framework for the rights to food and education, it is necessary to adopt a human rights-based approach to data (HRBA), built on these principles: (1) participation in the data collection process, especially by the marginalized; (2) data disaggregation to guard against discrimination based on sex, age, ethnicity, disability, sexual orientation or religion; (3) self-identification that does not reinforce further discrimination against vulnerable groups; (4) transparency regarding the data collection process; (5) privacy of respondents and maintaining confidentiality of their personal data; (6) accountability in data collection and use.

Human Rights Mechanisms made several recommendations to Zambia: in 2022, the CRC noted the lack of disaggregated data on children and recommended to (1) strengthen the data-collection system, with data covering all CRC areas, disaggregated by age, sex, disability, geography, ethnic/national origin and socioeconomic background; (2) analyze and provide policymakers with data on children's rights to improve monitoring and legislation, policies and implementation of children's rights; (3) develop and systemize data on children in poverty, in the street, CWD and child laborers, children in conflict with the law, or suffering from ill treatment, abuse, neglect (including sexual abuse), taking into account the OHCHR report Human Rights Indicators: A Guide to Measurement and Implementation.





In 2019, the CERD regretted the lack of updated disaggregated data on various groups and recommended that Zambia collect and provide updated disaggregated data on the socioeconomic situation of ethnic minorities, including Asians and Europeans, migrants, refugees and asylum seekers.

The “Study on advancing the rights to food and education in Zambia” also recommended that the GRZ (1) strengthen human rights budgeting data systems, data disaggregation and collection to track investments in realizing the rights to food and education and SDGs 2 and 4, reaching those furthest behind first; (2) increase budget allocations to step-up capacity of ZamStats and line Ministries for disaggregated data collection, statistics and analysis, in line with the HRBA to data; (3) allocate and execute adequate budgets to include the access of undocumented migrants and nationals to IDs, data and statistics, so they can access rights and services.

The UNCT, UN agencies, programs and funds should (4) ensure monitoring of implementation of Zambia’s ESCR obligations, especially those related to the rights to food and education, and assist the GRZ and NMIRF to respond to reporting obligations (especially under CESCR) and to implement HRM recommendations on the rights to food and education; (5) support and facilitate inclusive processes at national and local levels and participation of women, youth and most vulnerable groups from peri-urban and rural areas, in State reporting processes to HRM, as well as in UPR and budgetary processes; (6) strengthen the GRZ capacity (ZamStats and line ministries) to apply HRBA to programming and data collection, and observe fiscal discipline, especially at decentralized levels. CSOs should monitor budget and track the GRZ investments in the rights to food and education and design an index to assess/improve budget allocations and spending on the rights to food and education, with relevant stakeholders. The index should encourage greater investment towards the GRZ commitments to the rights to food and education.

### 9.3. Right to Food and Education Data Gaps. Emmanuel Kilio, Head of Monitoring and Evaluation, WFP.

Existing data collection activities in Zambia include the Population Census by ZamStats (every 10 years); the Living Conditions Monitoring Survey by ZamStats (every 3 years) and the Zambia Demographic and Health Survey (DHS) by the Minister of Health and ZamStats (every 5 years). Additionally, the Education Statistical Bulletin contains data on enrolment, pupil-teacher ratio, drop-out, transition, etc.; ministerial statements contain data on budget allocation and expenditure; the Statistical



Year Book contain data related to progress in school feeding and universal free education in primary and secondary schools. The Annual Vulnerability In- depth Assessment by DMMU focuses on food insecure households and related interventions; the Crop Forecast Survey by the Ministry of Agriculture informs on the expected production and overall food security. Other surveys include those by JCTR on the cost of the food basket, on the cost of a nutritious diet by the WFP, Fill the Nutrient Gap (food price monitoring), ad hoc assessments, and evaluations.

Nonetheless, the GRZ action suffers from (1) lack of comprehensive data on food security, nutrition, food consumption at the lowest level, education based on socio-economic characteristics, and disability; (2) insufficient frequency and timeliness of surveys, resulting in the inability to have year-to-year nationwide and lower level specific analysis on some indicators; (3) limited systematized data collection (standardized methodology including administrative levels, drawing bigger sample size, and collecting data on attributes of interest); (4) limited disaggregation by age, sex, disability, geographical location ethnic/national origin and socioeconomic background; and (5) lack of coordination: fragmented data collection, analysis, reporting and utilization mechanisms and efforts. More comprehensive and disaggregated data collection is needed across key **indicators** of the right to food to inform evidence-based policies and track progress.

To address challenges, it is necessary to build partnerships, improve data disaggregation, increase funding for statistics, strengthen data collection systems, capacity building and skills transfer on data collection, and leverage technology to enhance the quality and timeliness of data collection and analysis.

#### 9.4. Human Rights Budget Analysis. Learnings from Kenya. Martin Mulwa, OHCHR Surge Economist.

Countries in every region of the world are experiencing increasing poverty and inequality levels. Most low- and middle-income countries are either debt distress or at a high risk. Debt servicing affects critical investments in social protection, health care, education, and other essential services. Austerity measures are increasingly becoming the default policy instrument to maintain debt sustainability. Economic growth on its own will not redress structural injustices or fulfil people's human rights. A human rights approach to economic analysis can contribute to a renewed social contract between governments and their people and prioritize the well-being of people and planet. Human rights approach to budgeting is an important tool to eliminate discrimination and reduce inequalities, by investing in economic, social, and other rights, dismantling structural barriers to equality, and promote SDG progress. The human rights approach to budgeting uses the human rights framework to analyze budgets and budget trends over time, critically examining how governments allocate maximum available resources to progressively realize economic, social and cultural rights in the country. The budget process is particularly important in order to attain this goal.

In Kenya, OHCHR undertook a human rights-based analysis of the country's 2022/2023 budget, integrating a leave no one behind (LNOB) perspective,



to examine how budget allocations and expenditures impact the progressive realization of economic and social rights, and efforts to address inequalities in line with Agenda 2030. Focus was placed on social sector spending, to support implementation of recent HRM recommendations calling for increased budget allocations and resources for SDGs with a focus on vulnerable and disadvantaged groups. The analysis was conducted against a background of decreasing fiscal space, growing debt servicing costs, and risks of austerity policies. Different stakeholders were engaged, including the National Human Rights Commission and CSOs, to also strengthen their knowledge and capacity on human right budgeting and use the analysis for their own advocacy with the government at the national level. The analysis was also used to engage a group of parliamentarians around the need to strengthen human rights budgeting and financing for SDGs. Working with the UN economist network, coordinated by the RCO economist, and comprising economists from UNICEF, UNDP, OHCHR, UNFPA and UN Women, the 2023/24 budget was analyzed from a LNOB and human rights perspective, and the analysis was shared with the UNCT and used to engage the government in upcoming public finance management reforms. The analysis also informed other streams of engagement including working with civil society and community-based networks at the sub-national level. Sub-national level human rights budget engagement work was carried out to engage citizens at the sub-national level in budget-making processes and ensure participation, transparency, and accountability, working with civil society and community budget champions in three pre-selected pilot counties.

The objective was to strengthen public participation and ensure that marginalized groups are seen and heard in the budget-making process at the sub-national level, in line with the human rights principles and State obligations to promote participation, transparency, and accountability to ensure that resources are allocated in a way that promotes equality and non-discrimination and ensures sustainable development. When public budgets integrate human rights obligations and UPR and other HRM recommendations, they can be powerful levers for the progressive realization of ESC rights and SDGs progress. Human rights budget analysis is a useful tool for monitoring gaps between policies and action, supporting progress in SDGs, and for advocating alternative policy choices and prioritization.

#### 9.5. Leave No One Behind in Budgeting: The Case of Persons with Albinism. Muluka-Anne Miti-Drummond, Independent Expert, Persons with Albinism.

In August 2021, the UN Human Rights Council appointed Muluka-Anne Miti-Drummond (Zambia), as UN Independent Expert on the enjoyment of human

rights by persons with albinism, succeeding to Ms. Ikponswa Ero, appointed first ever UN Independent Expert on albinism in 2015, with the responsibility to promote, protect and advance the rights of persons with albinism, including through dialoguing with States and identifying best practices. Albinism is a rare, non-contagious, genetically inherited condition which occurs worldwide regardless of ethnicity or gender. The term, "albino" is viewed by some as offensive, as it places the emphasis on the condition rather than the person. The accepted term is "person/s with albinism". Both parents must carry the gene for a child to be born with albinism and there is a one in 4 chance that a child will have albinism and a 1 in 2 chance that the child will be a carrier. Statistics on the prevalence of albinism are contested: one in 18,000 to 20,000 in Europe and North America; one in 5,000 to 15,000 in Africa; one in 28 to 6,500 in indigenous populations in some places. Persons with albinism face specific challenges, such as low vision, nystagmus, photophobia and strabismus, lack of pigmentation which increases their risk of skin cancer; bleeding, lung, bowel and neurological problems, HPS, CHS and Griscelli syndrome.

Several factors affect their education and employment, such as the failure to accommodate and provide adaptive devices for low vision, the lack of accommodation for other conditions associated with albinism, bullying, stigmatization, and discrimination. The Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) recommended to prioritize the implementation of certain minimum core obligations, especially for vulnerable or marginalized groups, including with regards to the rights to health, food and education. States should ensure that revenue is raised, allocated and spent in a manner which addresses inequalities in society, also in line with the LNOB principle, SDG10 on reducing inequalities and SDG5 on gender equality.

Data collection is essential for budgeting, and lack of resources is not an excuse. States should undertake deliberate, concrete and targeted measures which can be implemented with specific funding to ensure the investment of maximum available resources (also based on SDG 17), through internal taxation, natural resources, debt and deficit financing, FDI, ODA, South-South cooperation, institutional investors, such as pension funds, funds raised by philanthropic foundations, funds raised by NGOs and remittances sent home by migrants working overseas. States must avoid retrogression of budget allocations. The Independent Expert on foreign debt's Guiding Principles on Human Rights Impact Assessments of economic reforms prescribe that human rights should be at the centre of good policymaking to ensure economic reforms "help advance societies, rather than hinder people's lives".



Active participation and transparency are key to include those who are often invisible. States must provide comprehensive, clear, reliable, timely and relevant public reporting on the public finances, and ensure accessibility of such reports. They must have procedures in place, including judicial and administrative procedures, to provide effective remedies in case of violation of the rights of specific vulnerable groups including persons with albinism. It is necessary to foster research and data collection to further understand root causes, prevalence, challenges, genetics and associated conditions. Other needs include that of technical assistance for investigations (forensic, witness protection, cross-border collaboration), due to aggressions murders of persons with albinism. Legal review and adoption of specific laws protecting the rights of persons with albinism, particularly with regards to Harmful Practices impacting Persons with Albinism: Accusations of Witchcraft and Ritual Attacks (HPAWR), and human trafficking. Health needs should also be addressed through adequate legislation, capacity building of medical professionals, treatment for associated conditions, provision of sunscreen, adaptive and assistive devices, and appropriate policies including to tackle attitudinal barriers.

Similarly, in the field of education, persons with albinism need to see their rights protected by adequate legislation, and fulfilled through the provision of reasonable accommodation, assistive and adaptive devices, based on appropriate specific policies and adequate budgets.

#### 10. Group Work and Wrap-up. Conclusions and Key Recommendations - the Way Forward. Dutima Bhagwandin, Enrico Muratore Aproso.

Participants split in three groups focusing on the selection of key recommendations of Human Rights Mechanisms and of the report of the study, to accelerate the progressive realization of the human rights to

adequate food and education for all in Zambia. Groups were also asked to reflect around possible practical strategies for the implementation of key recommendations. Groups focused respectively on (A) legal and policy recommendations, (B) budget monitoring and advocacy recommendations (MAR, taking account debt/loan agreements), and (C) monitoring and data-related recommendations.

A. Implementation of legal and policy recommendations:

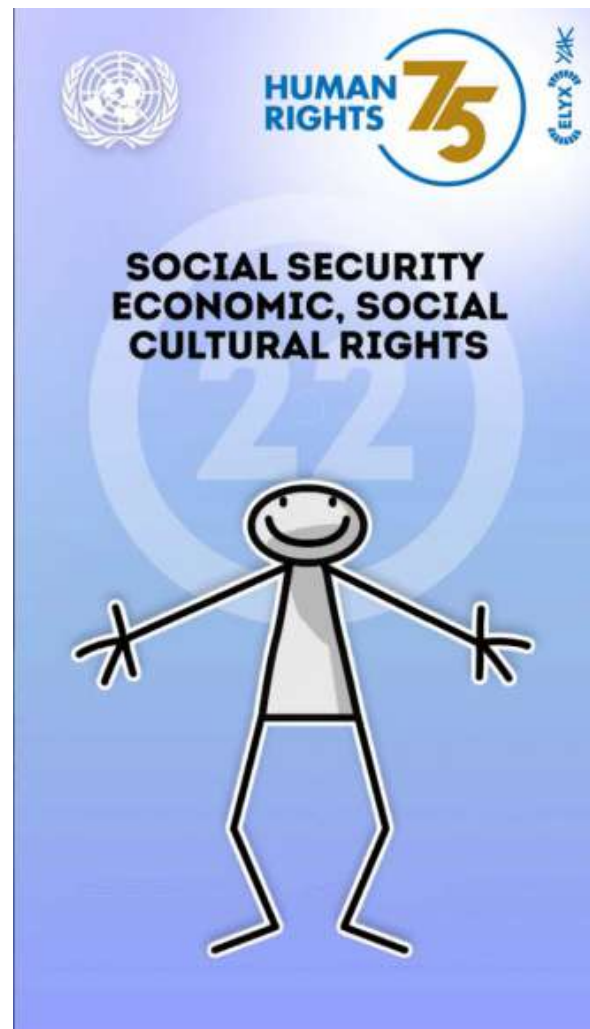
- (1) The government should promote a new referendum to amend the Constitution and ensure the inclusion of economic, social and cultural rights in the Bill of Rights. The UN should assist in the review of the Bill of Rights and the redrafting of amendments to also include other important rights that were omitted, e.g. refugee rights. The cost of the inclusion of ESCRs in the Constitution should be evaluated and this information should be used to guide the phrasing of the rights, bearing in mind the principle of progressive realization (e.g. the South African Constitution provides for the right to “access housing”). Timing is key. This process should occur before and far from the time for elections to avoid being politically kidnapped. On the other hand, the organization of the referendum would require sufficient resources, communication support to generate turnover, which may be higher if the referendum is associated with the organization of the elections. It is crucial to ensure public participation and ensure that CSOs play an active role and sensitize the citizenry.
- (2) The UN should assist the GRZ in constitutional and legal reform efforts by conducting a gap analysis of human rights instruments to be incorporated, provide financing and technical support for the various processes, and support CSOs participation.
- (3) The GRZ and the UN should work towards the finalization and adoption of the National Action Plan on Business and Human Rights; the UN should provide financial and technical support and support public participation and awareness raising by CSOs.
- (4) The UN should support legal aid organizations to promote an ESCR legal aid and strategic litigation program with focus on the rights to food and education. Legal reform advocacy is needed to amend the legal aid provision so that the Board can provide legal aid on ECRs not only to persons below 18 years of age. It is also important to advocate for increased budgetary allocation for both legal aid and strategic litigation.

B. Implementation of budget monitoring and advocacy recommendations (MAR, taking account debt and loan agreements).

- (1) The government should develop progressive tax measures to scale up social welfare.
- (2) An adequate financial allocation should be provided by the government and technical support by the UN to support ZamStats in the implementation of data-related recommendations to guide budget allocations in the field of ESCR, with particular focus to the rights to food and education.
- (3) The identification of maximum available resources and allocations to the progressive realization of the rights to food and education should be the object of a detailed 10-year costing budget.
- (4) The UN should provide technical and financial support to these processes, including to the organization of a human rights assessment of agreements with the IMF and other lenders and donors.
- (5) Such assessment should be connected to advocacy efforts at national and global levels for reforms in the international financial architecture so it can become more compliant with the obligations of States and other duty bearers, including financing and other international organizations, and private financial actors, in the field of human rights, and abandon conditionalities, measures and policies that are likely to cause the retrogression of economic, social and cultural rights, particularly the rights to food and education.
- (6) CSOs should ensure regular budget monitoring, work with government and partners on regular impact analyses, and develop a joint advocacy strategy.

C. Implementation of monitoring and data-related recommendations.

- (1) The government should strengthen its capacity at both national and local levels in the areas of human rights budgeting, data systems and data disaggregation and collection; invest in a robust Monitoring and Evaluation system able to provide both qualitative and quantitative data; and create a multi-stakeholder data repository and coordination center to support data driven decision making and address data gaps.
- (2) The government should fill legal gaps necessary to effectively fund and empower the National Mechanism for Implementation, Reporting and follow-up.
- (3) UNCT, agencies, donors should provide technical and financial support to the National Mechanism for Implementation, Reporting and follow-up, and to the investment data. Working with NGOs, they should support continuous monitoring of the implementation of Zambia's ESCR obligations; support and facilitate inclusive processes at national and local levels with the participation of women, youth and other marginalized groups; and strengthen the capacity of the government to apply rights-based approaches to programming and data collection. Technical support should also be directed at government line ministries and local authorities.
- (4) Strategies for implementation. Advocacy by relevant stakeholders is necessary to enable the activities above.



## ENDNOTES

<sup>1</sup> Lars Jensen, “Avoiding ‘Too Little Too Late’ on International Debt Relief”, Development Futures Series Working Papers (New York, UNDP, 2022).

<sup>2</sup> As part of the project *Advancing the realization of the rights to food and education in Zambia*, between September 2022 and August 2023, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UN Zambia conducted a study resulting in the present report and Annex 2: Monitoring Framework for the Rights to Food and Education.

<sup>3</sup> And other key processes such as Zambia’s eventual reporting to the CESCR and the implementation of the Cooperation Framework for the period 2023-2027.

<sup>4</sup> The others are the International Covenant on Civil and Political Rights (ICCPR); Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). It has also accepted the first OP to the ICCPR. It has not ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) nor the first and second OPs to the CRC. It has ratified the African Charter on Human and Peoples’ Rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and signed, but not ratified, the African Charter on the Rights and Welfare of the Child.

<sup>5</sup> CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23.

<sup>6</sup> CESCR, *General Comment No. 9: The domestic application of the Covenant*, 3 December 1998, E/C.12/1998/24.

<sup>7</sup> UNHR. Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016, 27 February-24 March 2017, A/HRC/34/58/Add.2, para. 13.

<sup>8</sup> **UDHR Article 8:** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

<sup>9</sup> ICESCR articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3) seem to be of immediate application.

<sup>10</sup> According to a Statement by the CESCR on public debt, austerity measures and the ICESCR, “Low-income families...and workers with the lowest qualifications are disproportionately affected by...job cuts, minimum wage freezes and cutbacks in social assistance benefits, which potentially result in discrimination on the grounds of social origin or property (art. 2 [2])...Reductions in the levels of public services, or the introduction of or increase in user fees in areas such as childcare, and preschool education, public utilities and family support services have a disproportionate impact on women, and thus may amount to a step backwards in terms of gender equality (arts. 3 and 10).” (E/C.12/2016/1, para. 2).

<sup>11</sup> International financial institutions (IMF and IBRD) and international organizations (IOs) must comply with the UDHR as part of customary international law. As specialized UN agencies, IMF and IBRD must act in accordance with the Charter, which sets the realisation of human rights as one of the UN purposes. Lending States should not impose obligations on borrowing States leading them to adopt retrogressive measures in violation of ICESCR.

<sup>12</sup> Considering the Guiding principles on foreign debt and human rights (A/HRC/20/23) and the Guiding Principles on Extreme Poverty and Human Rights (A/HRC/RES/21/11) which call for human rights impact assessment of conditionalities attached to loans or of measures which create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty.

<sup>13</sup> OHCHR, *The Status of National Mechanisms for Reporting and Follow-up in Southern Africa: Practices, Challenges and Recommendations for Effective Functioning*, (Pretoria, 2021).

<sup>14</sup> UNHRC, *Report of the Special Rapporteur on the right to food on her mission to Zambia*, 25 January 2018, A/HRC/37/61/Add.1.

<sup>15</sup> <https://www.ohchr.org/en/hr-bodies/upr/zm-index>.

<sup>16</sup> **UDHR Article 25:** 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

<sup>17</sup> **ICESCR Article 11:** 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

<sup>18</sup> **ICCPR Article 6:** 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In addition, ICCPR Article 1.2 states: “All peoples may, for their own ends, freely dispose of their natural wealth and resources ... In no case may a people be deprived of its own means of subsistence.”

<sup>19</sup> **CRC Article 24:** 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

<sup>20</sup> **CRC Article 27:** 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

<sup>21</sup> **CEDAW Article 12:** 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

<sup>22</sup> **CEDAW Article 14:** 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

<sup>23</sup> **CRPD Article 25 - Health:** States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

<sup>24</sup> **CRPD Article 28:** Adequate standard of living and social protection 1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

<sup>25</sup> CESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, E/C.12/1999/5.

<sup>26</sup> Dietary needs imply “a mix of nutrients for physical and mental growth, development and maintenance, and physical activity, that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation ... including breastfeeding” (ibid., para. 9).

<sup>27</sup> States should regulate activities of the private business sector and civil society to be in conformity with the right to food (ibid., para. 27).

<sup>28</sup> The national strategy should be formulated and implemented in “compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary” (ibid., para. 22).

<sup>29</sup> It should contain “guarantees of full and equal access to economic resources ... including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology” (ibid., para. 22).

<sup>30</sup> **UDHR Article 26:** 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

<sup>31</sup> **ICESCR Article 13:** 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

<sup>32</sup> **ICESCR Article 14:** Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

<sup>33</sup> **ICCPR Article 18:** The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.

<sup>34</sup> **CRC Article 28:** 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

<sup>35</sup> **CRC Article 29:** 1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

<sup>36</sup> **CEDAW Article 10:** States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve



this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods; (d) The same opportunities to benefit from scholarships and other study grants; (e) The same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; (f) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely; (g) The same Opportunities to participate actively in sports and physical education; (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

<sup>37</sup> **Article 24 CRPD** - Education: States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:

The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms, and human diversity;

The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

Enabling persons with disabilities to participate effectively in a free society.

In realizing this right, States Parties shall ensure that:

Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

Reasonable accommodation of the individual's requirements is provided;

Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

<sup>38</sup> **ICERD Article 5**: In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(v) The right to education and training; (vi) The right to equal participation in cultural activities.

<sup>39</sup> **ICERD Article 7**: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

<sup>40</sup> UNESCO, *Convention on Technical and Vocational Education*, 10 November 1989.

Available at <https://www.unesco.org/en/legal-affairs/convention-technical-and-vocational-education>.

<sup>41</sup> UNESCO, *Convention Against Discrimination in Education*, 14 December 1960. Available at

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-discrimination-education>.

<sup>42</sup> Zambia has also ratified the Education 2030 Agenda whose objectives are similar to those in the convention.

<sup>43</sup> CESCR, *General Comment No. 11: Plans of action for primary education (article 14 of the ICESCR)*, 10 May 1999, E/C.12/1999/4.

- <sup>44</sup> CESCR, *General Comment No. 13: The right to education (article 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10.
- <sup>45</sup> The State should ensure the adequate functioning of the Zambian school system and ensure that the material conditions of teaching staff are “continuously improved”.
- <sup>46</sup> The standards of availability, accessibility, acceptability and adaptability apply to all levels of education.
- <sup>47</sup> Their application should be regularly reviewed to avoid that they lead to the maintenance of unequal or separate standards for different groups and are not continued after the objectives for which they were taken are achieved.
- <sup>48</sup> Zambia also signed the 2018 Global Disability Summit Charter for Change and committed to mainstream disability in all sectors through focal point persons and to improve targeting and programming for girls and women in rural areas.
- <sup>49</sup> Zambia, *The Constitution of Zambia (Amendment) (No. 37) Act*, 2016.
- <sup>50</sup> <https://repository.jctr.org.zm/handle/123456789/130?show=full>
- <sup>51</sup> *Mwanza & Another v Attorney General* (Appeal 153 of 2016) [2019] ZMSC 33 (9 December 2019). Available at <https://old.zambialii.org/node/14349>.
- <sup>52</sup> The ZHRC spearheaded the design of key issues to be addressed under 8NDP and the development of related indicators in the 8NDP implementation plan and budget. Resources allocated to this area await approval by Cabinet.
- <sup>53</sup> The ZHRC conducted a baseline assessment to promote a National Action Plan on business and human rights to domesticate related UN Guiding Principles, address national legal/policy gaps and encourage businesses to adopt best practices.
- <sup>54</sup> a) Enhance access to quality, equitable and inclusive education; b) Improve technical, vocational and entrepreneurship skills; c) Increase access to higher education; and d) Enhance science, technology and innovation.
- <sup>55</sup> a) Strengthen public health; b) Increase access to quality health care; c) Enhance food security and nutrition; and d) Strengthen integrated health information systems.
- <sup>56</sup> The CRC recommended to strengthen the ZHRC by providing it with adequate human, financial and technical resources to effectively and independently discharge its mandate, including to effectively receive, investigate, and address complaints by children in a child-sensitive manner.
- <sup>57</sup> <https://www.globalhungerindex.org/>.
- <sup>58</sup> Within the Government COVID-19 recovery strategy, the FAO is supporting activities outlined under Pillar 4: Preservation of Socio-Economic Stability and specifically Strategy 3 of Pillar 4: Livelihoods and Food Security.
- Provide support to additional households to promote dietary diversity and income resilience among low-income households both in the urban and rural areas through promoting income diversification at household level.
  - Support commodity aggregation to increase and stabilize food supply among small holder agricultural households.
  - Scale up technical support to SUN II on promoting value addition and preservation, especially for perishable commodities to develop the local value chains and build resilience to shocks that disrupt trade. The support will also include forest products of such as baobab fruit and Moringa.
  - Support investments in local value chains for processed imported commodities that are in short supply due to regional trade restrictions to develop local value chains and reduce the impact of trade disruptions, e.g. wheat products such as pasta and noodles, processed dairy products, milk alternatives like soy milk etc.
  - Work with the Ministry of Agriculture and Ministry of Local Government in creating conducive market environments in light of COVID-19
  - Work with the Ministry of Agriculture and MoH in including the agricultural sector as essential service providers – particularly if the pandemic escalates and spurs the enforcement of a lockdown, to ensure that food supply disruptions are minimized.
  - Support programs promoting gender-sensitive COVID-19 recovery interventions.
- Building Back Better and Greener: Integrated approaches for an inclusive and green COVID-19 recovery in rural spaces. Under this Flexible Multi-partner Mechanism (FMM) project, FAO is implementing the following activities in line with 3 outputs of the FAO global priority area #3 of COVID-19 recovery strategy:
- Priority Area 3: Enhance food security and nutrition status.
- Outcome 3: To enhance capacities of government and stakeholders in the development and promotion of food and nutrition programmes and strategies aimed at improving the availability, access, utilization and consumption of food.
- Output 3.1: Improved capacities and political support of government and stakeholders for developing coordinated policy and regulatory frameworks and investment plans for improved food and nutrition security.
- Output 3.2: Strengthened human resource and organizational capacities in the food security and nutrition domain.
- Output 3.3: Evidence generated for policy dialogue and operational programming on complementarities between social protection and agriculture interventions and extension of social security.
- Activity 1: Work with the Ministries of Agriculture and Ministries of Social Services at national, provincial, and district level to develop institutional arrangements required to link extension services to social protection programmes that contribute to COVID-19 green recovery.
- Activity 2: In all countries, carry out institutional assessments to identify the challenges and opportunities to implementing integrated and gender sensitive support packages at local and national level.
- Activity 4: Facilitate training of local extension providers to deliver support to vulnerable and marginalized individuals and communities.
- Activity 5: Promote knowledge sharing and develop the capacity of stakeholders to integrate and address issues related to gender, inclusivity, and empowerment issues for enhancing access to social and agricultural services.

<sup>59</sup> United Nations Zambia. *UN Common Country Analysis 2021*, p. 41.

<sup>60</sup> Zambia Statistics Agency, Zambia Ministry of Health, and ICF. *Zambia Demographic and Health Survey 2018*. (Lusaka, Zambia, and Rockville, Maryland, USA, Zambia Statistics Agency, Zambia Ministry of Health, and ICF, 2019), p. 179.

<sup>61</sup> United Nations Zambia. *UN Common Country Analysis 2021*, p. 41.

<sup>62</sup> <https://zambia.un.org/en/194634-un-common-country-analysis-2021>.

<sup>63</sup> Conversation with the Carter Center in Zambia, and other colleagues, 26 October 2022.

<sup>64</sup> Volume 12 of the Acts of Parliament includes the Environmental Protection & Pollution Control Act, Fisheries Act, Forests Act, Water Act, Fencing Act, Lands Acquisition Act, Land Survey Act, Agricultural Lands Act, Land (Perpetual Succession) Act, Lands & Deeds Registry Act, Lands Act. Volume 14 includes the Plant Variety & Seeds Act, Dairy Produce Board Establishment Act, Dairy Produce Marketing and Levy Act, Plant Pests and Diseases Act, Agricultural Products Levy Act, Noxious Weeds Act, Dairies & Dairy Produce Act, Agricultural Statistics Act, Coffee Act, Cotton Act, Agriculture (Fertilisers & Feed) Act, Food Reserve Act, Agricultural Credits Act. The Food and Nutrition Act No 3 of 2020 was adopted to enhance the multi-sectoral response on food security and nutrition.

<sup>65</sup> Extracts from the Food Systems Summit commitments in New York, September 2021. (The official statement delivered has not been made public yet):

The President committed to ensuring a robust agricultural value chain, which includes the need to establish a good distribution network in addition to investing in food processing in order to improve production; and to enhancing the use of appropriate technology, innovation and agricultural research, as key results in enhancing productivity and improving food security. The [c]ountry has embarked on promoting Sustainable Agricultural Practice, Forest Management as well as regeneration of indigenous forest species as part of the commitment to the 2015 Paris Agreement on Climate Change adding to the robust tree planting program. The country has developed measures expected to have a positive impact on food security: Improvement of crop and livestock variety, Enhancement of animal disease control and mitigation, Irrigation schemes, Expansion and improvement of provision of agricultural extension services, Smallholder mechanization, Provision of affordable financial products to small scale farmers, Rejuvenate land and protect biodiversity. Other food and nutrition related commitments were made at the Nutrition for Growth Summit commitments in Japan, December 2021.

Source: FAO.

<sup>66</sup> As a follow-up to the Food Systems Summit, regional consultations were held around the Summit's five action tracks: (1) Ensure access to safe and nutritious food for all; (2) Shift to sustainable consumption patterns; (3) Boost nature-positive production - Environmental and climate action for sustainable food production; (4) Advance equitable livelihoods (gender, equitable access to land, urban – rural); and (5) Build resilience to vulnerabilities, shocks and stress. FAO assessed initial food systems to establish a baseline before government's interventions.

<sup>67</sup> Such as the implementation of the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. The CRC also recommended to improve children's access to safe drinking water, sanitation/hygiene and environmental protection, and access to and the availability and affordability of food; to promote exclusive breastfeeding of infants for the first six months; and to ensure that children in street situations are provided with adequate food, clothing, housing, health care and educational opportunities.

<sup>68</sup> The agricultural budget has steadily increased over the last four years:

	ZMW billion	Share of the total national budget
2020	4	3.7%
2021	8	6.7%
2022	8	4.7%
2023	12	7.4%

Agricultural budget allocations are heavy on the input subsidy programme:

<b>Zambia National Budget 2003 Budget Allocation to Agriculture</b>	<b>ZMW</b>
<b>Total Budget Agriculture, Fisheries and Livestock</b>	<b>11,209,692,002</b>
Farmer Input Support	9,119,154,149
Extension Services	789,528,363
Irrigation & Farm Block Development	426,611,657
Animal Disease Control	274,397,833

To promote agriculture and livestock development, Government has taken the following budgetary measures for the 2023 budget:

- Formulation of the Agricultural and Livestock policies (Revision of the National Agriculture Investment Plan, Formulation of National Animal Health and National Aquaculture and Fisheries policies, Revision of the Animal Health Act No. 27 of 2010 and Animal Identification Act No. 28 of 2010).
- Improvement of extension service delivery to increase crop productivity among small-scale farmers, with 1.5 million being targeted to access extension services. Government has commenced recruitment of 256 extension officers and additional officers will be recruited in 2023. Government will procure 1,623 extension kits, 1,000 tablets, 621 motorbikes and rehabilitate over 536 camp houses.
- Improvement of mechanisation among small holder farmers. In 2023, sixteen dams will be constructed. To actualise the Chiansi Irrigation Scheme in Kafue District, Government has secured financing of USD 10 million from the African Development Bank to cover 600 hectares infield irrigation by smallholder farmers. The financing will also be used to establish storage facilities and a youth skills development centre. This project will benefit over 12,000 people.
- Revision of the FISP to include extension service support; irrigation development; access to finance; support to value addition; and storage and logistics to ensure better targeting and equity in the provision of subsidies and services. The new expanded programme will be called Comprehensive Agriculture Support Programme. Under the Comprehensive Agriculture Support Programme, Government will be scrutinising beneficiaries in detail to ensure that only targeted and deserving people receive subsidised fertilisers.
- Development of Farm Blocks: Construction of key infrastructure such as main access and internal roads, power reticulation, water development for irrigation where feasible and administrative centre.
- To enhance animal disease control, budget allocation covers the following: Enhancement of surveillance, prevention and control for effective management of livestock diseases. Construction of biosecurity infrastructure on trunk roads and completion of laboratories for the livestock sector. Establishment of an animal vaccine plant, promotion of veterinary public health and food safety and enhancement of animal health research and diagnostics.
- Government will continue to support the aquaculture value chain players through the Aquaculture Seed Fund as well as promotion and enforcement of sustainable fishing practices in the capture fisheries.

<sup>69</sup> ZIPAR and United Nations Zambia, *Analysis of the 2023 National Budget: Reinforcing the Foundation for Inclusive Growth and Development*, Lusaka, October 2022.

<sup>70</sup> <https://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1155845/>.

<sup>71</sup> Conversation with UNICEF, 5 October 2022.

<sup>72</sup> The Special Rapporteur on the right to food recommended, among others, to strengthen protection against forced evictions, extend coverage of school meals to 100% of children, prioritizing rural areas, and address the issue of child labour in agriculture.

<sup>73</sup> The proposed 2023 budget of Zambia amounted to ZMW 167.3 billion.

<sup>74</sup> International programmes supporting GRZ action include the Scaling Up Nutrition (SUN) in 42 districts. The UN supports the development of the COVID-19 Recovery Plan. FAO also received USD 20 million from the EU to support small farmers coping with the impacts of COVID-19 and the conflict in Ukraine. Mary's Meals International implements the School Feeding Programme in 80% of Eastern Zambia primary schools (420,000 children receive a meal a day).

<sup>75</sup> ZIPAR and United Nations Zambia, *An Analytical Brief of the 2023 Social Sector Budget*, Lusaka, October 2022.

The Government also increased by 25% funds to the health sector (ZMW 17.4 billion), to recruit personnel, purchase equipment, medical supplies and develop health infrastructure. (Ibid.)

<sup>76</sup> [www.zambiaimmigration.gov.zm/the-refugees-act-no-1-of-2017/](http://www.zambiaimmigration.gov.zm/the-refugees-act-no-1-of-2017/).

<sup>77</sup> Conversation with Jockshan Foryoh, Education Programme Officer, UNHCR, 5 October 2022.

<sup>78</sup> In July 2022, Zambia adopted a **National Migration Policy Framework** and adopted a Trafficking in Persons policy to enforce the prohibition of the crime of human trafficking, established in the [Anti-Trafficking Act, 2008](#).

<sup>79</sup> Volume 10 also includes University Act, Technical Education and Vocational Training Act, National College for Management and Development Studies Act, Zambia Educational Publishing House Act, National Council for Scientific Research Act, Zambia National Commission for UNESCO Act, Examinations Council of Zambia Act, African Education Act, Zambia Institute of Human Resources Management Act, National Youth Development Council Act, Zambia Youth Service Act, Sports Council of Zambia Act, Boy Scouts & Girl Guides Associations Act.

<sup>80</sup> Zambia, *The Education Act* (No. 23 OF 2011).

<sup>81</sup> The Education Act of 2011 states, "(1) Subject to the Constitution and the other provisions of this Act, a person has the right to— (a) early childhood care, development and education; (b) basic education, including adult literacy education; and (c) high school education. (2) The Government shall make general and vocational education progressively available and accessible to all persons. 15. A child has the right to free basic education."

<sup>82</sup> Zambia, *The Children's Code Bill* (No. 12 of 2022).

<sup>83</sup> Post COVID-19 Recovery Needs Assessment and Recovery Framework, 2 October 2021.

<sup>84</sup> Zambia has entered a reservation to Article 14 of the ICESCR with respect to its obligation to provide compulsory and free primary education, providing that while Zambia is committed to take the necessary steps to provide compulsory and free primary education, it cannot immediately guarantee full compliance due to financial constraints.

<sup>85</sup> <https://zambia.un.org/en/194634-un-common-country-analysis-2021>.

<sup>86</sup> Conversation with ZIPAR, 7 October 2022.

<sup>87</sup> This increases the students' indebtedness; however, the Medium-Term Budget Plan also commits to reducing the loan repayment amounts and increase the payment period for working graduates. This is missing from the 2023 Budget.

<sup>88</sup> The education budget increased as a share of the total budget from 10% in 2022 to 14% in 2023.

<sup>89</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Zambia*, 9 January 2018, A/HRC/37/14.

<sup>90</sup> UNICEF Office of Research – Innocenti, "COVID-19 and Shrinking Finance for Social Spending", Innocenti Policy Brief series, Brief 2022-01, Shortfalls in Social Spending in Low- and Middle-income Countries (Florence, 2022).

<sup>91</sup> Developed by ZIPAR, Ministry of Planning and UNDP. Indicators were based on demographic health survey data.

<sup>92</sup> According to the Ministry of Education Permanent Secretary, Noriana Muneku, in a 2022 news article.

<sup>93</sup> The CEDAW called for a zero - tolerance policy to end violence against girls, sexual abuse and harassment; the Special Rapporteur on violence against women recommended that the MoE adopts regulations to prevent/protect schoolgirls from violence and put in place frameworks and systems for effective implementation of such regulations.

<sup>94</sup> Conversation with UNICEF, 3 October 2022.

<sup>95</sup> <https://transformingeducationsummit.sdg4education2030.org/ZambiaNCReport>.

<sup>96</sup> [www.lusakatimes.com/2022/06/16/continued-enforcing-of-corporal-punishment-in-some-cb-schools-worrying-jctr/](http://www.lusakatimes.com/2022/06/16/continued-enforcing-of-corporal-punishment-in-some-cb-schools-worrying-jctr/).

<sup>97</sup> Lars Jensen, "Avoiding 'Too Little Too Late' on International Debt Relief", Development Futures Series Working Papers (New York, UNDP, 2022).

<sup>98</sup> [https://www.mofnp.gov.zm/?page\\_id=3475](https://www.mofnp.gov.zm/?page_id=3475).

<sup>99</sup> [https://www.parliament.gov.zm/sites/default/files/images/publication\\_docs/Ministerial%20Statements%20-%20Debt%20Restructuring.pdf](https://www.parliament.gov.zm/sites/default/files/images/publication_docs/Ministerial%20Statements%20-%20Debt%20Restructuring.pdf)

<sup>100</sup> Zambia Minister of Finance and National Planning, "2023 Budget Address", 30 September 2022.

<sup>101</sup> Karin Strohecker, "Zambia debt rework delaying impede key investments, hitting the 'most vulnerable' – FinMin", Reuters, 24 November 2023.

<sup>102</sup> <https://www.ohchr.org/en/press-releases/2023/04/un-experts-concerned-over-delay-zambias-debt-restructuring>.

<sup>103</sup> Ibid.

<sup>104</sup> IMF, "IMF Executive Board Approves New Extended Credit Facility (ECF) Arrangement for Zambia", 31 August 2022. Available at <https://www.imf.org/en/News/Articles/2022/08/31/pr22297-imf-executive-board-approves-new-extended-credit-facility-arrangement-for-zambia>.

<sup>105</sup> IMF, "Zambia: Request for an Arrangement under the Extended Credit Facility—Press Release; Staff Report; Staff Supplement; Staff Statement; and Statement by the Executive Director for Zambia", IMF Staff Country Reports Series, volume 2022, issue 292 (Washington, D.C., 2022).

<sup>106</sup> According to the IMF, the expected fiscal adjustment envisages an important shift in spending, away from inefficient public investment and poorly targeted subsidies.

<sup>107</sup> According to a Statement by the CESCR on public debt, austerity measures and the ICESCR, "Low-income families...and workers with the lowest qualifications are disproportionately affected by...job cuts, minimum wage freezes and cutbacks in social assistance benefits, which potentially result in discrimination on the grounds of social origin or property (art. 2 [2])...Reductions in the levels of public services, or the introduction of or increase in user fees in areas such as childcare, and preschool education, public utilities and family support services have a disproportionate impact on women, and thus may amount to a step backwards in terms of gender equality (arts. 3 and 10)", (E/C.12/2016/1, para. 2).

<sup>108</sup> International financial institutions (IMF and IBRD) and IOs must comply with the UDHR as part of customary international law. As specialized UN agencies, IMF and IBRD must act in accordance with the Charter, which sets the realisation of human rights as one of the UN purposes. Lending States should not impose obligations on borrowing States leading them to adopt retrogressive measures in violation of ICESCR.

<sup>109</sup> Considering the Guiding principles on foreign debt and human rights (A/HRC/20/23) and the Guiding Principles on Extreme Poverty and Human Rights (A/HRC/RES/21/11) which call for human rights impact assessment of conditionalities attached to loans or of measures which create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty.

<sup>110</sup> The water, sanitation and hygiene (WASH) budget decreased from ZMW 2.3 billion in 2022 to ZMW 2.2 billion in 2022, which may have impacts on the health and nutrition of the most vulnerable groups and affect access to education by girls/persons with disability.

<sup>111</sup> ZHRC, 6 October 2022.

<sup>112</sup> The assessment should review the necessity and proportionality of retrogressive measures, discriminatory impacts on disadvantaged and marginalized individuals and groups, and whether measures affect MELR.

<sup>113</sup> Including fertility levels, nuptiality, sexual activity, fertility preferences, awareness/use of family planning methods, breastfeeding practices, nutritional status of children, early childhood/maternal mortality, maternal and child health, awareness and behaviours on HIV/AIDS and other STI, prevalence of HIV, domestic and gender-based violence, birth registration and certification.

<sup>114</sup> Based on the International Classification of Functioning, Disability and Health, it should be held every 5 years. In 2016, the Special Rapporteur on the rights of persons with disabilities recommended that Zambia strengthen the data collection and analysis capacity of the ZAPD and the Central Statistical Office and ensure that data collected relating to persons with disabilities is disaggregated, at least, by sex and age.

<sup>115</sup> ZamStats also contributes to agriculture and environment statistics, through quality assurance of surveys on crops, harvests and livestock by the Ministries of Agriculture and Livestock, and to economic and financial statistics.

<sup>116</sup> Conversation with ZamStats, 14 October 2022.

<sup>117</sup> See <https://uhri.ohchr.org/en/search-human-rights-recommendations>.

<sup>118</sup> The CRC welcomed the Statistics Act, the set-up of the INSS and of sector-specific information systems, the creation of the Zambia Statistics Agency, the launch of the Zambia Orphans & Vulnerable Children Management Information System and the intention to create a national database on children.

<sup>119</sup> The CRC recommended to establish a national database on all cases of violence against children, including ill treatment, sexual abuse, child abuse and neglect and domestic violence.

<sup>120</sup> The CERD noted that special measures to address inequalities were taken but expressed concern about the lack of comprehensive disaggregated data on the impact of current special measures on affected groups. It also recommended that Zambia systematically compile data, disaggregated by sex, age and origin, with a view to combating human trafficking and smuggling more effectively.

<sup>121</sup> In line with 8NDP Area 4 on Good Governance Environment and strategic development outcomes (2) Improved Rule of Law, Human Rights and Constitutionalism.

<sup>122</sup> OHCHR, *A Human Rights Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, (Geneva, 2018).

<sup>123</sup> See CRC, *Concluding observations on the combined fifth to seventh periodic reports of Zambia*, 27 June 2022, CRC/C/ZMB/CO/5-7.

<sup>124</sup> (a) Substantially reduce the rate of deforestation and land degradation and improve sustainable land management, including community forest management, and diversify livelihood options, particularly for rural communities; (b) Reduce the vulnerability of communities, particularly children, to the impacts of climate change, including by implementing climate-smart agriculture and forest-based livelihoods; (c) Strengthen climate change mitigation and adaptation measures to droughts and floods, in particular in relation to children's food, water and energy insecurity; (d) Ensure that children's special vulnerabilities, needs and views are taken into account in developing policies and programmes to address climate change and disaster risk management; (e) Increase children's awareness of and preparedness for climate change and natural disasters by incorporating them into school curriculum and teachers' training programmes.

<sup>125</sup> UNHRC, *Report of the Special Rapporteur on the right to food on her mission to Zambia*, 25 January 2018, A/HRC/37/61/Add.1.

<sup>126</sup> The law should (a) include a financial structure that contains the necessary budgetary and taxation measures to support smallholder farmers, as well as gender sensitive budgeting; (b) protect long-term sustainability for agricultural production; (c) establish authorities responsible for implementation; and (d) provide for proper supervision and accountability mechanisms to promote the full and active participation of all interested parties, including those most vulnerable.

<sup>127</sup> UNHRC, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, 5 February 2007, A/HRC/4/18, Annex 1.

<sup>128</sup> FAO, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*, (Rome, 2005). Available at <https://www.fao.org/3/y7937e/y7937e00.htm>.

<sup>129</sup> FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, First revision, (Rome, 2022). Available at <https://www.fao.org/3/i2801e/i2801e.pdf>.

<sup>130</sup> Committee on World Food Security, *Principles for Responsible Investment in Agriculture and Food Systems*, (FAO, 2014). Available at <https://www.fao.org/cfs/policy-products/rai/en/>.

<sup>131</sup> See Annex N. Human Rights Mechanisms Observations and Recommendations on the Right to Adequate Food in Zambia for full list.

<sup>132</sup> CERD, *Concluding observations on the combined seventeenth to nineteenth periodic reports of Zambia*, 3 June 2019, CERD/C/ZMB/CO/17-19, para. 28.

<sup>133</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Zambia*, 9 January 2018, A/HRC/37/14, para 131.107.

<sup>134</sup> Sustainable Development Goals-related or corresponding indicators.

<sup>135</sup> <https://www.macrotrends.net/countries/ZMB/zambia/unemployment-rate#>.

<sup>136</sup> Jody Harris, Sarah Gibbons, O'Brien Kaaba, Tabitha Hrynich and Ruth Stirton, "A 'right to nutrition' in Zambia: Linking rhetoric, law and practice", (Institute of Development Studies and the Southern African Institute for Policy and Research, 2021).

<sup>137</sup> The 2021 Socio-Economic Impact Assessment of COVID-19 on Households in Zambia noted that 93% of households reported an increase in food prices. The cost of a nutritious diet has increased in under 18 months with over 53% non-affordability due to high food prices and the impact of the COVID-19 global pandemic (National Food and Nutrition Commission, WFP, 2021).

<sup>138</sup> List of documents consulted in Annex 4.

<sup>139</sup> FAO: Suze Filippini, Country Representative; Celestina Lwatula, Programme Associate; Mukaba Mukaba, Youth FP; Rhoda Mofya, Programme Associate; UNICEF: Hideko Miyagawa, Chief, Education Section; Ruth Siyandi, Nutrition Programme Manager; IOM: Knowledge Mareyanadzo, OIC, Chief of Mission; Hussen Chanda, Project Assistant (Migration Policy, Liaison

and Data); Joseph Yowela, National Migration Health Officer; WFP: Allan Mulando, Technical Lead (Crisis Response/Social Protection); UNHCR: Jockshan Foryoh, Education Officer.

<sup>140</sup> ZHRC: Foster Hamuyube, Head of Research and Planning; ZIPAR: Miselo Bwalya, Human Development Unit; ZamStats: Etambuyu Lukonga, Senior Research Officer; Mary's Meals International: Panji Kajani, Country Representative; Carter Center: Rachel Fowler, Head; and Chapter One Foundation: Linda Kasonde, Director.

<sup>141</sup> Available at <https://zambialii.org/akn/zm/judgment/zmhc/2023/6/eng@2023-05-08#page-1> (accessed 15 October, 2023).

<sup>142</sup> *Ibid.*, pp. R2, R3 and R4.

<sup>143</sup> *Ibid.*, p. R12.

<sup>144</sup> Available at <https://old.zambialii.org/node/14349>.

<sup>145</sup> Katindo Mwale, "Africa / The right to food as a derivative of the right to life: The case of George Peter Mwanza and another vs. The Attorney General", Commonwealth Lawyers Association. Available at <https://www.commonwealthlawyers.com/africa/the-right-to-food-as-a-derivative-of-the-right-to-life-the-case-of-george-peter-mwanza-and-another-vs-the-attorney-general-by-katindo-mwale/> (accessed on 15 October 2023).

<sup>146</sup> Available at: <https://judiciaryzambia.com/wp-content/uploads/2022/05/CAZ-8-0064-2020-Molosoni-Chipabwamba-12-Other-Displaced-Village-Owners-vs-Yssel-Enterprises-7-Others-Coram-Justice-Makungu-Sichinga-Siavwapa-JJA.pdf>.

<sup>147</sup> Available at <http://www.saflii.org/za/cases/ZAGPPHC/2020/306.html> (accessed 22 September 2023).

<sup>148</sup> *Ibid.*, para. 1.

<sup>149</sup> *Ibid.*, para 38.1.

<sup>150</sup> ESCR-Net, "Government of the Republic of South Africa. & Ors v Grootboom & Ors 2000 (11) BCLR 1169. (CC)", Caselaw Database. Available at <https://www.escr-net.org/caselaw/2006/government-republic-south-africa-ors-v-grootboom-ors-2000-11-bclr-1169-cc> (accessed 27 September, 2023).

<sup>151</sup> *Ibid.*

<sup>152</sup> Legal Vidhiya, "Mohini Jain v State of Karnataka 1992 (Fundamental right to equality of opportunity under article 14 of Indian Constitution)", 7 April 2023. Available at <https://legalvidhiya.com/mohini-jain-v-state-of-karnataka-1992-fundamental-right-to-equality-of-opportunity-under-article-14-of-indian-constitution/> (accessed 22 September, 2023).

<sup>153</sup> *Ibid.*

<sup>154</sup> ESCR-Net, "T-025 of 2004", Caselaw Database. Available at <https://www.escr-net.org/caselaw/2023/t-025-2004> (accessed 25 September, 2023).

<sup>155</sup> *Ibid.*

<sup>156</sup> ESCR-Net, "Indigenous Community Members of the Lhaka Honhat (Our Land) Association vs. Argentina". Caselaw Database. Available at <https://www.escr-net.org/caselaw/2020/indigenous-community-members-lhaka-honhat-our-land-association-vs-argentina> (accessed 26 September, 2023).

<sup>157</sup> *Ibid.*

<sup>158</sup> The term amparo action mentioned in this case summary is a remedy for the protection of constitutional rights. An amparo action (also called recurso de amparo, "appeal for protection", or juicio de amparo, "judgement for protection") is intended to protect all rights that are not protected specifically by the constitution or by a special law with constitutional rank. See [https://en.wikipedia.org/wiki/Recurso\\_de\\_amparo](https://en.wikipedia.org/wiki/Recurso_de_amparo) (accessed 20 October 2023).

<sup>159</sup> Available at <https://www.canlii.org/en/on/onca/doc/2014/2014onca852/2014onca852.html> (accessed 26 September 2023).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*, para 88.

<sup>162</sup> The struggle for recognition of the right to adequate housing under the Canadian Charter of Rights and Freedoms has not met with much success. This can also be seen in *Abbotsford (City) v Shantz* and *Victoria (City) v Adams*. Available at <https://ohrh.law.ox.ac.uk/abbotsford-v-shantz-housing-rights-and-the-canadian-constitution/> (accessed 26 September 2023).

According to the Report of a 2007 Mission to Canada of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Canadian domestic law does not include any explicit recognition of the right to adequate housing - as an enforceable right or as a policy commitment. No such recognition is found in the Constitution Act of 1982, including the Canadian Charter of Rights and Freedoms, in provincial or federal human rights legislation, in national, provincial or territorial housing legislation or in federal-provincial agreements. The rights contained in international human rights treaties ratified by Canada are not directly enforceable by domestic courts unless they have been incorporated into Canadian law by parliament or provincial legislatures. As such, the right to adequate housing as codified in article 11(1) of the ICESCR cannot be claimed on its own.

...

Therefore, the Special Rapporteur strongly recommended that the right to adequate housing be recognized in federal and provincial legislations as an inherent part of the Canadian legal system. In line

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with previous recommendations made by the CESCR, the Special Rapporteur recommended that human rights legislation in all Canadian jurisdictions be amended to fully include economic, social and cultural rights and that they be included in the mandates of all human rights bodies.

UNHRC, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Miloon Kothari: Addendum Mission to Canada (9 to 22 October 2007), 17 February 2009, A/HRC/10/7/Add.3, paras. 7, 88 and 89.

<sup>163</sup> ESCR-Net, “R. (Adam and Limbuela) v. Secretary of State for the Home Department”, Caselaw Database. Available at <https://www.escr-net.org/caselaw/2012/r-adam-and-limbuela-v-secretary-state-home-department> (accessed 26 September, 2023).

<sup>164</sup> Ibid.

<sup>165</sup> ESCR-Net, “Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007”, Caselaw Database. Available at <https://www.escr-net.org/caselaw/2015/mental-disability-advocacy-centre-mdac-v-bulgaria-complaint-no-412007> (accessed 26 September 2023).

<sup>166</sup> Ibid.

<sup>167</sup> For the European Social Charter (revised) (ETS No. 163) referred to in this case, see <https://rm.coe.int/168007cf93>.

<sup>168</sup> ESCR-Net, “Daniel Billy et al. vs. Australia (Torres Strait Islanders Petition)”, Caselaw Database. Available at <https://www.escr-net.org/caselaw/2022/daniel-billy-et-al-vs-australia-torres-strait-islanders-petition> (accessed 27 September 2023).

<sup>169</sup> Ibid.

<sup>170</sup> List of participants and presentations by participants available upon request.

<sup>171</sup> See attached agenda in Annex 7.

<sup>172</sup> <https://www.ohchr.org/en/statements-and-speeches/2023/09/turk-launches-blueprint-action-economic-social-and-cultural-rights>.

<sup>173</sup> Nutrition Specific measures address the immediate determinants of fetal and child nutrition and development (promotion of iron and folic acid or micronutrient supplementation; referral of undernourished mothers to health facilities for additional care and treatment; nutrition counselling for improved dietary intake during pregnancy; early initiation of breastfeeding; nutrition counselling); Nutrition Sensitive measures address the underlying determinants of fetal and child nutrition and development, and development (WASH, Social Protection, Health, e.g. vaccinations, promotion of ANC).

<sup>174</sup> Provincial offices: Lusaka (Headquarters), Choma, Kabwe, Kasama, Ndola, Solwezi, Mansa, Chipata, Chinsal, Mongu. District Offices: Livingstone, Kitwe, Mazabuka, Mbala, Nakonde, Petauke, Mwinilunga, Serenje. LSUs: Livingstone, Choma, Mazabuka, Lusaka, Ndola, Kitwe, Chingola, Serenje.

<sup>175</sup> <https://internationalbudget.org/open-budget-survey/country-results/2021/zambia>.







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