

ZAMBIA

Social security remains an illusion



Despite having well-developed social policy on paper, Zambia lacks a proper system to implement the right of access to social security, making these policies as well as the international instruments the country has ratified not worth much more than the paper they are written on. The omission of social security from the Constitution means that the 70% of people who live in poverty have no legal recourse to improve their situation. Meanwhile gender considerations have also been ignored, forcing women make ends meet as best they can as they face gender discrimination in the private and public sectors.

Women for Change
Michelo Hansungule

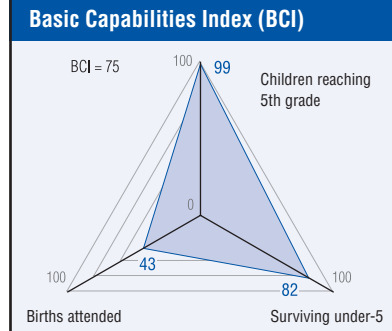
While Zambia has accepted the normative standard, it does not implement the universal right to social security. The 2007 Social Watch theme raises a fundamental issue for the millions of poor people. For this group, which constitutes the majority of the population, the universal right to social security, as also prescribed in the Universal Declaration of Human Rights, is a distant dream. There is simply no mechanism in place to ensure implementation of this right or to make it 'a reality' since the country lacks a proper and rational social system and the necessary capacity to manage poverty.

In policy but not in practice

The country does however have some of the most eloquently written social security policies and statements as demonstrated in recent policy instruments. For example, strategic policy interventions since the 1990s refocused government attention through the creation of the Ministry of Community Development and Social Services (MCDSS) as well as the Ministry of Youth, Sport and Child Development. The aim of the MCDSS is to respond to various international efforts, especially at the UN level, including the International Conference on Population and Development in Cairo and its Programme of Action and the World Summit for Social Development in Copenhagen.

Through these institutional structures the government has developed several policies towards making medical and educational services free and accessible for poor and vulnerable populations, such as the elderly, orphans, children with special needs, and children and adults with disabilities. The educational policy has banned authorities from sending pupils away for not being able to pay their fees and establishes mechanisms to provide vulnerable children with financial assistance to pay for school fees and supplies. It promised to establish scholarships and bursaries for poor and vulnerable children, targeting especially girls, orphans and children from rural areas and eliminating direct costs for children with special needs. Through the same policy, 5% of school funds were designated for funding free education and supporting poor and disabled children.

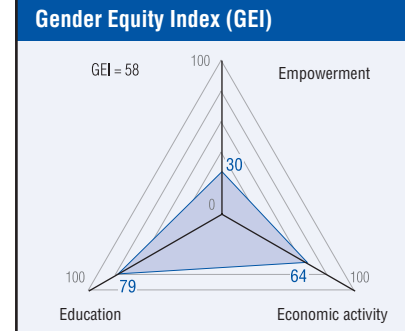
New health policy aims to extend free health services to children under the age of five and adults over the age of 65, as well as to tuberculosis patients,



and people living with HIV/AIDS. The policy states that the cost of any medical service must take into account the person's ability to pay.

In practice there is little sign of any of these policies and institutional systems. Zambia does not have a system of social grants to support those who qualify. The few people who receive benefits do so at the discretion of authorities, rather than as the result of a guaranteed right. Assistance is erratic and the amount of that assistance not fixed. No clear procedures exist on how to access assistance. There is no transparency in the administration of the grants. Government and field staff refuse to disclose the number of social grants beneficiaries, saying there could be chaos if this information were disclosed. Even though the policy has abolished school fees, however, the government has not come in to fill the financing gap created by the introduction of this policy. Consequently, several schools have ignored the policy since otherwise they could not function and parents are still being taxed as before. Another severe problem is the fact that the government does not remit its dues to its staff, which severely affects the schemes.

A worrying issue is that most of these policies are based on the Eurocentric concept of social security with great emphasis placed on money and the government-signed social security cheque. The social welfare policies in place at the MCDSS and in other government ministries and departments do not encompass African values on social welfare despite the fact that most citizens rely on traditional African culture to meet their social security needs. Government social grants, although important, cannot displace the natural system that has served people for centuries and should have been included in the government's concept.



Constitutional challenges

The Constitution poorly reflects the true situation in the country. While the majority of people are living in poverty, the Constitution refuses to give recognition to this reality and make provisions for the universal right to social security. More than 70% of Zambians live in extreme poverty. Nevertheless, the Constitution is silent on issues that affect this majority. Therefore it is not being applied practically to address the reality of those living in poor and precarious conditions and only remotely affects the lives of ordinary people in the country.

There are scant references to social security in the preamble of the Constitution in the form of pledges. It is common knowledge that by Zambian law, the preamble is no more than decoration. The August 1991 Constitution which is still partly in force "pledged the right to equal access to social, economic and cultural rights and facilities provided by the state..."

There were also pledges affording every citizen the right to education sanctified by a duty on the part of the state "to the rights and dignity of all members of the human family" in Act 18 of the 1996 Constitution. The preamble to the 1996 Constitution "recognizes the equal worth of men and women in their rights to participate to build a social system of their choice." This is the closest the Constitution comes to the issue of access to social security.

Part 1X of the Directive Principles of State Policy enshrines legally non-enforceable standards bearing on several aspects which would amount to effective access to social security. Article 112 and in particular paragraph (f) enjoins the state "to provide persons with disabilities, the aged and other disadvantaged persons such social benefits

and amenities as are suitable to their needs and are just and equitable.” This is the only line in the whole text to explicitly refer to “benefits and amenities” for vulnerable groups. Prior to that, there is a reference in paragraph (e) to “equal and adequate opportunities” but paragraph (f) is the only one to address social security in specific terms. Paragraph (g) makes reference to culture, tradition and custom which can be interpreted to mean that it seeks to encapsulate traditional social safety nets such as the extended family system. Important as they may be, all provisions of Part 1X or the Directive Principles of State Policy in the Constitution are not justiciable. In terms of Article 111, courts have been denied jurisdiction to entertain any complaint based on any aspect of this part of the Constitution. In this way, the right of access to social security is not fixed in the Constitution and the failure by the framers of the Constitution to articulate these standards directly in the Bill of Rights severely faults it. Additionally, Article 110 introduces a clawback clause which limits the duty of the state with regards to sustaining the application of the directive principles.

Furthermore, women are not reflected in the Constitution. Despite the fact that more than 50% of the population is comprised of women, the Constitution says very little of women on issues such as social security, and rather blatantly discriminates against them in several ways.

With such a defective constitutional framework, the poor have been deprived of the means with which to legally fight social injustice. Attempts to change this situation by rewriting the Constitution are currently being hampered by authorities trying to protect their own interests. President Mwanawasa has expressed a strong desire to tailor the Constitution to his liking and has consequently kept this process close to him. The motivation behind these actions is to protect the President from persecution upon completion of his term in office.

Ratified by not respected

Although most international human rights instruments on social security have been ratified, these have yet to be translated into practical benefits for the intended recipients. The following UN conventions have been ratified by the country:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified on 10 April 1984.
- International Convention on the Elimination of All Forms of Racial Discrimination ratified on 4 February 1972.
- Convention on the Elimination of All Forms of Discrimination against Women ratified on 21 June 1985.
- Convention on the Rights of the Child ratified 6 January 1991.

The country was also a founding member of the African Charter on Human and Peoples’ Rights, ratified in 1984.

Although Zambia has ratified a number of International Labour Organization (ILO) conventions, it has not yet acceded to the ILO Social Security (Minimum Standards) Convention of 1952 or the Workers with Family Responsibilities Convention of 1981. There are no indications from either the Ministry of Labour or the Ministry of Justice that the government is contemplating acceding to these two conventions. In practice, there is hardly any difference whether the country ratifies the instruments or not. The instruments that the country has ratified have no value beyond the paper on which they are written. Although some of these instruments, such as the ICESCR, have been part of the legal domain for more than 30 years, they have not led to an improved social security environment or made an impact on the particular situations of individuals to any significant degree.

Gender and social security

While poverty affects all, it affects women more than men, which is also the case of disabled women. While some policies are sensitive to gender, the majority have no gender content. For instance, gender was not taken into account in formulating the policy and legislation on privatization. Likewise, there were no women representatives on the board of the Zambia Privatization Agency. Although privatization affects women more than men, they were not part of the conflictive decision-making process undertaken to reconstruct the country’s economy which left workers out in the street, unable to put food on their tables. Similarly, the interests of human rights organizations were also not considered.

Two examples of the effects of privatization are important to note. The hasty liquidation of Zambia Airways – the national airline – and the privatization of Nitergen Chemicals and Kafue Textiles brought numerous social challenges to the population, and particularly women. As the custodians of families – often without independent incomes – women were affected when their husbands lost their employment due to the privatization restructuring policy. Many were left without an alternative means of employment and without the necessary capacities to provide for their families. Some women took to the streets to undertake menial trading jobs in a bid to put something on the table. Additionally, women have been exposed to sexual exploitation while trying to claim their deceased husbands’ entitlements, dues from their employers or benefits from tight-fisted social security schemes. This is the result of defective social welfare and privatization policies which did not include gender as a central pillar of the economic reforms championed by the government and its allies.

Living with social insecurity

As explained above, social security remains an illusion to most people. The majority of citizens have not been insured against future vulnerabilities such as old age and disability, with women being the worst victims of this neglect. In both private and public life, women are more greatly affected by social insecurity than their male counterparts. Despite the government’s obligation to provide social security to its population, it has not expressed the necessary political willingness to do so. Vulnerable people – the majority of the population – continue to live socially insecure lives.

This is in contrast to the several beautifully worded policies written by the government over the years. Looking at its policies alone, Zambia has one of the most effective social security systems in the world. At the same time, there is no specific legislation on social security. This is echoed by the Constitution which does not guarantee the universal right to social security. In fact, it does not guarantee any right besides archetypal political and civil rights. This renders the Constitution virtually irrelevant in the fight against poverty. The Constitution also omits the very important issue of gender and dignity. Instead of being unequivocal on gender-based discrimination, the Constitution yields to the social forces that disregarded women in the first place. Beyond normative standards, the country lacks a proper system to implement the right of access to social security since most of what exists is a defective and irresponsible system that does not accurately articulate the problems. The universal right to social security is still a long way from effective recognition in Zambia. ■