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Mandate of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

REFERENCE: AL ZMB 1/2014:

30 May 2014

Excellency,

I have the honour to address you in my capacity as Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights pursuant to Human Rights Council resolution 25/16.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **increased reliance on deficit funding by the public sector in Zambia after the country's debt was reduced through debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative from about US$ 7.2 billion to US$ 934 million in 2006**.

According to information I have received, in September 2012, Zambia successfully issued US$750 million Eurobond on the international capital market which was oversubscribed. In April 2014, the Government issued a further US$1 billion sovereign bond with a yield of 8.625%, which was significantly higher than that for the September 2012 Eurobond. According to reports, several public entities also plan to issue a total of US$4.5 billion in bonds on the international capital market to raise funds for infrastructure and other investments. These include the Road Development Agency (US$1.5 billion), Zambia Railways (US$500 million), the Lusaka City Council (US$500 million) and the Zambia Electricity Supply Corporation (US$250 million). I understand that municipalities, such as Livingstone and Solwezi, are also considering issuing bonds on the international market.

In November 2013, the Government of Zambia announced that it had raised its external borrowing threshold to K35 billion from K20 billion to allow it to borrow K7.1 billion from external sources to finance its 2014 budget. Deficit financing would thus make up 24.6 per cent of the entire budget and about 7.2 per cent of the country's gross domestic product (GDP).

Deficit financing is not per se negative, as long as investments funded by the Government and public enterprises contribute to poverty reduction and the realization of social, economic and cultural rights, and sufficient domestic revenue can be raised to service the debt. However, there is a real danger that the country may fall into a debt trap again if caution is not exercised in relation to borrowing, especially foreign-currency denominated borrowing on non-concessional terms. While the international financial institutions consider Zambia's current debt levels sustainable– at least in the short term - it is important that the Government borrows cautiously and continues to work towards improving its public debt management and revenue collection, which is hampered by a weak tax morality by the business community and individuals.

Increasing tax revenues and combatting illicit financial outflows

It is worrying in this respect that despite stable economic growth almost every category of Government revenues – except revenues from the Value Added Tax (VAT) – underperformed in 2013. According to information received in 2013 Zambia's fiscal deficit widened to 6.7 per cent and was thus much higher than the 3.4 per cent target the Government had set.

Illicit financial outflows, mainly in the form of tax evasion and avoidance by multinational corporations in the mining sector remain a cause for serious concern. For example, there have been allegations against Mopani Copper Mines plc, a Zambian company, which is largely owned by GlencoreXstrata. According to a draft audit report that was leaked to the public in May 2011, Mopani Copper Mines plc transferred its profit out of Zambia by inflating its costs and selling its commodities far below market prices to its parent company, Glencore, located in Switzerland. In this context, it is also a matter of concern that an investigation into these allegations has not yet been published by the European Investment Bank which had granted a €48 million loan for the rebuilding and modernisation of Mopani's Mufulira copper smelter in 2005 in contravention of the Bank's own transparency policy. Zambia urgently needs more tax revenue in order to fund better schools, health services, infrastructure and other public goods, but debt contracting should be accompanied by a strategy to increase tax revenues and combat illicit financial outflows.

Improving debt management

The World Bank has recently expressed concern about the poor management of debt noting that: "one year after the new bonds had been issued most of the proceeds of the $750 million sovereign bond from 2012 are yet to be used. All the proceeds were allocated to projects in the 2012 and 2013 budgets, but most of these projects have not taken off. Apart from using borrowed money on projects with high rates of return, the government needs to improve its public financial management and debt management to deal with the risks of fast growing external debt."

Building better institutional capacity for debt management is critical to ensuring that Zambia's debt remains sustainable. It is important that staff members of the Ministry of Finance are equipped with appraisal skills to ensure that projects are selected that adequately ensure social and economic returns and comply with Zambia's human rights obligations.

To prevent the build up of unsustainable debt, the legal and policy framework for contracting and managing debt should be strengthened. The proposals contained in article 282 (2) of the First Draft Constitution of 30 April 2012, which stated the "Government shall not borrow, guarantee, or raise a loan on behalf of itself or any State organ or institution, authority or person except as authorized by or under an Act of Parliament", and article 282 (3) which provided that "the terms and conditions of the loan shall be laid before the National Assembly and shall not come into operation unless they have been approved by a simple majority of the National Assembly" are a good starting point. I urge the Government to ensure that the country's new Constitution provides for adequate parliamentary oversight in relation to external borrowing, use of loan funds and the monitoring and evaluation of investment projects selected. This would be consistent with the United Nations Guiding Principles on Foreign Debt and Human Rights.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

2. Has a complaint been lodged?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please indicate any remedial action taken vis à vis the victim or his/her family.

I would appreciate a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Cephas Lumina
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Annex
Reference to international human rights law

Article 2 of the International Covenant on Economic, Social and Cultural Rights requires Zambia, as a State party to the Covenant, to realize economic, social and cultural rights progressively, using its maximum available resources. The implication of this is that the State is obliged to ensure that these rights are adequately satisfied before using public resources or funds obtained through bond sales to achieve other State objectives unrelated to human rights.

The United Nations Guiding Principles on Foreign Debt and Human Rights, which were endorsed by the Human Rights Council in June 2012 (A/HCR/20/23, Annex), call upon States to, inter alia, analyze their policies and programmes, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of all human rights, as well as their gender implications, and adjust them as appropriate, to promote a more equitable and non-discriminatory distribution of the benefits of growth and services (paragraph 12).

The Guiding Principles also underscore that the principles of transparency, participation and accountability should be observed in the lending and borrowing decisions by States (paragraph 28). This entails the full disclosure of all relevant information regarding loan agreements, debt repayments, debt management, outcomes of public debt audits and other related matters and require the effective and meaningful input from all stakeholders (including project beneficiaries) in loan policy and resource utilization decisions. The Guiding Principles further emphasize the need for oversight by relevant representative bodies and civil society organizations (paragraph 32).

In addition, the Guiding Principles call upon borrower States to conduct transparent and participatory needs assessments, as part of their annual debt strategy, in order to ascertain whether they have a genuine need to obtain new loans (paragraph 36). The Principles stress that debt sustainability assessments should not be limited to economic considerations (that is, the debtor State's economic growth prospects and ability to service its debt obligations) but should also consider the impact of debt burdens on a country's ability to achieve the Millennium Development Goals and to create the conditions for the realization of all human rights (paragraph 65). I urge the Government to ensure that ongoing efforts to strengthen public finance and debt management are fully informed by the Guiding Principles.