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Editorial

Dear readers,

this issue contains several essays which are worth reading: First, an article by Ofelya Sargsyan on the Arctic Region - but this time on the regional integration schemes in this region, and the relations to the EU. Only recently has the EU "discovered" this part of the world. Then we publish extracts from two LIBERTAS Papers: one on Acemoglu, the Turkish-American economist who sees a clear context between reforms and welfare in the post-Soviet area (Gohar Yeranyan), and one on the fairness of elections in Kyrgyzstan (Gulnaz Baiturova), as well as the ways to trouble them, after traditional patterns which are not very compatible with modern democratic values. But they existed and have taken into account by every consultant who explains the population how they should run an election campaign.

Furthermore, we have an article on the advantages for politics taken from religion - a very interesting comparative study by Ani Harutyunyan. In the quantitative focus is a contribution by Marijana Ilić from Vienna, on the interaction between taxation and education, with the example of Zambia. This is one of the biggest tasks for developing countries, to improve the education, and therefore also the tax revenues.

With best regards,



Hans-Jürgen Zahorka

The Arctic Region: Its Regional Integration and the Relationship with the EU

Ofelya Sargsyan

Introduction

The Arctic is the territory within the Arctic Circle with the latitude reaching 66.5622 degrees north of the Equator. The Arctic Circle incorporates the Arctic Ocean and from the terrestrial spaces parts of Canada, Finland, Greenland, Iceland, Norway, Russia, Sweden and the United States in the face of Alaska¹. While the region has long been associated with wilderness, with the global warming the portrait is getting evolved and diversified. To exemplify, for the first time in the living history a notable part of the Arctic Ocean was ice-free in the summer of 2007. The climate growth and the melting of the ice in the Arctic Ocean imply such novelties in the region as development of shipping routes and usage of its natural resources².

As the water warms up, the Arctic Ocean is becoming an open sea with cruise ships and commercial shipping routes. Moreover, it suggests shifts in the fishing migration patterns. Industrial activities in the region become feasible: mines are opening up, the amount of the earth metals in the region is estimated, oil and gas deposits are assessed. The temperature increase will also cause rise in sea levels, decrease in the reflection of the solar radiation as well as will have its impact on the wellbeing of the indigenous people of the region. These transformations and developments bring forward new challenges as well as geopolitical realities and interests, turning the Arctic into an increasingly more significant area. As such, not only the Arctic states but also

¹ Prokosch, Peter, New Awareness of and Opportunities for UNEP to Address Climate Change in the Arctic, UNEP, Nairobi, Kenya, 18.02.2013, p. 5

<http://www.unep.org/gc/gc27/Docs/se/What%20Future%20for%20the%20Arctic.pdf>.

² Gupta, Arvind, Importance of Arctic Region, 28.06. 2012, <http://www.newindianexpress.com/opinion/article552674.ece>

various other countries and international actors get more and more engaged with it, develop policies and strategies towards it and seek to ensure their presence there³.

To address the rising problems, protect the nature as well as adapt to the changes and make best use of them various regional cooperation patterns have been established in the Arctic. Among them are the Barents Euro-Arctic Council⁴, the Nordic Council of Ministers⁵, International Maritime Organization⁶ and the Arctic Council (AC)⁷ which provides the key platform for addressing the Arctic related issues, developing and implementing policies and strategies towards it, enabling regional cooperation projects as well as ensuring intergovernmental and interregional collaborations at large.

In line with this the present paper seeks to brief the institution's history, present its set-up and infrastructures, objectives and undertaken policies. Afterwards, the EU's position vis-a-vis the Arctic and especially the Arctic Council will be under discourse. On the one hand the objective of the paper is to raise public's information regarding the Arctic and the challenges it faces, the institutions and entities dealing with it as well as the instruments and policies used on the way, on the other hand, it aims to discuss the EU's involvement with the region, at a time when the Union tries to ensure its role in the world as a global player.

³ Standing Committee of Parliamentarians of the Arctic Region (SCPAR), Arctic Governance in an Evolving Arctic Region, pp. 1-2, <http://www.arcticparl.org/files/arctic-governance-in-an-evolving-arctic-region.pdf>.

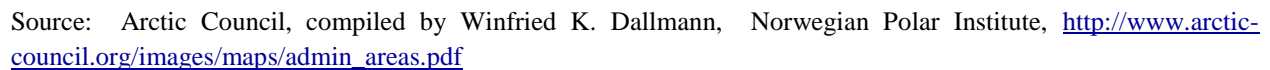
⁴ The Barents Euro Arctic-Arctic Region (BEAR) started in 1993 with the establishment of the Barents Euro-Arctic Council (BEAC) by Sweden, Finland, Norway, Denmark, Iceland, Russia and the EU Commission (International Barents Secretariat, Barents Cooperation, 30.10.2013, pp. 2-3, http://www.barentsinfo.fi/beac/docs/Barents_Cooperation_information_English_October_2013.pdf).

⁵ The Nordic Council of Ministers was established in 1971. The members of the institution are Denmark, Finland, Iceland, Norway and Sweden. The associate members are Greenland, the Faroe Islands and Åland. It aims to come up with joint policies promoting the wellbeing of the Nordic peoples. It deals with such issues as the environment and climate, energy, research, education, freedom of movement and raise of cooperation profile (Nordic Council of Ministers, <http://www.norden.org/en/nordic-council-of-ministers/the-nordic-council-of-ministers/why-the-nordic-council-of-ministers>).

⁶ International Maritime Organization (IMO) is a "specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented" (home page of the IMO, Introduction to IMO, <http://www.imo.org/About/Pages/Default.aspx>).

⁷ Stratfor Global Intelligence, The Growing Importance of the Arctic Council, 17.05. 2013, <http://www.stratfor.com/analysis/growing-importance-arctic-council>.

compiled by
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circumpolar environmental collaboration and resulted in the establishment of the Arctic Council by the Canadian initiative⁸. The Arctic Council was formally established with the Ottawa Declaration of 1996⁹. It is an intergovernmental entity ensuring a platform for developing and defining terms of cooperation, collaboration as well as interactions among the Arctic countries in the fields of sustainable development and environmental protection in the Arctic. Additionally it is to monitor and manage the programs presented by the working groups as well as distribute information and promote awareness and interests towards the Arctic problems¹⁰.



Cruising in the Arctic

Source: <http://www.audleytravel.com/destinations/polar-regions/the-arctic/the-arctic-in-pictures.aspx>

⁸ Airolidi, Adele, The European Union and the Arctic: Policies and Action, Nordic Council of Ministers, Copenhagen 2008, p. 13, <http://norden.diva-portal.org/smash/get/diva2:701329/FULLTEXT01.pdf>.

⁹ Arctic Council, History, the Establishment of the Arctic Council, 27.04. 2011, <http://www.arctic-council.org/index.php/en/about-us/arctic-council/history>.

¹⁰ Arctic Council, Declaration on the Establishment of the Arctic Council, Ottawa, Canada, 19.09. 1996, pp. 2-3.

Parties engaged

The member states to the AC are Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden and the USA. Additionally, it includes as Permanent Participants six organizations which represent the Arctic Indigenous Peoples. The Permanent Participants seek to promote the Arctic indigenous inhabitants participation and consultation within the Arctic Council. Among the Permanent Participants are Aleut International Association (AIA), Arctic Athabaskan Council (AAC), Gwich'in Council International (GCI), Inuit Circumpolar Council (ICC), Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON), and Saami Council (SC).

The Permanent Participants are administratively assisted by the Indigenous Peoples' Secretariat, based in Copenhagen, Denmark. The Arctic Council also has a number of non-Arctic states, international organizations and NGO that have Observer status in the Council.

Arctic Athabaskan Council AAC

Established in 2000, the Arctic Athabaskan Council (AAC) seeks to protect the rights and promote the interests of the American and Canadian Athabaskan peoples in the Arctic Council and other international platforms as well as raise the knowledge about the Athabaskan peoples. Currently, the entity represents about 45 000 indigenous people. The organization has a Chairman, a Vice Chairman and a Secretariat. The head of the entity is Michael Stickman. The every day activities of the AAC Secretariat are implemented by the AAC Executive Directors which are from Canada and the United States.

The Athabaskan peoples living in Arctic and sub-Arctic Alaska, USA, and the Yukon territory and Northwest Territories of Canada have occupied a territory ranging about three million square kilometers. Their ancestors have been semi-nomadic hunters. All together the Arctic Athabaskan peoples have 23 languages. Compared to the Aboriginal Arctic population, the Athabaskan people are comparatively young and growing. The political and cultural systems and infrastructures are different from place to place. In Alaska, peoples act in compliance with the federal and State structures which supply funds for the government actions, such as the Indian Reorganization Act for tribal governments, Alaska Native Claims Settlement Act for the involved Villages, etc. in Canada, the Athabaskan peoples gathered under the federal legislation

including groups established by the Indian Act, self-ruling First Nations as proclaimed by the Settlement Agreements and regional organizations¹¹.

Aleut International Association

The next permanent participant is the Aleut International Association (AIA) which is an Alaska Native non-profit organization. The AIA became a permanent participant of the Arctic Council in 1998 and has had Special Consultative Status since 2004. It was based by the Aleutian/Pribilof Islands Association, USA, which is one of the thirteen regional non-for-profit Alaska Native organizations. AIA has a Board of Directors, composed of four Alaskan and four Russian Aleuts as well as of a president. The current president is Arlene Gundersen.

The Russian and the Alaskan Aleuts are united by the Bering Sea and the North Pacific, sharing both the resources and the environmental problems of the problems. The organization seeks to cover environmental and cultural challenges of the Aleut community, to increase knowledge about global climate process, such as cross-order contaminants transport, the influence of the climate change, the impact of commercial fisheries on the ecosystem of the Bering Sea, etc. When forming strategies and projects promoting the wellbeing of the Aleut people and their environment, AIA cooperates with governments, scholars and various entities.¹²

Gwich'in Council International

The Council International (CGI) represents the Gwich'in in Canada and USA. It was founded as a non-for-profit company in 1999 by the Gwich'in Tribal Council in Inuvik, NWT, to guarantee the representation of the Gwich'in peoples in the Arctic Council as well as contribute to the development of policies concerning the Circumpolar Arctic. The founding members of the CGI are six Alaskan Gwich'in bodies and two Canadian ones. The head of the institution is Joe Linklater. Altogether, the founding members of the organization represent 9000 Gwich'in peoples. It gets its budget for the management of the Secretariat and the travellings from Department of Foreign Affairs and International Trade in Canada as well as from the US State

¹¹ Arctic Council, Arctic Athabaskan Council, <http://www.arctic-council.org/index.php/en/about-us/permanent-participants/arctic-athabaskan-council-aac>, 15.04.2011, retrieved: 29.04. 2014.

¹² Home page of Aleut International Association, <http://www.aleut-international.org/Page1.html>.

Department in Alaska for the promotion of the participation in the Arctic Council meetings of those Gwich'in who are US citizens¹³.

Inuit Circumpolar Council

The Inuit Circumpolar Council (ICC) was formed in 1997 to represent the Inuit in Greenland/Denmark, Canada, Alaska/USA and Chukotka, Russia. It represents around 150 000 Inuit of Alaska, Canada, Greenland and Chukotka, Russia.



Inuit hunters in the Arctic Circle

Source: <http://www.audleytravel.com/destinations/polar-regions/the-arctic/the-arctic-in-pictures.aspx>

¹³ Home page of Gwich'in Council International, <http://www.gwichin.org/index.html>.

It has Consultative Status II at the United Nations. The ICC aims at contributing to the integration of the circumpolar region, promoting the Inuit rights and interests at the international level, forming and implementing strategies protecting the Arctic environment. The organization has been actively engaged in various groups and projects of the Arctic Council such as the Arctic Monitoring and Assessment Programme (AMAP), the Conservation of Arctic Flora and Fauna, the Arctic Climate Impact Assessment (ACIA), the Protection of the Arctic Marine Environment (PAME), the Sustainable Development Working Group (SDWG), and the Arctic Marine Shipping Assessment (AMSA). ICC has also been actively involved in the UN and its entities.

From 2002-2006, ICC was engaged in multiple fields, such as promoting the Inuit language, trade, environment, human rights, sustainable development, resource usage, helping youth, etc. The work was carried out in the framework of international organizations and specific projects. The period 2002-2006 was crucial for all the Inuit communities. In Canada the Inuit established the Nunatsiavut Government in Labrador. In Greenland, in cooperation with Denmark, the Inuit completed a four-year evaluation of the Home rule structure since its launch of 1978. Moreover, they formed self-government commission to investigate further means for encouraging self-rule in relationship with Denmark. In Chukotka the Yupok society managed to resettle¹⁴.

Russian Association of Indigenous Peoples of the North (RAIPON)

Established in 1990 RAIPON is an entity incorporating 35 regional and ethnic organizations of indigenous peoples in the regions they reside. It represents 41 groups of indigenous peoples of the North, Siberia and the Far East. Altogether, the number of people is over 270 000. The purpose of RAIPON is to protect indigenous peoples' human rights, defend their legal interests, assist in solving environmental, social, economic, cultural and educational issues, and promote their right to self governance. RAIPON works with the State Duma and the Government of the Russian Federation in compliance with the legislation related to indigenous peoples' issues. The highest body of the organization is the Congress of all the indigenous people of the North, Siberia and Far East of Russia. Its meetings are held every four years. The current president of it is Sergei Kharyuchi. The organization is engaged with various international institutions, such as the Arctic Council, the UN Economic and Social Council where it has Special Consultative

¹⁴ Arctic Council, Inuit Circumpolar Council, <http://www.arctic-council.org/index.php/en/about-us/permanent-participants/inuit-circumpolar-council>.

Status, and the Governing Council/Global Ministerial Environment Forum of the United Nations Environment Programme as an observer¹⁵.

Saami Council

The Sami Council was established in 1956. It is a non-governmental organization, including members from Finland, Russia, Norway and Sweden. The head of the institution is Aile Javo. The entity seeks to promote the Saami rights and interests in the four countries where the Saami live, encourage the integrity among the Saami people, get recognition for the Saami as a nation as well as ensure the economic, social and cultural rights of the Saami in the legislations of the four countries, i.e. Norway, Sweden, Russia and Finland¹⁶.

Arctic Council governance and its Working Groups

The Arctic Council is governed by the Foreign Ministers or their representatives from the member countries as well as the political heads of the Permanent Participants. The ministerial meetings are held every two years. The Chairman of the Arctic Council is elected every two years from the MSs¹⁷. From 2013 to 2015 Canada owns the Chairmanship. The chair is Leona Aglukkaq. The topic of Canada's chairmanship is "Development for people of the North". It seeks to develop responsible use resources, ensure safe Arctic shipping and sustainable communities¹⁸.

To facilitate as well as promote the efficiency of the Arctic Council a permanent Arctic Council Secretariat was established at the Nuuk Ministerial meeting in 2011. The Secretariat is to accelerate the performance of the Arctic Council by enhancing human resources and presenting stability, administrative and institutional memory, functioning effectiveness, enlarged interactions and exchange of data with other related international organizations¹⁹. The work of

¹⁵ Arctic Council, Russian Association of Indigenous Peoples of the North (RAIPON), <http://www.arctic-council.org/index.php/en/about-us/permanent-participants/russian-association-of-indigenous-peoples-of-the-north-raipon>.

¹⁶ Home page of Saami Council, <http://www.saamicouncil.net/?deptid=2178>.

¹⁷ Guðmundsdóttir, Olga Sif, Arctic Social Indicators Measuring Change in Human Development in the Arctic, Helsinki, 2007, p. 13, http://skemman.is/stream/get/1946/781/2678/1/Arctic_Social_Indicators.pdf.

¹⁸ Arctic Council, Canada's Arctic Council Chairmanship, 2013-2015, government of Canada, p.1.

¹⁹ Arctic Council, Terms of Reference of the Arctic Council Secretariat, Stockholm, Sweden, 15.05.2012, pp. 1-2.

the Arctic Council is carried out in the scope of its working groups. Each of the working groups consists of experts from sectoral ministries of the member states, government entities as well as scholars. The sphere of activities and actions ranges from climate change to emergency response. The Arctic Council is composed of six working groups: Arctic Contaminants Action Program (ACAP), Arctic Monitoring and Assessment Programme (AMAP), Conservation of Arctic Flora and Fauna (CAFF), Emergency Prevention, Preparedness and Response (EPPR), Protection of the Arctic Marine Environment (PAME) and Sustainable Development Working Group (SDWG). Overall, the working groups monitor, evaluate and try to prevent the pollution in the Arctic. Additionally, they are engaged with such issues as climate change, biodiversity preservation, sustainable use of resources, emergency awareness and deterrence as well as the living conditions of the Arctic inhabitants. The results they reach present knowledge as well as recommendations to the Arctic Council.²⁰

The Arctic Contaminants Action Program (ACAP)

The Arctic Contaminants Action Program (ACAP) was granted the working group status in 2006 in Salekhard, Russia. Yet the entity was formed in 1998 as the Arctic Council Action Plan to Eliminate Pollution in the Arctic²¹. Its mandate is also formed in agreement with the Arctic Council Ministers. It composes of delegations from each of the member states of the arctic council and each delegation has its chairman. The ACAP has also a Chair and Vice Chair who are elected in consultation with the SAOs. In addition to the functions fulfilled by the previous body ACAP also calls Arctic States for domestic actions to reform and prevent activities concerning pollution emissions²².

Among the many successful projects and initiatives the following can be underlined: Integrated Hazardous Waste Management Strategy (IHWMS) (IHWMS), Environmentally Safe Management of Obsolete and Prohibited Pesticides in Russia, Reduction of Dioxins/Furans Releases into the Environment, Reduction of Atmospheric Mercury Releases from Arctic States, Proposed Multi-Pollutant Control Project at a Russian Non-Ferrous Smelter, Phase-Out of PCBs in Russia, NEFCO-Funded Project, Reduction/Elimination of Sources and Release of Brominated Flame Retardants (BFR'S), Indigenous Peoples Contaminants Action Program

²⁰ Arctic Council Secretariat, Arctic Council Fact Sheet, The Fram Centre, Tromso, Norway, 2013, pp. 1-2.

²¹ Barrow, Arctic Council Action Plan to Eliminate Pollution of the Arctic, (ACAP), 13.10. 2000, pp. 2-3.

²² ACAP Chair, Arctic Contaminants Action Program (ACAP), 04.2008, pp-1-3.

(IPCAP, Proposed project Steering Group of Short lived Climate Forcers and Contaminants (SLCFC)²³.

Arctic Monitoring and Assessing Programme (AMAP)

The next working group to describe is the Arctic Monitoring and Assessing Programme (AMAP). It was founded in 1991 to monitor and evaluate the Arctic Environmental Protection Strategy. It got the status of a Working Group of the AC in 1996. It is to monitor and evaluate the pollution and climate change issues in the Arctic, register the data, calculate its impact on the ecosystems and humans, and come up with solutions to reduce the related problems as well as raise public awareness regarding the threats. It consists of the representatives from the MS of the Arctic Council, Arctic Council Permanent Participants, Arctic Council Observing countries and organizations as well as of AMAP observing organizations. The work of this WG is realized in compliance with the mandate ratified by the Arctic Council Minister and Senior Arctic Officials, the AMAP Strategic Framework and the AMAP Work plan update on bi-annual basis. The Strategic Framework identifies the mandate, vision, objectives and regulations of the AMAP²⁴.

The AMAP Workplan presents the projects to be implemented in the coming two years so as to fulfill the AMAP mandate and address specific requests from Ministers and their Senior Arctic Officials (SAOs). The workplan for the period 2013-2015 includes Adaptation Actions for a Changing Arctic – part C; SLCF Expert Group, Human Dimension and Priority on Arctic Health and Human Well-being, Unmanned Aircraft Systems (UAS) Expert Group, Food and Water Security project, Arctic Marine Strategic Plan, Arctic Ocean Review, AACA part c, Ecosystem-Based Management Initiative, Circumpolar Biodiversity Monitoring Plan, SAON, AMAP's science results and information, United Nations Environment Programme (UNEP) Chemicals, Stockholm Convention Conference of Parties 7 (COP 7), UNFCCC IPCC and the SWIPA assessment results, Combined Effects of Contaminants and Climate Change,²⁵ etc.

In cooperation with scholars, representatives of the indigenous peoples, Arctic Council member states as well as AMAP observing countries and companies, the AMAP has resulted in a number

²³ ACAP, ACAP Progress Report to Senior Arctic Officials, Copenhagen, Denmark, 17.03.2011, pp. 2-14.

²⁴ Arctic Monitoring and Assessment Programme (AMAP), AMAP Report 2010-2018: AMAP Strategic Framework 2010+, pp. 4-17.

²⁵ AMAP Work plan 2013–2015, Extract from Senior Arctic Officials Report to Ministers, Kiruna, Sweden, 15.05.2013, pp 1-3.

of significant scholaristic evaluations of the Arctic region stance concerning pollution and climate change. These evaluations have served as the ground for the formation of the Arctic Contaminants Action Programme (ACAP)²⁶.

Conservation of Arctic Flora and Fauna (CAFF)

The Conservation of Arctic Flora and Fauna (CAFF) is the biodiversity working group of the Arctic Council. The members of the CAFF are representatives from the MSs, Permanent Participants and the Arctic Council observer countries and organizations. The CAFF is the platform for cooperation on species and environment management and deployment, provision of information on management tools and processes, investigation of means for the solution of the problematic issues for the Arctic, such as development and economic demands, preservation options and political choices. CAFF is ruled by a Chairman. The Administrative Board is assisted by the International CAFF Secretariat. CAFF aims at conserving the Arctic biodiversity, spreading its results to the Arctic governments and peoples as well as promote sustainable usage of the Arctic resources²⁷. The programmes the CAFF is engaged are Circumpolar Biodiversity Monitoring Programme, The Arctic Biodiversity Assessment (ABA), Expert groups on Circumpolar Flora Group (CFG) and The Circumpolar Seabird Group (CBird), The Bering Sea Sub Network (BSSN), Arctic sea ice associated biodiversity, Arctic Spatial Data Infrastructure (Arctic SDI), ECORA, Protected areas in the Arctic, Marine sensitive areas in the Arctic, etc²⁸.

Emergency Prevention, Preparedness and Response Working Group (EPPR)

The Emergency Prevention, Preparedness and Response Working Group (EPPR) was initially formed as the Arctic Environmental Strategy in 1991 and got a Working Group status in 1996. It gets its mandate from the Arctic Council ministerial meetings and aims to promote international cooperation on environmental protection and sustainable development in the Arctic²⁹.

²⁶ AMAP, Assessment reports, <http://www.amap.no/about/the-amap-programme/amap-assessment-reports>, retrieved: 05:05.2014.

²⁷ Arctic Biodiversity Portal, About CAFF, <http://www.caff.is/about-caff>.

²⁸ Barry, Tom & Lárusson Kári Fannar, Conservation of Arctic Flora and Fauna (CAFF), CAFF Administrative Series Report No. 2, 05.2011, pp. 5-13,

²⁹ EPPR, EPPR Strategic Plan, 06.2013, pp. 1-3, http://www.arctic-council.org/eppr/wp-content/uploads/2010/07/EPPR_Strategic_Plan_2013_Update.pdf

The current projects the WG is dealing with are Cooperation on Spill Response in the Arctic: Gap Analysis, Arctic Rescue, Arctic Guide, Updating the Environmental Risk Assessment, Recommendations from the report Behavior of Oil and Other Hazardous Substances in Arctic Waters, Safety Systems in Implementation of Economic and Infrastructural Projects, Pilot Projects. Among the successfully fulfilled undertakings are Safety Projects, Map Products, and Other Work, Exercises, Oil and Gas Products, Radiation Products, Cooperation with Other Groups³⁰.

Protection of the Arctic Marine Environment Working Group (PAME)

The Protection of the Arctic Marine Environment Working Group (PAME) was formed as Arctic Environmental Protection Strategy in 1991 and got the Working Group status in 1996. Its objective is to ensure that global and regional legal, strategic and other regulations regarding the Arctic Council's Arctic Marine Strategic Plan are adequate. It consists of the MSs of the Arctic Council, the Permanent Participants as well as of observer countries and organizations. Its meetings are held twice a year. It has a chairman, vice-chairman and a Secretariat. As for the PAME's Workplan it defines the scope of the WG's activities for the protection of the Arctic marine environment and is updated every two years. So far the projects realized by the PAME have been Arctic Marine Strategic Plan (AMSP), Arctic Marine Shipping Assessment (AMSA), AMSA Implementation reports (2011 and 2013), Offshore Oil and Gas Guidelines, Ecosystem-based Management and LMEs, Arctic Ocean Review Project³¹.

Sustainable Development Working Development

The Sustainable Development Working Group was established by the AC Ministerial meeting in Iqaluit, Canada in 1998. The key fields under its umbrella are the well-being of the Arctic indigenous peoples, the sustainable development of the region, promotion of education, preservation of culture, development of children and youth, adequate treatment of the natural resources, development of infrastructures. The recent projects it has undertaken regarding the Arctic Indigenous Peoples are Comparative Review of Circumpolar Health Systems (Canada/Greenland), Arctic Human Health Initiative (USA), International Circumpolar

³⁰ EPPR home page, <http://www.arctic-council.org/eppr/>

³¹ PAME home page, <http://www.pame.is/>

Surveillance (USA), Arctic Social Indicators Phase II (Iceland), Assessment of Cultural Heritage Monuments and Sites in the Arctic (Norway). Regarding the Oceans it realizes the project “Areas of Heightened Cultural Significance – Follow-up on AMSA Recommendation IIC (Norway)”³².

The EU-Arctic Relations

When observing the EU history, it becomes evident that the Union has paid marginal attention to the Arctic region, with Greenland being its most significant Arctic space. Nevertheless, after Greenland’s accession to the European Community in 1973 the situation got complicated. Greenland feared that the EU membership could threaten its lifestyle and economy, such issues as fishing and sea mammals hunting being a source of various conflicts. Eventually, with the 1982 referendum Greenlanders determined to leave the EC and officially left the Community in 1985. As a result, the EC had no representative in the region and the issues regarding the region had peripheral importance in the Union’s agenda. When in 1995 Finland and Sweden entered the Union a new momentum for the development of the relations was presented. The “Northern Dimension” (DM) was initiated in 1997 under the Finnish presidency. However, the key focus of the policy was the Baltic States; Sweden and Finland-Russia relations. With the second Finnish presidency of 2006 the initiative was furthered to become a cooperation model, with Norway, Russia and Iceland jointly with the EU being equal members. The triggers for the EU to have more complex involvement with the Arctic region have been multiple: the quick loss of the ice sheet of the Arctic, its future shipping and energy potential, as well as the EUs aspiration of asserting its position in the world³³.

In this regard, it is worth noting that the territories of the three of the Union member states – Denmark, Finland and Sweden, spread to the Arctic. Two of the EU’s Economic Area states are situated in the Arctic region – Iceland and Norway. The EU also has tight strategic ties with three other Arctic region countries – Canada, Russia and the United States. Moreover, the wide sea and terrestrial territories of the Arctic are essential elements of the global environment and climate system. Yet, the Arctic temperatures, as it is known, have been growing much faster than

³² Arctic Council home page, <http://www.arctic-council.org/index.php/en/sustainable-development-working-group-sdwg>,

³³ Wegge, Njord, The EU and the Arctic: European foreign policy in the making, Arctic Review on Law and Politics, vol. 3, 1.2012, p. 6–29, <http://site.uit.no/arcticreview/files/2013/04/The-EU-and-the-Arctic-European-foreign-policy-in-the-making.pdf>

the world average. Hence, the quick dissolution of the Greenland ice will result in the increase in the sea level. The loss of the ice sheet and the presence of modern equipment will raise the entry to the Arctic natural resources as well as give new pace to the navigation paths. Moreover, the climate change and the human interventions can endanger the vitality of the region. As such, the EU activities in such spheres as environment, climate change, energy, research, transport and fisheries are directly connected with the Arctic. Hence, acknowledging that environmental and geo-strategic shifts of the Arctic can endanger the global suitability as well as the EU's security, in 2008 the CFSP called for the development of an EU Arctic Policy, in contact with the Arctic countries and entities concerned³⁴. The key objectives of the policy are: 1) protection and preservation of the Arctic together with its peoples, 2) adequate usage of resources 3) increase in the Arctic multilateral governance. With regard to the first aspect the Union seeks to prevent and reduce the negative influence of the climate changes as well as assist to adjust to the inevitable changes. Increasing the participation of the indigenous peoples as well as protect their rights, increase public knowledge about the climate change as well as assess its impact on the environment. Concerning the second aspect, sustainable use of resources, the EU policies are directed towards exploiting the hydrocarbon as well as fishery resources at sustainable levels. Furthermore, it investigates the means to improve the conditions for the commercial navigation and sustainable tourism meanwhile ensuring safe and environmentally favourable regulations. As for the third objective, enhanced Arctic Multilateral Governance, the EU is to promote the development of the cooperation in Arctic governance taking into account the UNCLOS which would contribute to security and stability, successful environmental management, execution of the adopted regulations. The EU is to foster dialogue, suggest solution³⁵. Besides the main areas of focus the Commission's Communication also expressed interest to get an observer status in the AC, recognizing it as the as the key competent entity for circumpolar regional cooperations. Once the EU Council endorsed the idea, the Commission formally applied to the AC for the observer status. However at the meeting of the Arctic Council of Foreign Ministers of April, 2009, the application remained unaddressed³⁶. Yet, this has not prevented the EU from

³⁴ Clive, Arche, Defining an interest: the European Union and the High North - The EU's involvement in the Arctic, An EU Arctic Policy?, Norwegian Institute for Defence Studies, 09.2009, http://www.geopoliticsnorth.org/index.php?option=com_content&view=article&id=62&Itemid=73&showall=1.

³⁵ Commission of the European Communities, Communication from the Commission to the European Parliament and the Council - The European Union and the arctic region, COM(2008) 763 final, Brussels, 20.11.2008, <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=13zbTqtQKOL28RpZbCwlxGdY2rTyGqvpJ67My2VY811Q3LnLZ5H1!-1238186976?uri=CELEX:52008DC0763..>.

³⁶ Airolidi, Adele, The European Union and the Arctic Main developments July 2008–July 2010, Nordic Council of Ministers, Copenhagen, 2010, pp. 45-53.

developing and implementing Arctic-related strategies. To meet the identified objectives of the 2008 Communication, the Union has provided funding schemes for multiple projects, namely Interreg, the Baltic Sea Region Programme, Karelia ENPI CBC and Kolarctic ENPI CBC Programmes³⁷.

Moreover, the EU also undertook its own initiatives. Namely, in 2011 the European Parliament requested the EU Commission to establish an EU-Arctic Center which would provide scientific data for future policy and decision makings with regard to the Arctic³⁸. Within the period of 2009-2012 the European Union Arctic Information Centre initiative was formed. It incorporates 19 Arctic institutions from the EU MS and the EEA space. In line with the EP vocation it seeks to raise the knowledge and information on the Arctic, its stance and trends. The head of the center is Paula Kankaanpää. During 2013-2014 the institution is entrusted to carry out the 18-month project “Strategic Environmental Assessment of Development of the Arctic”. The initiative is on the request of the Commission and holds an one million budget³⁹. Furthermore, in compliance with the 2009 EP “Report on a Sustainable EU policy for the High North” the EU Arctic Forum was established in 2010. It provides an independent non-for-profit foundation in the EP to bring together the actors engaged with arctic politics, science, civil society and economics. The Secretary General of the Foundation is Steffen Weber⁴⁰. Furthermore, the EU continued cooperation and developed its ties with other regional integration units of the Arctic. One of the platforms that provided a cooperation forum between the EU and Arctic is the Barents Euro Arctic-Arctic Region (BEAR). The EU Commission was one of the founding members of the entity. As its programme of 2014-2018 defines, it seeks to advance creative businesses in the region, transnational cooperation in various fields e.g. economy, transport infrastructure, tourism, science and research, promote joint management of natural resources, climate change issues, etc.⁴¹.

A strategic and central importance for the EU vis-a-vis the Arctic region has the Nordic council of ministers. The institution is unique for the EU both for its geographical context and expert

³⁷ International Barents Secretariat, Barents Cooperation, 30.10.2013,

http://www.barentsinfo.fi/beac/docs/Barents_Cooperation_information_English_October_2013.pdf, pp.2-3

³⁸ Funch, Michael, New initiatives could improve EU-Arctic relations, Nordic Council of Ministers, 08.04. 2011,

<http://www.norden.org/en/news-and-events/news/new-initiatives-could-improve-eu-arctic-relations>

³⁹ EU European Arctic Information Centre (EUAIC), <http://www.arcticcentre.org/InEnglish/ABOUT-US/EU-Arctic-Information-Centre>

⁴⁰ Arctic Forum Foundation, <http://eu-arctic-forum.org/about-the-eu-arctic-forum-in-the-european-parliament/origins/>

⁴¹ International Barents Secretariat, Barents Cooperation, 30.10.2013,

http://www.barentsinfo.fi/beac/docs/Barents_Cooperation_information_English_October_2013.pdf, pp.2-3

knowledge regarding the Arctic region. In this regard in 2008 conference “Common Concern for the Arctic” served a unique platform for discussing policies and actions to be undertaken by the member states of the NCM and the EU. The 2010 NCM conference “Arctic – Changing Realities” aimed to find ways to adapt to the changes in the region, promote sustainable development there. The NCM Arctic cooperation programme 2009-2011 provided a forum for Nordic cooperation on the Arctic issues both within the Arctic countries and the neighbours⁴².

After the 2008 Commission’s Communication on the EU-Arctic, on 3 July, 2012 together with the High Representative the European Commission issued the communication “Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps. The document states EU’s position to enhance its involvement in the Arctic by becoming permanent observer and increasing bilateral dialogues with the Arctic countries. It also identifies the Union’s priorities towards the region, among them being the urgency to manage climate change issues, preserve environment, promote sustainable development. Additionally, the document acknowledges the EU’s interest in the resources of the Arctic countries since the Union is a major consumer of them. Furthermore the EU’s concern regarding the shipping infrastructures for the region are underlined. The document also welcomes the EU’s accession to the Arctic Council as a permanent observer⁴³.

Nevertheless, once again at the Arctic Council’s biannual meeting of 15 May, 2013, the Arctic Council accepted six new observers - China, India, Italy, Japan, South Korea and Singapore, yet, the EU’s application was postponed for a later scrutiny⁴⁴. The reason for the rejection is the import ban on the seal products that the EU has imposed since 2009. However, this is a determining issue for Canada because sea hunting is of key importance for the indigenous peoples⁴⁵. Additionally, the EU Commission’s observer position is not in the interest of the other Arctic Council MSs, either since it may diminish the MSs sovereignty in the Arctic⁴⁶. On May 22, 2014 the World Trade Organization concluded that the EU’s Seal Policy is prerequisite for

⁴² Airolidi, A, 2010, pp. 108-111, <http://norden.diva-portal.org/smash/get/diva2:702010/FULLTEXT01.pdf>.

⁴³ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps, JOIN(2012) 19 final, Joint Communication to the European Parliament and the Council Brussels, 26.6.2012.

⁴⁴ Nielsen, Nikolaj, China beats EU to Arctic Council membership, EU observer, 16.05.2013, <http://euobserver.com/environment/120138>.

⁴⁵ Pettersen, Trude, Six new observers to Arctic Council, Barents Observer, 15.05.2013, <http://barentsobserver.com/en/arctic/2013/05/six-new-observers-arctic-council-15-05>

⁴⁶ Coffey, Luke, The Arctic Council Rejects the EU—A Boost for Sovereignty and Democracy, the Foundry, 16.05.2013, <http://blog.heritage.org/2013/05/16/the-arctic-council-rejects-the-eu-a-boost-for-sovereignty-and-democracy/>

the protection of the public morals, thus rejecting Canada and Norway's appeal for the exemption of the seal ban⁴⁷ further complicating the EU's path to the Arctic Council as a permanent observer. However, as the EU researcher Sebastian Maffione mentioned at the Montreal conference on April 26, 2013, the EU's admission to the Arctic Council as an observer can contribute to Arctic tourism, promote doing research there, using Arctic fisheries as well as oil and gas⁴⁸.

As for the EU, it has kept progressing its engagement with the Arctic. As seen the EU's application was rejected for the second time. Furthermore on 12 March 2014 the European Parliament made a resolution on the EU Strategy for the Arctic. The document is in line with the previously identified issues and policies. Here certain parts can be highlighted:

"F. whereas France, Germany, the United Kingdom, the Netherlands, Poland, Spain and Italy – observers to the Arctic Council – show a substantial involvement in the Arctic and strong interest in future dialogue and cooperation with the Arctic Council;

J. whereas the Arctic Council made a decision in Kiruna on 15 May 2013 to 'affirmatively receive' the EU's application for permanent observer status; whereas this affirmative decision includes the condition of resolving the seal products ban issue between the EU and Canada; whereas the EU and Canada are in the process of resolving this issue; whereas the EU is already working under the above status of permanent observer to the Arctic Council;

N. whereas the growing interest in the Arctic region shown by non-Arctic actors, such as China, Japan, India and other countries, their allocation of funding to polar research and the confirmation of South Korea, China, Japan, India and Singapore as observers to the Arctic

Council indicate an increasing global geopolitical interest in the Arctic;

17. Welcomes the implementation of the Search and Rescue Agreement and the Oil Spill Response Agreement by Arctic Council members; considers it regrettable, however, that the agreement does not include specific binding common standards;

19. Highlights the need for an active engagement of the EU in all relevant working groups of the Arctic Council⁴⁹.

⁴⁷ Fox, Benjamin, WTO confirms EU seal trade ban, EU observer, 23.05.14, <http://euobserver.com/news/124250>

⁴⁸ George, Jane, Arctic Council: EU out but China likely in, academics say, Nunatsiaq news, 29.04.2013, http://www.nunatsiaqonline.ca/stories/article/65674arctic_council_eu_out_but_china_likely_in_academics_say/.

⁴⁹ European Parliament, Joint Motion for a Resolution pursuant to Rule 110(2) and (4), of the Rules of Procedure, 10.03.2014, pp. 4-11, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2014-0229+0+DOC+PDF+V0//EN>.

Following these initiatives on 12 May, 2014 in its “conclusion on developing a European Union Policy towards the Arctic Region” the Council welcomed the 2012 Joint Communication of the Commission and the High Representative on Developing a European Union Policy towards the Arctic Region as well as stated the significance of the European Parliament’s 12 March 2014 resolution, concerning the EU Strategy towards the Arctic⁵⁰.

By and large, it is worth noting that over the years the EU has persistently evolved its policies and strategies towards the Arctic stemming from both its domestic and foreign policy implications. As for the Arctic States, while on the one hand they have been open to conduct Arctic-related partnerships with the EU, on the other hand they have so far been reluctant to allow the Union too close.

Conclusion

The Arctic region is of valuable environmental and geopolitical significance. Yet, due to the global warming as well as changes in the global economic and political systems, the region becomes vulnerable. However, the means and tools of protecting its nature and resources are still to be reformed.

Various initiatives have been undertaken to ensure the safety as well as the sustainable development of the region. A central role in the Arctic-related issues has the Arctic Council. It seeks to address issues related to the environment and climate of the region, its biodiversity, indigenous peoples and oceans. Today the institution is a significant Arctic actor with permanent Arctic Secretariat, competent to adopt binding agreements, resolve conflicts and develop policies for the protection of the Arctic environment and the indigenous peoples. However, it also has certain deficiencies. As could have seen, the institution is intergovernmental and has rather weak governance functions. The emergency response policies are not well developed. The number of policies and projects on security, shipping, natural resources, oil and gas, tourism as well as the amount of the funds is limited. Given the challenges the Arctic faces, the gaps the Arctic Council has as well as the wide range of linkages and interdependence that the EU and the Arctic have, it

⁵⁰ Council of the European Union, Council Conclusions on Developing a European Union Policy towards the Arctic Region, Foreign Affairs Council meeting, Brussels, 12.05.2014, p. 1-2, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142554.pdf.

becomes evident that the strengthened cooperation between the Union and the Arctic Council is of mutual benefit and can contribute to the sustainable development of the region⁵¹.

However, while the EU has indeed developed a more complex Arctic policy since 2008 and has taken part in various activities via the EU Arctic Forum, Barents Euro-Arctic Council, etc., it still does not have any official authority regarding the continental shelf or the management of the Arctic fisheries and natural resources. To be included in the regional geopolitics, the EU has sought to become a permanent observer in the Arctic Council. Yet, the AC has so far not approved the application due to the EU's ban over the seal trade as well as the Arctic states concern to preserve their sovereignty. Taking into account these aspects as well as the bureaucratic complications of the EU as well as diverging interests of its MSs hardly is it possible that the EU will have or be allowed to have a determining say in the Arctic. However, the EU's Arctic related engagement should remain persistent. Moreover, "it should not be the EU's prerogative to create an Arctic policy similar to those of the Arctic states, but rather to supplement these policies with what the EU can provide to ensure additional benefits to the Arctic and its inhabitants."⁵² To this end, enlarged cooperations in such fields as environment, climate change, research, indigenous peoples, sustainable development, natural resources, shipping, tourism, etc, are foreseeable as well as mutually favourable.

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⁵¹ Weber, Steffen & Romanyshyn, Julian, Breaking the ice: The European Union and the Arctic, International Journal, Autumn 2011, pp. 859-860, <http://eu-arctic-forum.org/wp-content/uploads/2012/07/Steffen-Weber-Julian-Romanyshyn.pdf>.

⁵² Osthaagen, Andreas, The European Union – An Arctic Actor?, Journal of Military and Strategic Studies, Vol. 15, N 2, 2013, p. 87, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=13&cad=rja&uact=8&ved=0CD4QFjACOAo&url=http%3A%2F%2Fwww.jmss.org%2Fjmss%2Findex.php%2Fjmss%2Farticle%2Fdownload%2F529%2F515&ei=qhaBU8WiCOiY0AWmiYDgDA&usq=AFQjCNGfNQTQMqxDjbpz3J_mL_PppTo6cQ&sig2=QGFQK2Gov-o-PEuUIXW0m9A&bvm=bv.67720277.d.bGE.

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Interrelationship of Official Norms and Traditions in Relation to Principal Violations of Fair Elections in Kyrgyzstan

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Indubitably, contemporary elections in Kyrgyzstan are affected not only by written norms, but also by traditions and informal rules that have evolved in the society. Before describing the state of the contemporary election's process, it is important to look back at the history and overview of how elections took place in Kyrgyzstan a hundred years ago. Professor Nurbekov in his book on the history of statehood and law of the Kyrgyz Soviet Socialist Republic stated that:

Elections of a volost administrator occurred in a way that every fifty yurts elected one volost representative, who in their own turn, convening for a volost assembly, elected the volost administrator. Elections were accompanied with heated pre-election strife. The point is that political division established by the tsarist government did not correspond to the aged tribal division of the Kyrgyz society. As a result smaller tribes were united and larger tribes were split and if the remaining yurts were more than 2000 they were allotted to other volosts. In such a

way, not one clan and not one tribe, but several tribes could fall within one volost. Therefore, the leaders of each tribe strived to put forward their own candidates that led to clashes for power.

In order to get an extra elector, chieftains of groups resorted to reception of new members or allotting new yurts to younger family members sometimes infants, as well as division of a village into two. [...] As a result of heated group combat, vote buying and bribing, the most sly and artful dodgers passed for elective positions. After being elected for the position of volost administrator they first tried to reimburse expenses that they had spent either personally or through leaders of boy gangs who secured their election during the election campaigns. They resorted to various exactions from the population – chygym - under the pretext of compensation of expenses sustained as though for public necessities (1970: 64-5). Furthermore, Professor Nurbekov referred to Russian Senator Count K.K. Palen who in 1910 described Kyrgyz pre-election grouped struggle of early 20th century as following: *Not only allowable but also unallowable means are being employed: reception of new members, allotment of new tents, vote buying, forge of family polls, by default execution of letters of attorney on behalf of the absent community members, baranta (barymta) of livestock, women kidnapping, intimidation and even custody of voters for the opposing party or coercive bounding access to the place set for ail assembly and eventually false accusations and fictitious suits* (qtd. in Nurbekov, 1970: 64-5).

Those who are familiar with election processes in contemporary Kyrgyzstan would easily draw a parallel between the elections of the early 20th and the early 21st century. Among the most frequently encountered violations undermining present-day elections are the lack of effective voter access to diverse sources of information, biased media, continued deregistration of candidates on minor grounds, inaccurate and poorly maintained voter lists, family voting, voters being transported to more than one polling station, protocols being filled out in pencil or blank signed protocols being transferred to the Territorial Election Commissions, interference in the campaign by government organs on behalf of their preferred candidates and rampant vote buying practice.

Unfair Pre-election Campaigning

Pre-election campaigning of candidates for the most part is oriented on local traditions. Despite the open prohibition in the legislation, *agitation through representatives of religious figures* at mosques is practiced at Kyrgyz elections. Mullahs sometimes are asked to agitate believers to vote for particular candidates.

Family voting is another impediment to fair elections in Kyrgyzstan. For a long time the practice was that heads of families would come to polling stations with passports of their wives and children, receive a corresponding number of ballots and vote for the members of their families. Recently, however, electoral legislation strictly precludes such practice. Although family voting still takes place, it now does so in a form of verbal direction by the head of the household. Elders and husbands decide for whom the rest of the family should vote. These practices primarily occur in rural areas and emanate from traditional respect and obedience to the will of the heads of the family (*children's high respect of parents and wives' obedience to husbands*). As was mentioned earlier, during the 19th century the voting for the volost administrators was usually conducted by a single representative from the whole family. Another reason of today's family voting practice lies in the collectivist approach to the elections ("Our village/clan should support Mr. B") rather than individual expression of political preferences.

Candidates often direct their *campaigns towards aqsaqals* and other respectable people whose opinion is heeded by entire families, clans and villages. For instance, if an aqsaqal says "We should vote for a particular person," people might do so due to the prestige of an elder governed by the idea that the sage knows better what is good for their village or clan. There was also a case in recent elections when someone started to campaign for a candidate who was not from his own clan but from another clan. The man's father received telephone calls with reproach and intimidations because his own son did not support the members of their tribe. The telephone callers knew that aqsaqals are highly respected and obeyed by children; they also knew the importance of *uiat* (public censure) for a Kyrgyz elder.

Bata is a blessing by old people for forgiveness of sins and advancement of one's goals. The elderly are especially invited for *bata* before important events and life steps, including running for elections. An aqsaqal who gave his blessing for a particular candidate feels morally obliged to vote for that person and calls upon his relatives and villagers to do so also. Thus, *bata*, without any special election campaign by itself, strongly influences peoples' decisions.

Vote Buying

Vote buying is one of the most striking and widespread violations of the fair election process in contemporary Kyrgyzstan. For many villagers and small town dwellers whose average monthly income does not exceed the cost of one sack of flour, election time is one of the few opportunities to increase their income by receiving a reward for their vote. Vote buying is prohibited by the Criminal Code of the Kyrgyz Republic. Article 140 states that punishment in

the form of imprisonment (from 2 to 5 years) will be imposed upon a candidate, their immediate relatives, their authorized representatives and trusted persons if found guilty of vote buying. There are two forms of vote buying practiced in Kyrgyzstani elections: vote buying during the election campaigns and vote buying on the day of elections.

Vote Buying During Election Campaigns

A Kyrgyz proverb states that a “*Dog which is beaten by a fatty bone never barks*”. This proverb illustrates that gifts and feasts for the hungry people could make them more obedient and compliant. Traditionally the Kyrgyz aristocracy used feasts and gifts to manage the masses. Today, this technique continues to be used during election campaigns. During election campaigns some candidates distribute money or sacks of flour, others treat the people with free vodka, and still others support local public work projects (i.e. repairing a cultural centre, hospital). Another common vote buying practice is throwing a feast (*beshbarmak* or *pilaw*) for the village. Candidates often finance preparation of a dinner, for which all villagers gather and receive various gifts (cuts of fabric, kerchiefs, china, etc) from the candidate.

Vote Buying On Election Day

Interviewed election observers discussed the cases of overt vote-buying. A voter would fill out the ballot, show it to the Trusted Persons of a corresponding candidate and after placing the ballot into the ballot box would boldly leave the room to receive the reward for his/her vote. The vote buying practice by the candidates became so rampant and habitual that, in many election precincts, people started to intentionally gather in front of the polling stations with the aim of gaining a material benefit for their votes. This unseemly trend of vote-buying was particularly manifest during the parliamentary elections in February and March, 2005. For example, in a number of districts of Osh province (Nookat, Karasuu, Alay) people gathered from early morning in front of the polling stations and offered to sell their votes to the candidate that would give them the greatest reward. The prices for each vote differed in various districts from about fifty cents to three US Dollars. Groups of women, youth, neighbours, relatives, and so forth, were prepared to wait near the polling stations the whole day despite rain or cold in order to receive a payment on the spot. Buying and selling votes in most of the districts became like a kind of auction. In some cases, people made ultimatums to the candidate’s representatives, threatening to vote against all candidates if they would not receive compensation for their votes. The primary reason for the practice of vote buying stems from an extremely low level of social

and economic life in rural areas. Another reason for vote buying comes from the attitude of viewing elections as a form of political exchange, where electors cast their ballots for candidates in return for specific assistance.

Deregistration of Candidates

Deregistration of candidates has been one of the most common forms of manipulating elections. Various legal provisions were used as a reason for deregistration of undesirable candidates. In most cases deregistration of candidates for the Presidency in the 2000 elections were based on unsatisfactory knowledge of the Kyrgyz language.

Several candidates, including Izhak Masaliev (the leader of the Southern branch of the Communist party), Anarbek Usupbaev (communist), Ishembay Kadyrbekov (oppositionist parliamentarian), and Anvar Artykov (ethnic Uzbek and ex-parliamentarian) did not pass the examination organized by the Linguistic Commission. Among the examination's requirements were composition writing, reading text, and delivering a speech that included historical and literary themes of the Kyrgyz Republic. The Deputies of the Assembly of People's Representatives of the Zhogorku Kenesh, Izhak Masaliev and Dooronbek Sadyrbaev, appealed to the Constitutional Court with a claim to invalidate the activity of the Linguistic Commission. However, the Court's decision was not in their favour (September 13, 2000). The Linguistic Commission's opaque operations allowed Soviet style underground decision-making. Later examination of the ability to speak the state language was reconsidered. As of January 2004, according to article 61.3 of the Election Code, the Central Election Commission nominates the members of the Linguistic Commission and the Zhogorku Kenesh approves or rejects their nominations. Similarly, from January 2004 the requirements posed for candidates for Presidency have been considerably lightened:

Article 61.3 of the Election Code

[...] For checking the presidential nominee's command of the state language of the Kyrgyz Republic, the nominee shall:

- write up his/her election program pledges on not less than three pages;*
- make an oral presentation for 15 minutes stating the main provisions of his/her election program pledges;*
- read a printed text on not less than three pages ...*

(In the edition of the Law of the Kyrgyz Republic# 7, issued on January 24th, 2004)

In addition to the linguistic requirement (mentioned above), not satisfying the requirement of candidates to declare their property and income was another legal means to deregister candidates. Article 27.1 of the 1999 Election Code requires candidates to submit information concerning their assets, motor transport, stocks, or capital shares belonging to him/her or to members of his/her family, as well as information concerning their income for the year before the year of elections. According to the article 27.5 of the 1999 Election Code, a candidate could be deregistered if conceals income or property totalling more than 200 times the minimum wage (which is 100 som/month).

On February 20th, 2000, according to the elections results, Mr. Usenov received 12,402 votes, while his immediate opponent Mr. Tokoev only received 5,213 votes. On March 3rd, the district election commission cancelled the registration of Mr. Usenov when the *Trusted Person* of Tokoev presented information about Usenov's possession of a plot of land, an apartment in Bishkek, shares of stock, and a house in Karabalta, which he did not declare while registering as a candidate. On March 10th the Court passed a judgment on deregistration of Mr. Usenov, and on the evening of March 11th the Supreme Court upheld the earlier court's decision (Sydykova, 2003: 59). Thus it is evident that strong candidates can sometimes be removed with the use of legal devices. Deregistration of the candidates often takes place shortly before the first or second round of elections. Such practices have limited the actual choice of the voters because, at the last minute, many candidates are removed from the ballot.

Numerous breaches and abuses of law during the process of deregistering candidates compelled the Parliament to amend the Election Code, abolishing in January 2004 the candidate's obligation to declare their income and property.

Furthermore, article 56.1 of the Constitution and article 69.1 of the Election Code requires every candidate for parliament to be a citizen of Kyrgyzstan, to be 25 years old on the day of elections, and to have been a permanent resident within the Kyrgyz Republic for the last five years prior to his/her candidacy. The deregistration of Roza Otunbaeva⁵³ who, during the five years prior to the 2005 parliamentary elections served as an ambassador to Great Britain and as an assistant to the UN Secretary General's Special Representative for the conflict in Abkhazia, provoked great discussion in Kyrgyzstan. The district election commission based its decision to deregister Ms. Otunbaeva on the claim that she did not reside in the territory of Kyrgyzstan for the last five years. This decision by the district election commission was immediately labelled political, since Otunbaeva represented the opposition, while the daughter of President Akaev (who had also

⁵³ Roza Otunbaeva later became President ad interim, after the fall of the Bakiev regime.

lived abroad during this time) was permitted to run as a candidate in the same voting district. The improper use of provisions contemplating deregistration of candidates originate in the Soviet tradition of using administrative resources and judges for pursuing certain political goals.

Abuses on the Day of Elections

Among other breaches of law on the day of elections are: *voter transporting*; *agitation on the day of elections*; *merry-go-round*; and *procedural violations*.

Voter transporting is a frequently-used technique where a group of voters move by bus from one polling station to another; each time voting in favour of a particular candidate. Since multiple voting (voting more than once on election day), including voter transporting, was largely practiced in previous elections, amendments were introduced to the Election Code in 2004, providing for the marking of voters' hands with indelible ink.

Campaigning on the day of elections: Kyrgyz electoral legislation prohibits campaigning on the day of elections. However *Trusted Persons* of candidates sometimes welcome the voters, and “remind” them of who they should vote for or they walk from house to house appealing to voters to vote in favour of a specific candidate.

Merry-go-round of ballot papers is another technique employed to undermine fair elections. One ballot paper is taken out of the polling-station and is filled outside for the needed candidate. The next person takes the already marked ballot and places it into the ballot-box, exiting with another blank ballot. This practice may continue during the whole day of elections. As a result, in 2005 the Central Election Commission was obliged to change the former polling-booths made of fabric which entirely enclosed the voter while casting his/her vote to small polling-booths. These smaller booths were covered enough to prevent seeing the vote-making process by surrounding people on three sides, but they were open enough to minimize unfair voting.

Procedural Violations. During past elections, many election protocols were completed in violation of electoral legislation. On election day there were also cases where the election commissions did not allow observers to witness the vote counting process. Moreover, in some cases ballot boxes were removed to another room for counting and observers and *Trusted Persons* were asked to wait in a separate location for the results. Also during the process of vote counting, the electricity is often turned off at the polling stations so that additional ballots, filled-out in advance, could be stealthily placed in the darkness.

Misuse of Lawsuits

About 20% of parliamentarians elected in the year 2000 learned about the election results not from the election commissions but at court proceedings. Misuse of lawsuits also became a prominent feature of the parliamentary elections of February and March, 2005. Numerous legal challenges opened the way for a protracted process of determining the elections' winners and prompted reconsideration of election results multiple times.

Politically undesirable candidates were sometimes removed from competition with the use of the judicial system. During the 2000 Presidential elections, courts decided that key opponents Felix Kulov and Daniyar Usenov were not allowed to partake in the elections. Daniyar Usenov was arrested, accused and convicted for hitting a Member of Parliament (six years earlier), even though the victim himself withdrew the complaint. Felix Kulov was accused of exceeding his commission while being the mayor of Bishkek. In summary, the laws were often applied by the courts to serve the interests of candidates favoured by authorities. The misuse of legal proceedings stems from the lack of judicial independence and corruption in the court system; with lawsuits serving as a tool for subverting election results.

On October 4th, 2000 and January 24th 2004 amendments to the Election Code were introduced concerning the procedure and time for appeals to decisions and actions of the election commissions. Thus, the formulation in article 54.5 of the Election Code in 1999 stated that:

Article 54.5

Decisions and actions (failure to act) of election commissions and their officials can be appealed to a superior election commission within the period stipulated by this Code and within 3 months after the publication of election results. Failure to meet this time requirements shall result in non-consideration of the appeal.

(In the edition of the Law of the Kyrgyz Republic#7 issued on May 29th 1999)

October 4th, 2000 amendments to the Election Code required that this must be done within “*1 month from the day of elections*”. Subsequently, after amendments to the Election Code on January 24th, 2004 terms for appealing the election results were shortened to ten calendar days after the Election Day.

54.5

Decisions and actions (failure to act) of election commissions and their officials may be appealed to a superior election commission within the period stipulated by this Code. Voting results or election results may be appealed within 10 calendar days after the election day. A complaint shall not be accepted upon expiration of this period.

(In the edition of the Law of the Kyrgyz Republic#7 issued on January 24th, 2004)

Moreover, article 56.3 of the Election Code as amended in 2004 stated that violations of this code committed by candidates who did not get elected based on the election results and who were not included into the ballot for repeated elections, may not constitute the basis for announcing election results as invalid.

Administrative Pressure

The Administrative pressure on state employees (which was largely practiced during the Soviet era) continues to make itself known today in such violations as:

inaccurate and poorly maintained voter lists,

pressure on election commissions and

pressure on civil servants and state university students to cast votes for particular candidates.

Inaccurate and poorly maintained voter lists. According to article 21.3 of the Election Code, the compilation of polling station voters' lists is based on the permanent or prevailing residence of citizens of the Kyrgyz Republic. Here, prevailing residence means the place of residence of a citizen related to his productive, scientific, service and other activity (Article 8 of the Election Code). Responsibility for compilation and verification of data on registered voters lies on the local authorities: city administrations, village administrations, and quarter committees. Unfortunately, all these institutions are often susceptible to administrative pressure.

In past elections, there were many negligent or intentional breaches in the compiling of voters' lists. Thus, certain voter lists included names of dead people, names of voters that moved to another place or were absent, and voters with a new permanent residence. Furthermore, the lists could include names of voters from other constituencies, from nonexistent houses, names of minors and students not registered in the permanent residence books.

Pressure on the election commissions could be lessened by making them more representative. Precinct electoral commissions often consist of teachers, since the polling stations are usually situated in schools. Teachers are a particularly vulnerable group with low salaries and are employed by the local state administrations (who could easily dismiss them). Nevertheless according to the article 11.7 of the Election Code, representatives of political parties, state and municipal employees, and employees of municipal bodies, may not comprise more than one third of the total number of the election commission members. Furthermore, *civil servants and students of state universities are pressured to cast votes for particular candidates.* Students of some state

universities are compelled to participate in election campaigns and elections' abuses like *merry-go-round* and *voter transporting* by the fear of being given low marks on future exams. Many students, especially those who studied hard for a *diploma with distinction* felt compelled to participate in the election's abuses.

The culture of strong control of public processes by the authorities (inherited from Soviet Times) contributed to the use of administrative resources in subverting election results. Institutional dependence and fear of losing their official positions compels civil servants to close their eyes and serve as a tool for the implementation of unfair policies. Due to the culture of pandering to high posts, local authorities often try to curry favour with candidates currently in state power. Thus, during the presidential elections, the acting president, Bakiev, alleged that he did not want to utilize administrative resources⁵⁴. However, many officials at the local level still exerted administrative pressure on state employees. This pressure may have emanated either from Bakiev's team or because pandering to those in high positions became a habitual practice for local authorities.

General Impact of Traditions on Decision-Making

Gender Aspect

Few women candidates are elected, especially in the countryside. This stems from the fact that the traditional image of a Central Asian woman is not usually associated with politics. Women are seen more as housewives, teachers, doctors, vendors, and first and foremost mothers. Women candidates often are not seriously taken into account and are less trusted.

Tribalism

In pre-soviet *volost administrator* elections, everyone supported representatives of their own tribe. Today, many people continue to pay considerable attention to what clan or tribe the candidate represents rather than the political platform of the candidates. In rural areas, sometimes entire clans vote for a particular candidate from their tribe. However, as the practice of vote-buying became more and more common, reliance on one's own tribe became less important for

⁵⁴ It should also be noted that Kurmanbek Bakiev had no serious contenders in the Presidential elections of July, 2005.

decision making. This change stems from the fact that in today's society tribal support of distant tribesman is not as practical as supporting candidates who can provide immediate material benefits in the face of harsh economic circumstances. This also proves that even the most rooted traditions are subject to gradual change.

Composition of voting districts is vital for determining election results. If a particular ethnic group or tribe prevail in the district, then the candidate representing that ethnic group or tribe has a greater chance to win the elections. Therefore, various political groups try to influence the process of districting in order to ensure the election of a particular candidate. Similarly most of the candidates run for elections from the district they come from, and only a few run for elections in locations where they do not have relatives. This means that most candidates count on the support of their compatriots and tribesmen.

Implication of North-South Rivalry on Political Leadership and Allocation of Official Positions

The differences in cultural traditions between Northern and Southern Kyrgyzstan are often exploited by the political elites of the two regions in order to cause a rivalry between the regions and thus gain more resources and political power. Interestingly, the elder respondents from both the South and the North stated that, in the past, there was no such regional rivalry. Separation became more acute after Kyrgyzstan was administratively divided into oblasts. In his article on Tribalism, Social Conflict and State-Building in the Kyrgyz Republic, Azamat Temirkoulov suggests that:

During the Brezhnev era, when the political leadership lost much of its ideological basis and corruption became endemic across the USSR, this situation created so-called clan-based networks which penetrated the state structure and played a role in the distribution of resources. Integration of tribal structures into the state allowed it to persist and even to play a political role, despite the Soviet attempts to eradicate all traditional institutions (2004: 94).

After the March 24th, 2005 revolt and before the July 10th Presidential Elections the possibility of conflict arising between the North and South was largely discussed, as the main candidates for the Presidential post represented these two regions. Kurmanbek Bakiev hailed from the South while Felix Kulov originated from the North and it was rumoured that unless one of them would withdraw his candidacy in favour of the other, then conflict would be unavoidable. Generally in Kyrgyzstan, when discussing possible candidates for presidency people pay considerable attention to a candidate's ability to consider the interests of both the North and South.

The Culture of Pandering to High Posts and Association of Public Posts with Power and Wealth

Historically, the tribal elite had the best lands, the largest herds and the most beautiful brides. Tribal leaders often received gifts and were paid homage by their people. These tributes were usually given out of respect for the leader's personal qualities as well as out of the people's fear for their military strength. Today, it is still commonly perceived that the higher a person's political position, the wealthier and more influential they are. People regard official positions primarily as a means for a better life rather than assuming obligations, and therefore many try to get official positions at any price.

Other Factors

A number of additional factors play a considerable role in elections. One of them is the political interest of authorities not to allow rigid opposition deputies to be elected. Another factor is that some candidates want to be elected because deputy status gives them immunity from legal prosecution. Others hope to be elected primarily because Deputy status gives them the ability to influence the selection of political positions, and distribute resources. Furthermore, the interests of foreign powers in retaining or changing certain political regime also play a role in the election process.

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Taxing for Human Rights: Fiscal Rights Monitoring on the Example of Zambia and the Right to Education

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Abstract

Mobilising revenue and taxation are crucial tasks for all countries in order to fulfil human rights to which they have committed themselves by international law. But this task appears even more daunting for developing countries and they struggle on a daily basis to mobilise necessary funds. The present thesis deals with the ability of Zambia to mobilise resources for the fulfilment of minimum core human rights obligations in the area of education. While assessing Zambia's fiscal commitment to human rights, the analysis also incorporates the influence of external factors that influence the capacity to finance the most basic human rights. By looking at Zambia, it will be examined whether the state has done everything possible to advance the human right to primary school education for all, without discrimination, and whether the government has undertaken every possible effort to mobilise resources necessary for its realisation.

Table of Acronyms

CRC	UN Committee on the Rights of the Child
CESCR	UN Committee on Economic, Social and Cultural Rights
CESR	Center for Economic and Social Rights
FAD	Fiscal Affairs Department (of the IMF)
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
HRC	UN Human Rights Council
IMF	International Monetary Fund
MDG	Millennium Development Goals
NGO	Non-governmental Organisation
OPERA	Outcomes, Policy Efforts and Resources to make an overall Assessment
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UIS	UNESCO Institute for Statistics
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
VAT	Value Added Tax

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*'Moral norms, designed to protect the livelihoods and dignity of the vulnerable,
place burdens on the strong.'*

Thomas Pogge, *World Poverty and Human Rights*, 2008

Introduction⁵⁵

Taxation is considered a specialist field, confined to the work of economists and experts in public finance. It is increasingly coming under the radar of public scrutiny and, as will be advocated in this study, should feature more prominently also in human rights discourse. The impact of tax policies can be directly felt by the public as reforms in the past frequently result in changes in public revenues and thus the available resources to finance human rights in the future. The failure to collect needed revenue very often leads to shortcomings in the provision of basic services and infrastructure, and has the ability to infringe upon human rights obligations. Due to their chronic lack of resources, developing countries struggle on a daily basis with the issue of how to mobilise money to provide for basic things like primary school education, enough food for the most vulnerable population, and basic health provision.

Why study Zambia in this regard? Zambia has been described as one of the poorest countries in the world. The decolonisation process and subsequent independence in 1964 introduced the urgent need to raise public resources. Until the oil price shock in 1974, Zambia fared well with its economy and developed from one of the poorest nations at the time of independence to one of the wealthiest Sub-Saharan African countries. Zambia relied in the past as much on copper mining as today and had no problems of raising revenue through mining and trade taxes. Even

⁵⁵ Acknowledgments: Writing this thesis was a great learning experience where I could combine my previous research in taxation with a completely new approach— the human rights framework. I thank my supervisor Prof. Mats Tjernberg from Lund University, Faculty of Law, for his readiness to deal with a rather unconventional look at taxation, his availability, openness and support. I thank Radu Mares from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law for his critical apprehension of some early ideas. To librarian Lena Olsson from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, I am very grateful for her unfailing assistance and supply with reading material. Last but not least, I thank my parents Nada and Budimir Ilic, and my partner Andreas Birnstingl who made all this possible with their continuous support. The latter I also thank for his valuable comments and detailed proofreading. Of course, all remaining errors are my own.

though copper prices became lower, copper taxes still contributed almost 60 percent of the overall government revenue. All this changed by the beginning of the 1990s.⁵⁶ As a highly indebted country it has struggled with the problem of raising revenue and allocating proper resources to human rights for almost 25 years now.

Today, more than 70% of the population live in extreme poverty, meaning that they cannot afford to buy basic necessities such as food, water, hygiene and basic medicine. The situation in Zambia has been additionally aggravated through the HIV/AIDS crisis. Zambia is one of the most affected countries by the HIV/AIDS epidemic that struck it in the beginning of the 1990s. By 2000, life expectancy had decreased to just about 42 years making Zambia second to last according to the Human Development Index.⁵⁷

Zambia is also home to 6 million children, 4 million of which are in primary and secondary school age. In recent years it has made commendable progress in increasing primary school enrolment including girl's education. Still, more than a quarter million children are out of school and "47% of those enrolled in school do not complete the primary cycle."⁵⁸ The HIV/AIDS problematic has left many children without parents. There is a high number of single and child-headed households and street children with many children involved in child labour. Of one million child labourers, the majority are HIV/AIDS orphans and more than 600 000 were reported to be engaged in the worst forms of child labour.⁵⁹

The situation of children in Zambia is dire and needs thorough analysis. Looking at the the right to education and the minimum core obligations it imposes on states is important, because the right to education can be seen as a "*multiplier*" right. It ensures freedom from child labour and "*enhances all other rights when guaranteed*."⁶⁰ It can equally be used as a means for creating equality while at the same time it has the ability of exacerbating existing inequalities even further.⁶¹

⁵⁶ Di John, 2010, p. 10.

⁵⁷ UNDP, Human Development Indicators for 2000 at <http://hdrstats.undp.org/en/indicators/69206.html> (consulted on 12 May 2013).

⁵⁸ UNICEF Country website Zambia, at <http://www.unicef.org/zambia/education.html> (consulted on 21 March 2013).

⁵⁹ United States Department of Labor, 2011 Findings on the Worst Forms of Child Labor - Zambia, 26 September 2012, p. 676, at <http://www.refworld.org/docid/5065942a0.html> (consulted on 15 June 2013).

⁶⁰ Tomasevski, 2003, p. 1.

⁶¹ Tomasevski, 2006, p. 195.

While Zambia has made progress by increasing school enrolment, the minimum requirement of primary school education for all children has not yet been fulfilled because of lack of available resources. Katarina Tomaševski, the former UN Special Rapporteur on the Right to Education, rightly recognised the importance of budgetary allocation for the fulfilment of the human right to education. In 2003 she wrote that “*budgetary allocations have to be adjusted to the requirements of international human rights law that is, converted from discretionary into obligatory allocations*”. She favoured a stronger enforcement of “*solidarity functions*” such as taxation so that funding can be created through the budget.⁶² Unfortunately this has to date not been translated into reality. Instead, the need for resources remains one of the biggest impediments for the realisation of even the most basic human rights such as right to primary school education.

Departing from the premise that the fulfilment of human rights is the primary metric for assessing state policies, this study seeks to explain primarily the impact of resource generation and specifically the tax system on the enjoyment of human rights on the example of the right to education. It will be examined whether the state has made every possible effort to afford the “*maximum available resources*” to fulfil the right to primary school education for all.

Therefore this study attempts to answer two overarching research questions. The first part deals with the relationship between taxation and human rights. These conceptual links will be assessed from a philosophical, public finance and international law perspective (Chapters 3, 4 and 5). The second part (Chapter 6) is a case study on the example of Zambia and deals with the question whether Zambia has mobilised its “*maximum available resources*” in order to realise the right to primary school education without discrimination for all.

The idea is to trace the denial or violation of human rights not only in the legal and policy framework but to also assess the adequacy of economic and fiscal policy, especially resource and tax revenue mobilisation.

In assessing efforts undertaken by Zambia, I will follow a framework designed by the Center for Economic and Social Rights, an international Non-governmental Organisation (NGO) based in New York. This framework consists of four steps, each designed to assess a particular part of a state’s performance. The first step deals with the assessment of the current human rights situation regarding primary school education; the second step analyses whether the state has employed targeted policies to assess and address the situation of the most vulnerable groups of children. The third step looks at how the state allocates and generates resources and whether this is

⁶² Tomasevski, 2003, p. 4.

happening equitably, effectively and transparently. In the fourth step, I will take account of overarching structural factors that impede the state's ability to raise enough revenue for the provision of primary school education for all.

Data and statistics lie at the foundation of any rights-based economic and development policy so that the overall situation in a country can be assessed and compared with others.⁶³ Actual data are scarce for certain periods, which makes the study not comprehensive, neither as regards timeframe covered, nor content. Methodologically it is a challenge to work on a case of a developing country. Developing countries tend to be poor in statistics, not to mention good quality disaggregated data. Although the IMF, World Bank, UNESCO, UNICEF, and others have helped the countries a great deal in creating statistics, we are still far away from being able to access good disaggregated datasets. Though important, statistics are not the only source of data that a good qualitative study should take into account. This is why the study will draw on previous qualitative research by experts on Zambia.

Although statistics are being increasingly created, there are limitations to the case study because different methodologies are applied by the different countries when they create their statistics. An example may illustrate the problem: the World Bank's World Development Indicator encompasses a poverty headcount ratio. Unfortunately, every country defines the poverty line differently, so we cannot compare say Zambia with Mozambique, its next neighbour. This is a huge methodological problem for anyone dealing with the assessment of statistics. Where possible I will sidestep to internationally defined indicators. This way it will be possible to compare directly the headcount of poor people because poverty is measured according to a common international definition.

The case study will incorporate and assess both primary and secondary sources. The analysis extends not only to government reports, but includes also civil society submissions and reports by the relevant international bodies. Primary material consists of reports to international supervisory bodies such as submissions to and reports by the UN Human Rights Council (HRC), the UN Committee on Economic, Social and Cultural Rights (CESCR), or the UN Committee on the Rights of the Child (CRC). The study will also draw on the vast availability of statistics and indicators produced by the World Bank, the International Monetary Fund (IMF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the United Nations Children's Fund (UNICEF) among others. I will also include measurements of

⁶³ Tomasevski, 2003, p. 1.

progression (or retrogression) over time and compare benchmarks to countries in similar economic development and human rights situation.

To date, governments are not required to report to UN human rights monitoring bodies such as the HRC or CESCR on their fiscal commitment to human rights. Fiscal policies are still considered a specialist field out of reach for human rights lawyers. It is the hope of this research to increase the appetite for the material side of human rights, with a view of embracing rights based fiscal monitoring in existing international human rights monitoring practice.

Taxation in the philosophy of human rights

This chapter is dedicated to a brief discussion of philosophical justifications for raising revenue and taxation, and why these are essential for the fulfilment of basic human rights. I will trace justifications of taxation by mainly looking at concepts of justice as formulated by John Rawls, Ronald Dworkin, Henry Shue and Thomas Pogge.

The human rights regime claims that all individuals are endowed with the same human rights, irrespective of their origin, sex, ethnicity, etc. In fact, individuals dispose of different assets and talents and their capabilities are as diverse as their origins and circumstances in which they are born. This diversity also means a profound inequality that is inherent among human beings. How talents, and thus the capability to create resources to secure a decent way of living are distributed differs considerably, and no one can know what talent and capability they will have once born. However, capabilities are not only randomly distributed because social conditions in which we are born play a role. A child born in Zambia has a much higher lifetime risk of not attending or finishing school than a child in Austria, the risk being determined by prevailing political and socio-economic conditions at the time of its birth. Thus it comes as no surprise that philosophers such as John Rawls, Ronald Dworkin, Henry Shue, and Thomas Pogge have all addressed the random or rather unequal distribution of natural assets and wealth, and stressed the need for redistribution as a foundation of their theories of justice. And they have all done so in different ways.

Rawls shared the view of many liberal thinkers that there was no such thing as an entitlement to income.⁶⁴ According to Rawls, inequalities are not always unjust as not all can be equal in

⁶⁴ Musgrave, 1990, p. 116.

wealth.⁶⁵ There are inalienable assets such as talents and capabilities that cannot be taken away and shared with others. Distribution of natural assets and wealth is not per se just or unjust. “*The natural distribution is neither just nor unjust; nor is it just that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.*”⁶⁶ The central argument of Rawls is that inequalities only become unjust if they affect the basic structures of a society in an unjust way.⁶⁷ Thus, the main feature of justice is the institutional setup that is supposed to guarantee liberties and create fair and equal opportunities for all.⁶⁸

To overcome institutional inequalities, Rawls developed two priority rules upon which he based his *Theory of Justice*. The *priority of liberty* is the guiding principle of justice which may only be restricted for its own sake.⁶⁹ The second priority is the *priority of justice*, which overrides utilitarian considerations of maximising efficiency as a societal goal. It contains the principle of fair equality of opportunity and the principle of the greatest benefit to the least advantaged, the *difference principle*. According to the latter, any inequality of opportunity must advance the opportunities of the less advantaged.⁷⁰

Rawls summarised his principle of justice as follows: “*All social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured.*”⁷¹ Precisely because of this definition some readings of Rawls’ *difference principle*, claimed that he regarded the distribution of natural talents as a “*common good*”. This has been criticised by other philosophers, most notably Robert Nozick, as enslaving the relatively talented by confiscating the fruit of their labour.⁷² Nozick generally considered taxation of labour as „*forced labour*“. According to him, redistribution should occur based on willingness of each individual to donate and not through state coercion. He saw as the only legitimate purpose of taxation the need for the financing of the criminal justice system and economic transactions.⁷³

⁶⁵ Rawls, 2001, p. 114f.

⁶⁶ Rawls, 1999, p. 87 as cited in Dietsch, 2002, p. 12.

⁶⁷ Rawls, 2001, p. 113.

⁶⁸ Dietsch, 2002, p. 10.

⁶⁹ Kukathas & Petit, 1990, p. 44; Later Rawls relativised this maxim by stating that what he meant with it was a basic notion of liberty as enshrined in various bills of rights and constitutional guarantees and not absolute liberty. Ibid., 130.

⁷⁰ Idem., p. 44.

⁷¹ Idem.

⁷² Dietsch, 2002, p. 10f.

⁷³ Fenwick & Novitz, 2010, p. 15f.

Many such as Thomas Pogge have tried to rectify this argument in favour of Rawls by explaining that what Rawls meant was not any kind of redistribution or “*equalisation of circumstances*” but a demand to put into place institutional systems that do not put anyone at disadvantage.⁷⁴

Rawls was indeed more concerned with “*background justice*” and he was convinced that it is not only formal but fair opportunity that must be guaranteed by the government. “*Background social conditions*” must secure that each citizen, no matter of which class or origin, can potentially and equally reach a favourable social position.⁷⁵ A social minimum income must be guaranteed, as well as equal chances of education and culture through public or subsidised schooling, and the elimination of unjust discrimination.⁷⁶

The two principles, the principle of fair opportunity and the difference principle also apply if we look at the issue of economic justice and Rawls delivers a justification for taxation in pursuit of distributing resources in a fair way. The Rawlsian state encompasses among other things a transfer and distribution branch, the first being responsible for providing for social minimum transfers, while the latter attaining distributive justice through means of taxation.⁷⁷

Rawlsian theory is not about eliminating the suffering of the poor.⁷⁸ The poor and less endowed with talent are not compensated by virtue of their being “handicapped” but by recognising their equal value in society.⁷⁹ He considers the narrowing of the gap between the rich and the poor an obligation to the ultimate effect that the least advantaged gain enough means (e.g. resources but also equality of opportunity) to make informed use of their freedoms and live worthwhile lives.⁸⁰ As mentioned at an earlier stage, Rawls has nothing against inequality of income and wealth “*as long as the institutional scheme that underlies these differences prioritises the interests of those that are least advantaged under its arrangements.*”⁸¹

Departing from similar considerations of thinking about opportunity and inequality, Thomas Pogge reinterpreted and widened the principle of equal opportunity to include not only the general provision of equality, which as much as it is absolute, remains abstract and thus

⁷⁴ Dietsch, 2002, p. 11.

⁷⁵ Rawls, 2001, p. 115.

⁷⁶ Kukathas & Pettit, 1990, p. 51.

⁷⁷ Idem.

⁷⁸ Rawls, 2001, p. 114.

⁷⁹ Dietsch, 2002, p. 14f.

⁸⁰ Rawls, 2001, p. 114.

⁸¹ Dietsch, 2002, p. 17.

inapplicable to real life circumstances.⁸² Pogge suggested to making it more concrete by guaranteeing minimal provisions in the area of education, health and employment, classical public goods, which must be financed by the state through some form of taxation.⁸³

Also Ronald Dworkin stated that no one should have less income simply in consequence of less native talent.⁸⁴ For the purpose of equality, he introduced an insurance scheme in which every person could insure herself against handicaps or lack of talent. This insurance could be further developed into a tax system, where taxes are periodically levied from the income. He himself favoured only income taxes and neglected property and consumption taxation but left it open to the various societies to decide upon their own tax mix.⁸⁵

Just as Rawls and Pogge, Henry Shue has stressed the importance of institutions by claiming that the provision of both “*negative*” and “*positive*” rights needed institutions that prevent, protect, and punish behaviour that violates these rights. Violations of positive or subsistence rights such as (intentional or even unintentional) causation of hunger, could be addressed in an equal manner as negative or security rights. First, by preventing third parties from interfering with them and second, by establishing protective institutions in a similar manner as with negative rights, e.g. police, army, judiciary. This can happen in form of prohibition or punishment of certain acts but also in form of taxes to compensate those affected.⁸⁶

There are plenty of philosophical justifications for taxation as one of the driving forces of distribution. An institutional setup in Rawlsian sense that guarantees the same liberties, fairness and opportunities for everyone cannot be created for free. Equality, liberty, and human rights, especially if they are to apply for all, are precious common goods but they are also costly and require resources to be realised.⁸⁷ In the next chapter I will explore in more depth the different functions of revenue mobilisation systems from a more legal and public finance perspective and then explain how revenue raising and taxation feature in international human rights law instruments.

⁸² Pogge, 1989, §§15-1 as quoted in Dietsch, 2002, p. 15.

⁸³ Idem.

⁸⁴ Dworkin, 1981, p. 327.

⁸⁵ Idem., p. 312 n9.

⁸⁶ Shue, 1999, p. 346.

⁸⁷ See Holmes & Sunstein, 1999.

Why people pay taxes?

Revenue mobilisation is not limited to taxation.⁸⁸ Historically states have raised revenue through exploitation of natural resources, or wars and conquests. In order to finance wars, states have frequently also indebted themselves.⁸⁹ Charles Tilly claims that the kinds of resources that are mobilised by states and most importantly the ways in which states mobilise them also “*deeply affect the character of rule*”.⁹⁰ The most prominent examples are the European absolutist monarchies France and Great Britain, and Tilly and many others have argued that it is precisely because of three reasons that modern states evolved at all: increasing indebtedness through state centralisation and warfare introduced the need for state financing which in turn lead to increased taxation. This on the other hand sparked revolts by large parts of populations and thus claims for representation. The best known examples of tax revolts are the American and French Revolutions.⁹¹

Depending on one’s definition of taxation, taxes have existed since thousands of years in various forms. In the introduction to “*A World History of Tax Rebellions*”, David F. Burg described forced or *corvée* labour as it was practiced in Ancient Egypt while constructing the pyramids as a type of tax.⁹² Taxes have different functions and are usually very behated in public eyes. Nobody likes to pay them, and they are never extracted entirely voluntarily. This stems from historical reasons as taxes were very often imposed to punish or promote certain behaviour, frequently in discriminatory ways. History has produced some of the most cruel taxes known: the Indian breast tax on the lower castes meant that women, as soon as they reached the age of puberty, had to pay a special tax in order to be able to cover their bosoms.⁹³ Muslim conquerors imposed different kinds of taxes on Muslims and non-Muslims. While Muslims had to pay the *zakat*, a redistributive wealth tax and one of the five pillars of Islam, non-Muslims paid different and often higher taxes on the basis of their different confession.

These forms of taxes are highly problematic and do not correspond to the modern notion of tax. They have frequently been extracted by coercion and in discriminatory ways, or for discriminatory purposes. Margaret Levi, a famous tax historian, has ranked these types of taxes within the “*theory of predatory*” rule, meaning that people pay taxes because powerful rulers

⁸⁸ On a discussion of contemporary sources of revenue other than taxation see Moore, 2007, p. 10f.

⁸⁹ Moran, 2009, p. 203.

⁹⁰ Tilly, 2009, p. 182.

⁹¹ Ross, 2004, p. 230f.

⁹² Burg, 2004.

⁹³ Sadasivan, 2000, p. 394.

can enforce them, by means of coercion ultimately. But bearing in mind that taxes could as well be seen as fair prices for receiving public or private goods in return, she has also described tax compliance as “*quasi voluntary*”.⁹⁴ This view corresponds essentially to the benefit theory of taxation most notably advanced by Adam Smith and other liberal thinkers. This will be discussed in more depth in the chapter on tax principles.

Human rights as public goods

We commonly assume that modern welfare states collect taxes in order to fund so-called positive or welfare rights such as the right to health and education, because we assume that these are expensive and need plenty of funding. Nicholas Kaldor rightly claimed that taxes are needed to finance non-revenue yielding services such as health, education, and infrastructure.⁹⁵ This is true, but only in part. Investment in education, for example, does yield revenue though not in the short-run. An educated person is more likely to get a well paid job that yields revenue in form of income taxes. Holmes and Sunstein claim that some rights such as the right to education and health are costly at the beginning but tend to “*increase taxable social wealth to such an extent that they can be considered self-financing*.”⁹⁶

Modern states primarily tax in order to provide for security of everyone within their jurisdiction including protecting their property rights. This requires the state not only to refrain from acting such as unlawfully confiscating property or unlawful killing. Human rights law establishes that it also entails a positive obligation to protect against any such acts from third parties. For this, states need armies, police and judiciaries so we can claim our rights and receive a remedy. All this pressures states to act against harmful assaults on physical security and property. Henry Shue puts it perfectly when he says that “*demand for physical security is not normally a demand to be left alone, but a demand to be protected against harm*.”⁹⁷ In sum, we can say that the distinction between “*negative*” and “*positive*” rights does not hold as we need costly, positive measures to protect both security and welfare rights. This also means that practically all rights have costs.⁹⁸

⁹⁴ Levi, 1989, p. 54 as quoted in Martin, Mehrotra & Prasad, 2009, p. 18f.

⁹⁵ Idem.

⁹⁶ Holmes & Sunstein, 1999, p. 21.

⁹⁷ Shue, 1999, p. 343.

⁹⁸ In addition, the distinction is blurred because frequently “positive” and “negative” rights overlap. The right to health and safety at the workplace – a so called “positive” right, can display aspects of the right to life, a classical

Rights are thus legally enforceable interests, which the legal system is ready to ultimately defend by means of force, while “*an interest qualifies as a right when an effective legal system treats it as such by using collective resources to defend it.*”⁹⁹ Can human rights exist without resources to protect them? Holmes and Sunstein claim that legal rights in reality only exist if there are resources allocated for their protection and execution.¹⁰⁰

They go on to explain that “*if rights are not enforceable because of lack of resources, then they are no good at all as rights.*”¹⁰¹ They correctly claim that people who live in states that are not able to extract taxes and offer effective remedies, have in fact no legal rights at all.¹⁰² States that cannot or do not want to take away property in form of levying various taxes, can also not protect said property and are thus useless.¹⁰³

Rights can be considered as public goods because their provision is usually largely funded by tax payer money, with the general public contributing to financing the enjoyment of rights regardless of the ultimate beneficiaries.¹⁰⁴ An example to illustrate this claim is the right to property. The state provides protection to those who own property from the funds of the general public, which means that also those who do not own property pay for the protection of property owners.¹⁰⁵

Definition and purposes of taxation

Since Richard A. Musgrave published his book *The Theory of Public Finance: A Study in Public Economy* in 1959, a general consensus has emerged on the question of purpose of taxation in the discipline of public finance. Thus, the three reasons for taxation rest on economic, redistributive and welfare considerations.

„negative“right. The minimum age of admission to employment – again a “positive” right - might fall within the scope of prohibition of slavery and forced labour, an inalienable and negative human right. Fenwick & Novitz, 2010, p. 13.

⁹⁹ Holmes & Sunstein, 1999, p. 17.

¹⁰⁰ Holmes & Sunstein do not specifically consider moral rights claims such as human rights, in their analysis. Although they focus on the US, their debate that all rights ultimately carry costs and their view that taxation is essential for the justiciability and enforcement of rights, were valuable insights for this thesis.

¹⁰¹ Idem., p. 18.

¹⁰² Idem., p. 19.

¹⁰³ Idem., p. 61.

¹⁰⁴ Idem., p. 21.

¹⁰⁵ Holmes & Sunstein, 1999, p. 29.

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In economic terms, taxes are levied in order to reduce the purchasing power of the private sector. Increasing incomes induce companies and consumers to spend more money in form of investments and consumption. This in turn can create inflation leading to a weakening of the purchasing power but can be prevented by taxing the excess income to keep the balance in purchasing power in order to maintain macro-economic stability.¹⁰⁶

From the redistribution angle, governments collect taxes in order to redistribute income and wealth from those who have more to those who, for various reasons, have less and find themselves in need of transfer payments.¹⁰⁷

A rights-oriented welfare perspective claims that taxes are levied for the provision of public goods such as defence, judiciary and police, deemed to be needed by everybody under the auspices of a state who is guaranteeing their security. In this category we can also find classical public goods such as roads and infrastructure, but also education, research, and health care. Generally all tax payers pay for the provision of these goods whether they consume them or not.¹⁰⁸

So, a transaction qualifies as a tax if it is “*a compulsory contribution with no direct service in return*”.¹⁰⁹ The definition thus defines taxes not as payments but as contributions. A payment would call for a reciprocal relationship between the payer and the recipient in so far as the payer would receive something in return. Taxation is a one-track relationship in its strict sense - there is no entitlement to receiving anything in return for the contribution.

Expanding the definition we can say that any kind of contribution, no matter whether in kind, monetary, or labour, is in principle a tax as long as there is an authority that is capable of enforcing it. This is a *quasi* deviation from the tax definition in its strict sense but it is conceptually extremely important as it allows us to look at tax issues beyond official statistics that are taken as sources of measurement for the tax burden.

It also enables us to also include more complex measurements such as informal taxation. Olken and Singhal completed a study on informal taxation in ten developing countries and found that local residents in different countries of the world ranging from Albania to Zambia contribute

¹⁰⁶ Dahmén, 1999, p. 107.

¹⁰⁷ Idem.

¹⁰⁸ Idem.

¹⁰⁹ Idem. See also the World Development Report from 1988, which considers taxes as „unrequited, compulsory payments collected primarily by the central government.“ The entire report was dedicated to the issue of public finance and development. World Bank, 1988, p. 79.

substantially outside the formal tax net to the provision of public goods.¹¹⁰ They discovered a high incidence of informal financial and labour contributions. This kind of resource mobilisation has nothing to do with corruption or bribery but is rather defined as *“a system of local public goods finance coordinated by public officials but enforced socially rather than through the formal legal system.”*¹¹¹ The same social groups hardly appeared as contributors to the formal revenue system. We will see on the case of Zambia how informal taxation has helped increase school enrolments in Zambia and how it helps sustain whole parts of the education system.

The classical definition of taxation suggests that, strictly speaking, one cannot expect anything in return for paying taxes. Hence citizens cannot legally claim anything in return as opposed to other contributions or fees they pay which are earmarked for certain purposes. A parent who pays school fees for the education of his or her children, can also expect that service to be delivered. Can the same parent expect protection from assault on its personal security? We encounter the first fundamental issue of the definition if we look at the relationship between state and citizen. If state protection is a service for which all who can pay taxes, does that mean that it cannot be expected in any case, but remains at the discretion of the government? If the definition of taxation, as it was formulated by economists and public finance specialists after World War II, really applied, all international commitments to human rights and specifically to the security of the person would be in vain. So the definition does not entirely comply with international and human rights obligations that modern democratic states face today.¹¹²

Even though the classical definition of taxation suggests that there is no right or entitlement to receive anything in return for paying taxes, it can be claimed that government expenditure in form of public goods is the other side of the taxation coin - because it is usually financed by taxes. Even if there is no right to claim anything in return, we still know that people do receive invaluable goods and services. Rights, such as physical security and in fact all other legally guaranteed and socially enforced rights, are given to us, as they are financed by the general public, and thus the tax system.

¹¹⁰ Olken & Singhal, 2011, p. 1.

¹¹¹ Idem., p. 2.

¹¹² There are of course dissenting voices. Åsa Gunnarsson confirms the relevance of the „benefit theory“ in the practical formulation of tax policy although she admits that it has never been allowed to dominate the latter. See Gunnarsson, 1999, p. 147.

Tax principles and equity

A review of literature on public finance and economics offers various descriptions of tax principles. Tax principles are meant to guide tax policies in their attempt to create so-called “optimal” tax systems. But what are optimal taxes, and more generally asking, can there be such a thing as optimal taxes in the first place? Tax principles attempt to approximate this question by addressing the issue of economic inequality.

Adam Smith, the great economist and sociologist, generally thought that the proper role of taxes was to raise revenue for the state budget while at the same time not discouraging economic activity and growth.¹¹³ In *An Inquiry into the Nature and Causes of the Wealth of Nations*, Adam Smith set out his main views on the principles that should guide tax policy. In his first principle he connected tax payments to benefits, suggesting that citizens should pay taxes in return for goods and services provided by the government. The ideal tax to address the “*benefit theory*” of Smith was the consumption tax, which made sure that those who consumed a good or service also directly contributed to it. Local residents would pay for locally available benefits such as light, water and sewage systems, and students would pay a proportion for the cost of education.¹¹⁴ But in his view, the primary benefit that everybody enjoyed from government was the protection of private ownership and property.¹¹⁵

He claimed that wealth and property were also benefits for the government itself, as government without property to protect was meaningless and obsolete.¹¹⁶ This is why Smith favoured quite radical forms of income redistribution in form of wealth taxes.¹¹⁷ His ideal tax system comprised of a wealth and consumption tax (on luxury) and included wide exemptions for wages or “*necessities*” such as food, shelter, etc. because he found wage taxes distortionary, resulting in decrease of employment rates and possibly economic growth.¹¹⁸

Smith did not have a rigid view on the benefit theory and as a sociologist he was very well able to see inequalities which resulted in the fact that not everybody equally benefitted from government services. This is why he stressed another principle to guide tax policy, namely the “*ability to pay*”. According to this principle, individuals should be taxed relative to their wealth

¹¹³ Moran, 2009, p. 201.

¹¹⁴ Moran, 2009, p. 205.

¹¹⁵ Idem.

¹¹⁶ Smith thought that the ultimate rationale of government is to secure wealth and protect the rich from the poor. Idem., p. 206.

¹¹⁷ Idem., p. 209.

¹¹⁸ Idem., p. 208f.

and income. Rates should be set in proportion to revenue which implies the ability to pay, and they should be transparent.¹¹⁹

The ability to pay and the benefit principle are the two most important principles that have guided modern tax policy. In public finance and tax law they have come to be known as horizontal and vertical equity. Horizontal equity demands that persons with similar or equal income should pay the same proportion of their income in tax. Implied in this is vertical equity which demands that persons with different incomes should be treated differently by the tax law in respect of the tax rate applicable. Taken together horizontal and vertical equity are what has come to be known as “*progressive taxation*”.

Even though issues of justice and fairness figure prominently with social scientists and political economists, the discipline of tax law and public finance has developed in a rather different way, avoiding hurtful questions such as tax justice.¹²⁰ As a sociologist, Adam Smith was aware of the dominant socio-economic structures in his time and widespread inequalities caused by the unequal accumulation of capital. It is his great achievement that he brought in equity and fairness considerations into tax policy.

The ideal tax system: simple, efficient, and fair

Three issues have become predominant in the assessment of ideal tax systems. Ideal tax systems are said to be simple, efficient and fair. This “*tripartite structure*” is built on the premise of equality of all three tenets, indeed Christians claims that efficiency and simplicity concerns have very often overridden fairness.¹²¹ This confirms Thorndike’s claim that equity and fairness are featuring less prominently among tax lawyers as opposed to social scientists.¹²²

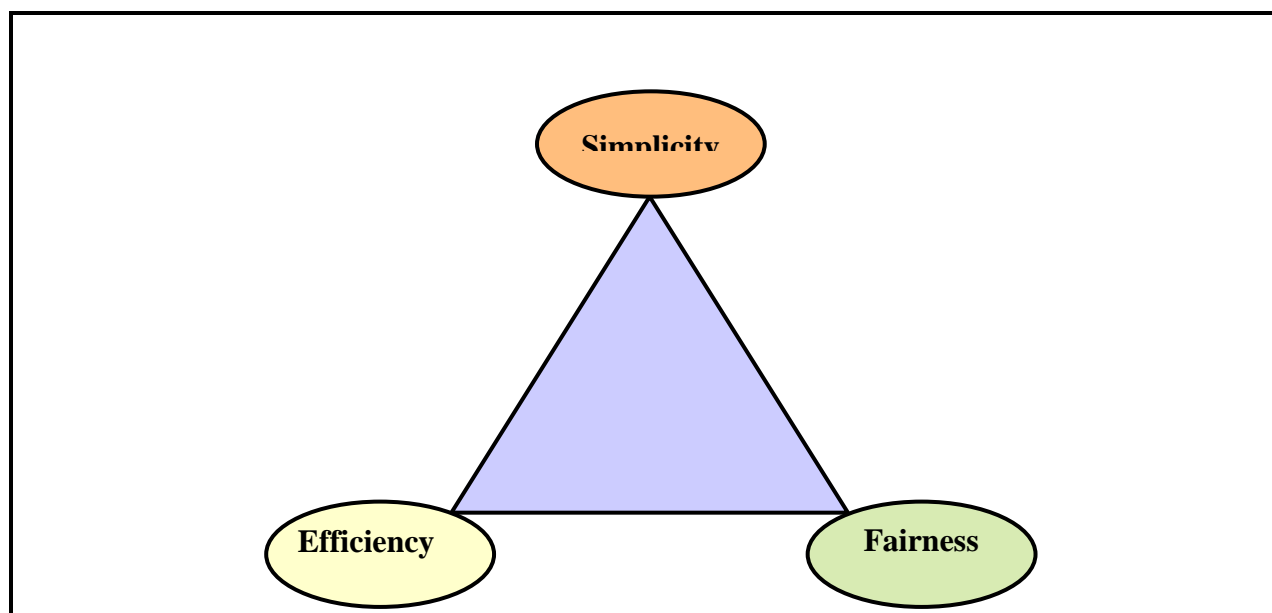
¹¹⁹ Smith, 1779, p. 825 as cited in Moran, 2009, p. 204.

¹²⁰ See Thorndike & Ventry, 2002, p. 2.

¹²¹ Christians, 2009, p. 10.

¹²² Thorndike & Ventry, 2002, p. 2.

Figure 1: Ideal tax system¹²³



Simplicity

A simple tax system generally calls for clear and simple tax legislation but also favours fewer tax rates. This is also favourable from an efficiency point of view because it is equally easy for the tax payer and tax administration to know who is due what. But it can influence fairness in highly negative ways. Simplicity has been the cornerstone of tax reforms throughout the developing world in the last 20 years. Simplifying tax laws and administration has been recommended very often by international financial and advisory institutions such as the IMF. In a sample of 50 countries Damme, Misrahi and Orel found that simplifying tax administration was recommended in more than 50% of low-income countries by the IMF.¹²⁴ Simplicity often means fewer tax rates and favours the use of flat tax rate structures. A flat tax on both capital and personal income as it was recommended and introduced in many countries is very simple and makes the work of tax administration much easier. But it is less favourable from the fairness perspective as it treats every income equally so that the personal income of a worker is taxed at the same rate as the

¹²³ Author's graph on basis of Christians, 2009.

¹²⁴ This figure is related to reports in the framework of Article IV consultations between the governments and the IMF. See Damme, Misrahi & Orel, 2008.

capital income of a big company. Flat tax rates, albeit being simple and favourable from an administrative point of view, erode more progressive notions of taxation which favour differential treatment of different income groups.

Efficiency

According to optimal tax theorists an efficient tax is one that does not distort economic behaviour. This approach claims that taxes in general can discourage economic activity, both wage labour and capital. Payroll taxes reduce the incentive to work and capital taxes reduce savings and thus future economic activity. Too high taxes motivate people to consume less, or prefer other goods or services (or give up economic activity), or evade taxes altogether. Both the government and tax payers lose potential revenue.¹²⁵ Optimal tax theory seeks to correct these “*distortions of tax payer behaviour*” by designing “*neutral tax systems*” that do not interfere with economic efficiency and growth. Keeping the taxes low but broad is assumed to support economic growth and bears the least economic cost.¹²⁶

In the wake of these insights from economists concerned with economic efficiency, whole tax systems were overhauled worldwide. Personal and capital income tax rates were brought to the same levels. Tax rates for top earners (marginal-tax rates) which were previously held high were lowered while at the same time so-called “*broad-based*” taxes were introduced, mostly in form of consumption taxes such as the Value Added Tax (VAT).¹²⁷ In the same sample as above, Damme, Misrahi and Orel found that broadening of the tax base was recommended in 80% of the cases.¹²⁸

A problem that arises from globalisation is that, not only barriers to capital movement have been abolished, but that globalisation itself has created the need for competitive tax systems. As highly mobile capital is moving across the globe most of the world’s countries are involved in some form of tax competition. By lowering or abolishing corporate taxes for multinational companies, developing countries have experienced disastrous effects on their budgets and thus the ability to finance for human rights. International tax competition has triggered a “*race to the*

¹²⁵ Skinner, 1989, p. 2.

¹²⁶ Idem., p. 54.

¹²⁷ Bird, 2010, p. 1 & 2.

¹²⁸ Damme, Misrahi & Orel, 2008.

bottom” among poor countries with corporate tax revenue in Africa falling by 20% alone in the 1990s.¹²⁹

Fairness

Tax policy is about building simple, efficient but also fair tax systems, a principle which is deeply rooted in the tradition of liberal thinkers such as Adam Smith. This entails constant balancing between these three tenets which are in a competition with each other and at times even incompatible.¹³⁰ An example to illustrate this is the head tax: This tax would be simple to administer and it would be applicable to everybody without discrimination or exemption. It would equally be efficient as it would not distort economic efficiency in a way that more progressive taxes do. Such taxes replaced forced labour and were the basis of colonial exploitation of many parts of Africa.¹³¹ They have also produced strong resistance and rebellions because it is not regarded as fair that everybody, irrespective of wealth and income, should pay the same amount in tax.

Fairness of course also implies non-discriminatory laws, with income-inequality as one of the few justifiable bases for differential treatment of tax payers in a country. But having non-discriminatory laws is not always enough to assess the fairness of a tax system, as the burden of paying taxes can affect certain tax payers disproportionately high while putting a low burden on others. Fair tax systems do not only comprise of fair and non-discriminatory tax laws but also of an equally and fairly distributed tax burden so those who benefit more and those who can pay more contribute more to the tax system.

Factors that influence the ability to raise revenue in developing countries

Developing countries share some similar experiences in their effort to raise revenue and taxes. The most important constraint to raising taxes is the constitution of the economy and wealth distribution, but also the tax effort undertaken by the administration. Expenditure composition and spending pressures, as well as revenue instability due to fluctuations in development aid,

¹²⁹ Keen & Simone, 2004, p. 1318.

¹³⁰ Christians, 2009, p. 10.

¹³¹ Fjeldstadt & Therkildsen, 2008, p. 114.

along with crises and debt issues, will deeply influence a country's ability to raise revenue.¹³² Donors and advisors have increasingly also gained influence in shaping many developing countries' capacity to raise revenue.

Countries cannot freely choose the taxes they apply but must rely on realistic assessments of taxable capacity.¹³³ In assessing taxable capacity, a government has to take into account the constitution of its economy but also ability of individuals to pay taxes and also their willingness to do so. The ability to pay taxes will depend on the economic wealth of individuals which in turn will influence revenue composition and the tax mix applied; willingness implies among other things an indirect assessment of whether the price paid for a public good is fair. Whether the government raises taxes to finance public goods, and the nature of the public goods that are provided, will deeply affect the willingness to pay taxes.¹³⁴ The question of raising required revenue will also depend on the tax effort undertaken and especially the country's administrative capacity to do so. Corrupt or badly-trained officials, lack of funding and outdated equipment and methods of assessment influence the performance of the tax administration and its tax raising effort.

Foreign investment very often has decisive influence on revenue stability and its composition as many developing economies are highly dependent on the contributions of foreign investors. Also foreign aid, which very often forms big parts of budgets, can make revenue in developing countries unstable as it depends on the ability and willingness of donors to contribute, but also increasingly on the performance and accountability of the aid recipient.

External tax advisors and donors also influence developing countries' capacity to raise taxes.¹³⁵ Revenue systems in developing countries are generally characterised by poor performance and there is almost always need for reforms in order to increase desperately needed funds. Developing countries are and have always been hungry for any kind of advice on how to raise their budgetary income. External technical advisors such as the IMF and the World Bank, but also individual academics, have had a profound impact on the tax systems in many countries, sometimes to the better, sometimes to the worse.¹³⁶

¹³² As discussed in Prest, 1973, p. 11 – 29.

¹³³ Idem. p. 19.

¹³⁴ Idem.

¹³⁵ Fjeldstad, 2013, p. 2f.

¹³⁶ For a description of the history of tax advice in developing countries see Goode, 1993. See also Moore, 2007, p. 20f.

There is also evidence that the nature of governance and the prevalent political regime determines tax capacity and revenue composition. It is said that governments tend to be more accountable to their citizens when they depend on their resources.¹³⁷ We will see how in the case of Zambia the elite has used the tax system to create rents and legitimacy.

Lastly, spending pressures are another characteristic that has profound influence on developing countries' ability to finance themselves. Population growth, democratisation but also human rights discourse, have placed burdens on many developing countries to finance development for growing parts of their population. But also the role of debt and crises has put pressures on governments to raise revenue for economic recovery measures and debt repayment.

The role of revenue and taxation in international human rights law

Without resources and thus money, it is not possible to realise human rights. All rights have a material basis, and if not realised, then the same rights, no matter how enthusiastically promised, do not have much value as rights. This is why observers have claimed that human rights are valueless when there is no commitment in form of making resources available to fulfil and protect them.¹³⁸ The inability to collect revenue frequently results in the failure to provide for basic services and infrastructure and thus can violate or at least infringe basic human rights. States have often asserted the inability to generate resources as an excuse for not fulfilling or denying basic human rights. This has featured at the centre of the discussion around the right to education in the last 20 years, arguments that still persist.¹³⁹

But we cannot be happy with this explanation and need to expose the reasons behind the governments' reluctance to finance such things as basic education for the most vulnerable. As we shall see, all states have certain immediate obligations towards realising minimum human rights standards of which they cannot absolve themselves by claiming lack of resources. In the following, we will look at core human rights documents in order to define what these immediate human rights obligations are, who is responsible for their realisation, and how they can be reached before we focus on the specific obligations arising from the right to education and its minimum core content.

¹³⁷ Idem., p. 24.

¹³⁸ Holmes & Sunstein, 1999, p. 21.

¹³⁹ Tomasevski, 2004.

The Universal Declaration of Human Rights

Hannah Arendt has referred to the origin of human rights as the realisation of humanity of “*the right to have rights*”.¹⁴⁰ Indeed, human rights law is based on the assumption that all human beings are endowed with the same inalienable rights by virtue of their human dignity. The Universal Declaration of Human Rights (UDHR) states in Article 1 that “*all human beings are born free and equal in dignity and rights*”. All share the same “*inherent dignity*” and “*equal and inalienable rights*”¹⁴¹ and without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁴²

Even though the UDHR has remained a Declaration and as such is not binding law, it has exercised normative power over the development of more binding human rights norms. Certain of its human rights provisions generate absolute and immediate obligations on states, something tax theorists and public finance experts should be equally interested in, as they need to find ways and solutions how to provide for the fulfilment of these absolute and immediate rights. They include human rights norms that with the years have attained customary law status. According to Oraá Oraá, among these can be found in Art. 1, Art. 2, Art. 3 and Art. 7 of the UDHR.¹⁴³

Art. 1 recognises freedom and equality of all in dignity and rights. Art. 2 provides for non-discrimination of any kind in the enjoyment of rights by stipulating that “*everyone is entitled to the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” Art. 3 guarantees the right to life, security and freedom of the person. Art. 7 acknowledges equality of all before the law and entitles everyone “*without any discrimination to equal protection of the law*”.¹⁴⁴

Further human rights provisions in the UDHR that pose absolute and immediate obligations on states are the prohibition of slavery (Art. 4), prohibition of torture (Art. 5), recognition of legal personality of every human being (Art. 6), prohibition of prolonged arbitrary detention (Art. 9), right to a fair trial (Art. 10 and Art. 11), and the right to marry (Art. 16).¹⁴⁵

¹⁴⁰ Arendt, 1973, p. 296f.

¹⁴¹ Preamble of the UDHR; preambles of the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR.

¹⁴² Art. 2 of UDHR, ICCPR and ICESCR.

¹⁴³ Oraá Oraá, 2006, p. 129.

¹⁴⁴ Idem.

¹⁴⁵ Idem.

Neither the UDHR nor the International Covenant on Civil and Political Rights (ICCPR) in which these provisions can be found, specify how these rights should be provided for or financed. Rather, states are given a margin of appreciation in choosing how to finance and thus realise rights. This margin becomes more dominant when we look at economic, social and cultural rights. Whether rights are financed through taxes, by whom, how and when, is not specified in international human rights law.

As I have emphasised earlier, all human rights bear costs. This occurs not only because states need to build institutions that define the scope of its lawful action and behaviour in order to be able to refrain from unlawful assaults on the physical security of those under its jurisdiction. The state's main function has always been the protection mandate against assaults of third parties on the physical security of its citizens and/or persons under jurisdiction. A state can protect in refraining from action, but it also must act (sometimes with force) in order to protect the right to life, security and freedom of individuals. An example to illustrate this: Refraining from torture, an absolute and immediate human right might be a rather cheap endeavour, in the sense that the state just has to stop the practice. To find those who torture and give them the possibility of a fair trial, are minimum requirements a state would have to extend to alleged violators of such gross breaches of human rights law. This is an endeavour that entails more costs on the side of the state than simple refraining from acting.

In summary, certain human rights obligations do not allow governments to claim that they do not have the necessary resources to fulfil a certain right. International human rights law obliges states implicitly to fund minimal judicial and administrative structures in order to provide individuals with access to institutions and legal recourse.¹⁴⁶

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Looking at human rights obligations from the perspective of economic, social and cultural rights, the impression arises that the ICESCR makes more recourse to acknowledging the financial burden that inevitably comes with the provision of the rights set forth in it. The Covenant defines the state as the primary responsible for the progressive realisation of human rights. In the following, I will briefly discuss the obligations that arise from Art. 2, Para. 1 of the Covenant, which states that:

¹⁴⁶ Christians, 2008, p. 17.

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

(1) **“take steps, individually”**

In 1990, General Comment Nr. 3 was dedicated to the interpretation and clarification of obligations for states that arise from Art. 2, Para. 1, of the Covenant.¹⁴⁷ The obligation to take steps is considered as „*the principal obligation of result*“¹⁴⁸ meaning that state actions should be directed to reaching „*full realization of the rights recognized in the present Covenant by all appropriate means*“. As to „*appropriate means*“, it is desirable that states take legislative measures to ensure the rights in the Covenant but this is not enough. In Para. 7 the Committee for Economic, Social and Cultural Rights (CESCR) states that „*Other measures which may also be considered “appropriate” for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.*“¹⁴⁹

(2) **“through international assistance”**

The Covenant takes into account the limitations on available resources in developing countries by equally taking into obligation other members of the international community to contribute by means of international assistance and co-operation to the realisation of human rights.¹⁵⁰ The Covenant not only recognises the duty of all states to contribute to the full realisation of the relevant rights in Art. 2, Para.1, but also in various other Articles such as Art. 11, 15, 22 and 23.¹⁵¹ Most importantly, General Comment Nr. 3 states that “*the essential role of such cooperation*” must be the facilitation of the full realisation of the relevant rights.¹⁵² One of the logical fields for technical assistance is assisting states in raising the necessary resources for the fulfilment of the Convention rights.

¹⁴⁷ E/1991/23.

¹⁴⁸ Idem, Para 9.

¹⁴⁹ E/1991/23, Para. 7.

¹⁵⁰ In Art. 2, Para. 3 of the same Article the Covenant recognises yet again the resource constraints of developing states by exempting them partly from the non-discrimination clause inscribed in Art. 2, Para. 2: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

¹⁵¹ E/1991/23, Para. 13.

¹⁵² E/1991/23, Para. 13.

(3) **“to the maximum of its available resources, with a view to achieving progressively the full realization of the rights”**

This provision suggests that the implementation of the Covenant rights is subject to restrictions because it is limited by “*available resources*”. It is remarkable that the provision explicitly acknowledges the financial burden that comes with the fulfilment of human rights and gives states the possibility to achieve rights progressively by demanding them to seek assistance, and equally obliging other states to assist. So, lack of resources does not allow states to infinitely postpone the realisation of the rights; on the contrary, they have the immediate obligation to begin realising them. This is spelled out in the Limburg Principles from 1987.¹⁵³ The Limburg Principles hence hold that the steps to full realisation of rights are to be set immediately but that the goal is to be reached progressively. Notwithstanding the progressivity provision, they also state that the application of some rights is justifiable with immediate effect.¹⁵⁴ Governments are in principle also not allowed to set retrogressive measures and need to prove that these are not deliberate as “*any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully 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.*”¹⁵⁵

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

The Maastricht Guidelines from 1997 introduced similar obligations on states as in the case of civil and political rights, namely the obligation to respect, protect and fulfil. Accordingly, the obligation to respect relates to the governments’ non-interference with the enjoyment of economic, social and cultural rights. The obligation to protect is directed to state protection against violations by third parties. The obligation to fulfil is the most crucial requirement, as it obliges states to take such steps as to create conditions by which rights can be enjoyed and advanced. Such conditions entail taking appropriate legislative measures but they go beyond mere legislative promises and also require states to enact judicial, administrative, and also budgetary measures toward realising these rights.¹⁵⁶

¹⁵³ E/CN.4/1987/17.

¹⁵⁴ Idem., Para. 8.

¹⁵⁵ Idem., Para. 9.

¹⁵⁶ International Commission of Jurists, 1997, Para. 6.

The Maastricht guidelines clarify the obligation to fulfil in more depth and define specific standards relevant to its realisation. Hence, the obligation to fulfil includes obligations of conduct and obligations of result. Obligations of conduct refer to identifying groups whose enjoyment of rights is violated or not at all fulfilled, and developing plans of how to tackle the situation. The obligation of result makes the government responsible for reaching internationally recognised and binding targets.¹⁵⁷ Violations occur when governments fail to fulfil these obligations, either through acts of commission or omission by the state. In the following I will briefly discuss the nature and scope of violations.

Violations through acts of commission

More often than not, governments pursue active policies that consciously deny certain groups or individuals specific rights. But acts of commission go beyond discrimination and include “*adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations*” and failure to protect enjoyment of economic, social and cultural rights from interference by third parties. The introduction of retrogressive measures constitutes a violation of the Covenant unless there is proof that, “factors beyond its reasonable control”, or lack of available resources, have adversely impacted the governments’ capacity to implement a certain policy.¹⁵⁸ Lastly, reducing or diverting public resources which has a retrogressive impact and leads to non-enjoyment of certain rights, and the failure to compensate this reduction in order to guarantee the minimum subsistence rights for everyone, is a violation of economic, social and cultural rights by active commission on side of the government.¹⁵⁹

Violations through acts of omission

These violations happen when governments fail to take appropriate measures to provide for the realisation of the legal commitments by employing the maximum available resources towards their full realisation, a commitment made by signing the Covenant. Most importantly, violations by acts of omission occur when governments fail to remove obstacles of various forms, some of which will be briefly mentioned here. The provision that economic, social and cultural rights are

¹⁵⁷ Idem., Para. 7.

¹⁵⁸ International Commission of Jurists, 1997; Para. 14.

¹⁵⁹ Idem.

to be fulfilled progressively has created among governments, but surprisingly also among some academics and civil society organisations, a consensus that limited funds justify non-realisation of those rights. This is why governments frequently fail to take any steps towards achieving the rights, an obligation that according to the Maastricht Guidelines has to be fulfilled with immediate effect.¹⁶⁰ This failure constitutes a violation by acts of omission. Violations by acts of omission also encompass failures to put into place and implement laws and actual policies that repeal outdated legislation and help implement the Covenant. They also include failures to regulate activities of third parties in order to prevent them from violating said rights, and equally incorporate bilateral and multilateral cooperation as well as relations with multinational corporations¹⁶¹ and international organisations.¹⁶²

As will be shown in the following case study on the example of Zambia, governments frequently fail to demonstrate any attempt of monitoring human rights and their progressive realisation specifically. The need for statistics and indicators for assessing the situation is vast, and governments frequently find themselves in the morally questionable and highly embarrassing situation that they cannot explain to monitoring bodies the extent of (non-)realisation of a certain right. In order to progressively realise economic, social and cultural rights, governments are obliged by the Covenant to take steps and then progressively improve the situation until the full realisation of Covenant rights. Though taking steps is a prerequisite, state duties do not stop there, as there are obligations which are required to be implemented with immediate effect – the so-called minimum core obligations.

Minimum core obligations

Resources are a weighty determinant for the realisation of economic, social and cultural rights, but their scarcity does not permit governments to delay the fulfilment of certain core human rights infinitely. The Limburg Principles in their attempt to precise the content of state obligations in the area of economic, social and cultural rights, already stated in 1986 that there are certain minimum obligations that governments cannot delay and must implement immediately.¹⁶³

¹⁶⁰ Idem., Para 15.

¹⁶¹ Idem.

¹⁶² Idem., Para. 19.

¹⁶³ E/CN.4/1987/17, Para. 8.

The Committee on Economic, Social and Cultural Rights in interpreting the Covenant provisions in General Comment Nr. 3, went beyond the sole statements on the obligation of states “to take steps” contained in the Covenant by claiming that “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.”¹⁶⁴ Hence the Convention would be null and void of its *raison d’être* if the government failed to provide the most essential foodstuffs, health care, shelter and housing, and most basic forms of education. It would be *prima facie* failing to fulfil its obligations arising from the Covenant and violating the rights of a significant number of individuals.¹⁶⁵ General Comment Nr. 3 leaves room for the interpretation of the Covenant’s minimum core obligations in light of resource constraints but the state “must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”¹⁶⁶

Minimum core obligations in education

The right to education entails obligations of governments to provide at least some education without discrimination to all children.¹⁶⁷ Human rights law allows governments to decide on their own how much education they want to guarantee for their citizens. There are no limits to the top but certain minimum requirements have been defined for all governments who have ratified the ICESCR. In 1999, the UN Committee on Economic, Social and Cultural rights clarified the normative content and obligations arising from the right to education as defined in Art. 13 of the ICESCR. The document defined that education “in all its forms and at all levels shall exhibit the following interrelated and essential features.” These are availability, accessibility, acceptability and adaptability.¹⁶⁸

As a minimum obligation governments need to ensure immediately the availability of primary school education to all. As opposed to secondary and tertiary education which can be realised gradually, governments have the “*immediate duty*” to provide primary school education for all.¹⁶⁹ Governments are obliged to immediately remove obstacles in order to facilitate the

¹⁶⁴ E/1991/23, Para. 10.

¹⁶⁵ Idem.

¹⁶⁶ E/1991/23, Para. 10.

¹⁶⁷ Tomasevski, 2006, p. 16.

¹⁶⁸ E/C.12/1999/4, Para. 6.

¹⁶⁹ Idem., Para. 51.

enjoyment of the right to education by e.g. making primary school education compulsory and free of charge.¹⁷⁰ This legal rationale is supported by research results which confirm that free and compulsory education is a quasi-warranty for universal access.¹⁷¹ But as Katarina Tomaševski has suggested, mere availability does not make sure that all children really enjoy primary school education.¹⁷² This is why education needs to be accessible for all without discrimination. General Comment Nr. 13 stresses the prohibition of discrimination on all Covenant grounds. These can be found in Art. 2, Para. 2 of the ICESCR and include “*race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” This prohibition is neither subject to progressive realisation nor availability of resources and must apply immediately to all.¹⁷³

It is commendable that the Committee has gone beyond the Convention grounds in demanding that “*sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.*”¹⁷⁴ This is why the Committee also imposes monitoring obligations for states, including the monitoring of spending patterns in order “*to identify and take measures to redress any de-facto discrimination.*”¹⁷⁵

There is no point in wasting time in schools that do not teach children anything, where the teacher is absent for weeks, or where the classrooms are so overcrowded that children do not have space to write not mentioning a desk, chair and learning materials of their own. Parents will not send the children to such schools and if they do, the children are very much likely to finish school illiterate. This is why governments need to make education acceptable and adaptable in its relevance, content and quality.¹⁷⁶

In general, human rights law allows states to design their own education policies. At the same time states are obliged to fulfil certain minimum core obligations. These include the immediate introduction of compulsory and free of charge primary school education systems. Primary school education needs to follow the “*4-A scheme*” as defined by the Committee on Economic, Social and Cultural Rights. Primary school education needs to be available to all and accessible without

¹⁷⁰ Tomasevski, 2006, p. 16.

¹⁷¹ Idem., p. 17.

¹⁷² Idem., p. 41.

¹⁷³ E/C.12/1999/4, Para. 31.

¹⁷⁴ Idem., Para.35.

¹⁷⁵ Idem., Para. 37.

¹⁷⁶ Idem., Para. 6 (c).

discrimination, it needs to be of acceptable quality and adaptable so it remains relevant. States are not allowed to discriminate and must monitor not only discrimination that arises from the Covenant's protection grounds but also de-facto discrimination. This also includes the monitoring of spending patterns, which if widespread and unreasonable, can constitute de-facto discrimination.

Summary of the standards relating to the obligation to fulfil

(1) Duty to take steps

The state has the duty to take steps as regards legislative, administrative, judicial and budgetary measures to ensure the full realisation of human rights.¹⁷⁷ Such steps include e.g. the adoption of legislative measures and action plans that cannot be avoided by the states on grounds of lack of resources.¹⁷⁸ A violation happens when the state *“by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result”*.¹⁷⁹

(2) Progressive realisation

States need not only to take immediate steps but also to follow-up with concrete measures and in an effective and quick fashion towards the full realisation of economic, social and cultural rights. Progressive realisation needs to be measurable¹⁸⁰ and states have to justify any retrogression in budget allocations dedicated to social spending.

(3) Maximum available resources

Resource scarcity does not allow states to abstain from fulfilling with immediate effect certain minimum core obligations and progressively the full realisation of all rights. Maximum available resources include state funds but also resources that can be drawn from international cooperation, an obligation to which all signatories of the Covenant have subscribed.

¹⁷⁷ E/1991/23, Para. 7.

¹⁷⁸ E/C.12/1999/4, Para. 8.

¹⁷⁹ International Commission of Jurists, 1997, Para. 11.

¹⁸⁰ Idem., Para 8.

(4) Minimum core obligations

Human rights requirements that have immediate effect irrespective of the availability of resources and must be given top priority through legislative, judicial, and also budgetary measures and other policy making.

(5) Non-discrimination

Entails not only the immediate abolition of *de jure* discrimination but also (as quickly as possible) all *de facto* discriminatory practices that lead to unequal enjoyment of economic, social and cultural rights.

(6) Quality of the services

Governments need to identify the goods and services suitable for the realisation of economic, social and cultural rights. The services provided need to be “*available, accessible, acceptable and of adequate quality*”.¹⁸¹

(7) Participation

In order to ensure that public goods and policies are of adequate and acceptable quality for rights-holders, governments cannot and should not design them in isolation from the rights-holders but must ensure participation, transparency and accountability throughout the entire process. This includes the right to information and its implementation in national policies as well as political participation in relevant policies and access to complaints mechanisms.¹⁸²

Rights-based fiscal policy monitoring - the OPERA framework¹⁸³

Due to lack of analytical frameworks to assess fiscal policies against human rights commitments, the Center for Economic and Social Rights (CESR), an international NGO based in New York, created a new and comprehensive approach for measuring the responsibility and accountability

¹⁸¹ CESR, 2012, p. 5.

¹⁸² Idem., p. 12.

¹⁸³ The OPERA framework was applied for the first time on the example of Guatemala and found that the state was not only unable but also unwilling to provide the necessary resources for the fulfilment of minimum core human rights obligations. The “Rights or Privileges?” project exposed the important role of fiscal policy in the non-fulfillment of minimum core obligations of the rights to food, education and health. See CESR, 2009.

of states and their fiscal commitment to economic, social and cultural rights. The acronym OPERA stands for “Outcomes, Policy Efforts and Resources to make an overall Assessment” and has become a tool for rights-based policy monitoring and advocacy. CESR puts the purpose of the OPERA framework this way: „*The obligation to fulfill entails obligations of conduct, as well as obligations of result. As such, assessing compliance requires looking not only at the extent of deprivation of a particular right, but also at trends in public policies and resource allocations, in order to fully understand the efforts that the state has taken to fulfill it.*”¹⁸⁴

What is the advantage of the OPERA framework for the case study? The advantage lies in the assumption that the fulfilment of human rights is the primary metric for assessing state policies. This means that if we are to assess the state’s responsibility for failure to fulfil human rights, we need to assess policies that indirectly affect it, such as its ability and willingness to raise resources. This is a difficult endeavour and poses many challenges to human rights practitioners, as the links between poor human rights records and policy efforts are difficult to measure.¹⁸⁵

Another advantage is that the OPERA framework allows us to combine not only human rights law with fiscal policy in the wider sense. It equally encourages the application of different techniques, qualitative and quantitative, indices, benchmarks, comparisons between countries etc. in order to not just find violations but also the reasons behind it, and in places that common analyses do not explore, such as the country’s revenue system.¹⁸⁶ OPERA has been mainly designed in order to monitor state compliance with economic, social and cultural rights by focusing on the obligation to fulfil. The framework consists of four steps which include a description of human rights outcomes, the policy efforts undertaken, resources allocated and an assessment of structural impediments for the fulfilment of human rights.

The first step is designed to give an overview or “*snapshot*” of the enjoyment of the rights at stake by focusing on minimum core obligations. It measures aggregate enjoyment of rights but equally focuses on disparities that cannot be made visible through aggregate data. By disaggregating data, the most vulnerable groups are exposed and identified. If possible the indicators are also monitored over time in order to measure the level of progression or retrogression, and differences in disparity. Comparisons to other countries in similar economic or

¹⁸⁴ CESR, 2012, p. 1.

¹⁸⁵ Idem.

¹⁸⁶ CESR, 2012, p. 2.

social circumstances are made to see whether violations in form of disparities and retrogressions are attributable to policy choices.¹⁸⁷

Outcomes alone cannot identify violations as a broader set of policies needs to be reviewed. The second step analyses the obligations of conduct that the government has to fulfil by looking at its policies relevant to the rights at stake. This step explores to which international instruments the state under review has committed, whether appropriate national laws and policies have been designed in order to fulfil the rights, and whether these policies and laws have been adopted and implemented in line with human rights standards.

The third step looks at the financial side of rights fulfilment and examines the ways how governments generate their resources, an obligation which arises from the Covenant itself.¹⁸⁸ This step takes into account the whole process of resource allocation and redistribution. Macroeconomic constraints and policy contexts that impact upon the realisation of a particular right are also taken into account.

The fourth step helps to understand other factors that influence the government's ability to raise revenue, factors that might potentially be out of reach for the state. These can be historic, structural or international constraints that continue to impede government policies and its ability to mobilise revenue. This step also draws attention to any acts or omissions by third parties that cannot be prevented by the concerning state. A final assessment is made on basis of cumulative findings of the four steps.

OPERA is methodologically not rigid and allows the combination of different sets of questions and methods. As every situation is different, it also demands the use of new and different types of data in order to grasp the problems at stake for every country. In this sense, OPERA allows researchers to ask new questions when applying it in order to define problems as they actually appear.

Case Study on Zambia

The following analysis of Zambia will follow the analytical rationale of the previously described OPERA framework. The idea is to trace the denial or violation of human rights not only in the legal and policy framework but to also assess the adequacy of economic and fiscal policy,

¹⁸⁷ Idem., p. 7.

¹⁸⁸ Idem., p. 18.

especially resource and tax revenue mobilisation. The study will be divided in four separate chapters, each dealing with one part of the OPERA framework. In the first part, I will discuss the **outcomes** or results of the current human rights situation and examine whether minimum core obligations of the right to education have been fulfilled. The second part will deal with **policy efforts** where the quality of policy content and policy implementation will be assessed. The third part deals with the question whether the state has mobilised the maximum available **resources**. In the final part, I will deliver a final **assessment** by looking into other factors that impede on a the government's ability to finance human rights such as historic, structural or international constraints.

Human rights situation

In this part, I will assess Zambia's fulfilment of the obligation of result by looking at the current outcomes of rights enjoyment. Special regard will be given to the right to education and the measurement of the fulfilment of minimum core obligations and other minimum criteria as established by international standards and benchmarks. This step will include aggregate measurement of rights enjoyment but it will also seek to make disparities and possible issues of discrimination visible in order to identify who are the "*significant numbers of individuals*" deprived of minimum human rights. In this step I will also include measurements of progression (or retrogression) over time and compare benchmarks to countries in similar economic and human rights situation.

Increasing poverty amid economic growth

Zambia experienced an unprecedented decline in economic and human development from 1990 onwards. Between 1975 and 1997 life expectancy fell dramatically and declined by more than 17%.¹⁸⁹ Until 2000, Zambia was leading the world's adult mortality statistics, with 690 and 588 male and female deaths per 1000.¹⁹⁰ These alarming numbers show the devastating effects of the HIV/AIDS epidemic that struck Zambia like no other country at the beginning of the 1990's. The

¹⁸⁹ Human Development Report 1999, p. 130, at <http://hdr.undp.org/en/reports/global/hdr1999/> (consulted on 21 March 2013).

¹⁹⁰ WHO World Health Statistics, 2011 as cited in Human Development Indicators, 2000 at <http://hdrstats.undp.org/en/tables/> (consulted on 20 March 2013).

Human Development Report of 1990 stressed that the AIDS epidemic was equally disastrous for all affected countries but that it specifically affected countries like Zambia which had weak health and social welfare services.¹⁹¹ As a result of the economic decline and HIV/AIDS epidemic, Zambia's Human Development Index (HDI) also dropped from 0.48 in 1990 to 0.38 in 1999.¹⁹² Zambia has made huge economic progress since 2004 and commendable progress of some socio-economic indicators. While its Gross National Income (GNI) per capita¹⁹³ was 490US\$ in 2000, it grew steadily to 1350US\$ in 2012.¹⁹⁴ In 2011, Zambia graduated from the World Bank's list of the poorest countries and was upgraded to a lower middle income country by surpassing the required level of GNI 1006 US\$. Zambia is among Sub-Saharan Africa's fastest growing countries and regardless of the global economic crisis, the Zambian economy grew at a fast pace in the last couple of years reaching 6.8% in 2011.¹⁹⁵ Despite economic growth, poverty is rampant in Zambia and the economic rise was not translated into poverty reduction. Instead, poverty numbers have increased from 64.3% in 2004 to 74.5% in 2010 with an increasing number of Zambians living below the international extreme poverty line of less than 1.25\$ per day.¹⁹⁶ Economic growth has been uneven and mostly urban. The booming mining, tourism and financial service sectors failed to create new jobs, and the concentration on urban development left even more than 80% of rural Zambians below the international poverty line of 1.25\$ per day.¹⁹⁷

What are the current issues from the perspective of economic, social and cultural human rights? The HIV/AIDS epidemic and economic downturn during the 1990s have caused the death or reduced the life expectancy of many adult Zambians. Given the fact that Zambia now has a population of almost 14 million, almost half of which are children under the age of 14 years, children's rights are in a critical state and need a thorough analysis.¹⁹⁸

¹⁹¹ UNDP, Human Development Report 1990, p. 40, at <http://hdr.undp.org/en/reports/global/hdr1990/chapters/> (consulted on 21 March 2013).

¹⁹² *Idem.*, p. 128 and UNDP, Human Development Report, 1999, p. 130.

¹⁹³ In fact, the GNI per capita as measured according to the World Bank's "Atlas method" in current US\$ is considered here.

¹⁹⁴ World Bank, World Development Indicators, 2000 and 2012.

¹⁹⁵ Kumar et al., 2012, p. vii.

¹⁹⁶ World Bank, World Development Indicators, 2012.

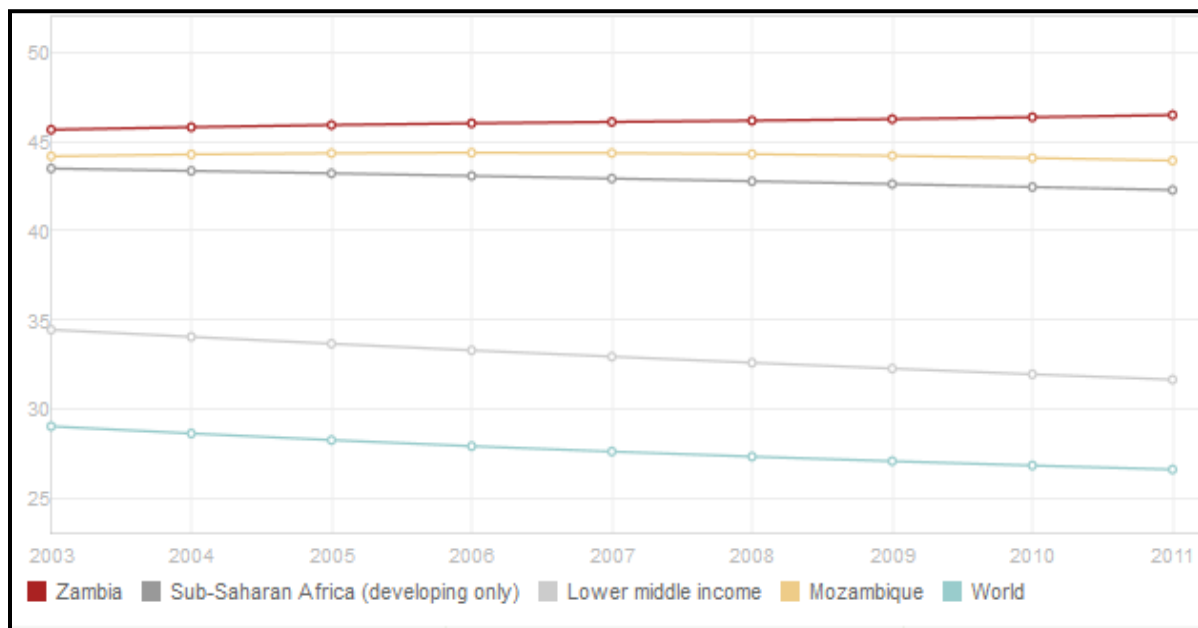
¹⁹⁷ Kumar et al., 2012, p. 11.

¹⁹⁸ CIA, The World Factbook Zambia, as quoted in Edmund Rice International et al., 2012.

Children's rights: Is Zambia making progress in reaching universal primary education?

Zambia has not only almost double the world average of children, but also much more than its Sub-Saharan African neighbours (See Figure 1). While in the year 2000, 1.33 million children were of primary school age, the number almost doubled until 2011 to 2.47 million.¹⁹⁹

Figure 2: Population ages 0-14 (% of total)²⁰⁰



In 1999, 37% of children in school age did not attend school, in rural areas they were even more than 60%.²⁰¹ Since then, Zambia has made enormous progress in boosting primary school enrolments. Today, primary school enrolments exceed the average for Sub-Saharan countries and countries with similar income as Zambia, and are at 117% (see Figure 3).²⁰²

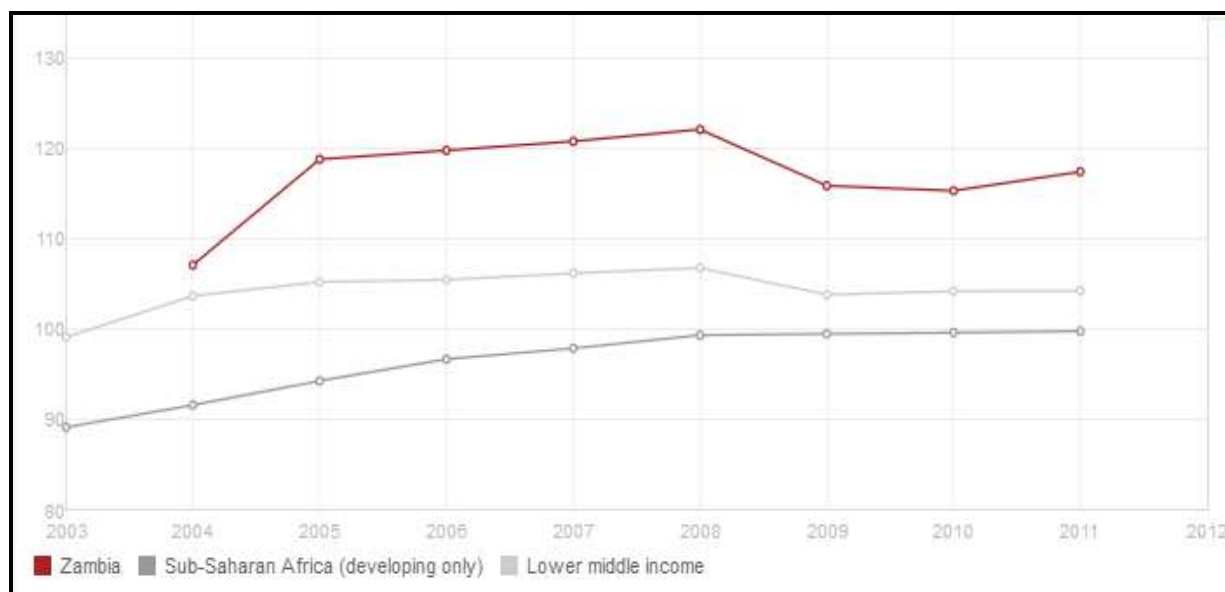
¹⁹⁹ UNESCO Institute for Statistics, at <http://www.uis.unesco.org/Pages/DataCentre.aspx> (consulted on 9 July 2013).

²⁰⁰ World Bank, World Development Indicators, 2003 – 2011.

²⁰¹ Dutch Ministry of Foreign Affairs, 2008, p. 34.

²⁰² UNESCO Institute for Statistics as cited in World Bank, World Development Indicators, 2011.

Figure 3: School enrolment, primary (% gross)²⁰³



But the high enrolment ratio reached by Zambia should not hide the fact that there are still high numbers of children who are out-of-school and not encompassed in such statistics. According to UNESCO statistics, an estimated number of 184 000 was found out of school in 2010. 108 160 boys and 76 290 girls were neither enrolled nor attending any kind of primary school. (See Figures 4 & 5 further below). While Zambia's neighbour Mozambique, brought its out-of-school rate for primary school children from over 500 000 in 2004 to 123 000 in 2010, Zambia made much slower progress. On the contrary, while the rate was brought down from 133 000 in 2004 to 42 000 in 2007, it began to rise to almost the same level as in 2004. In 2010, still 108 000 boys in primary school age were out of school (See Figure 4). Zambia compares better to poor and war-torn Mozambique with out-of-school numbers for girls, but still the retrogression is evident here too - while the rate went rapidly down from 2004 to 2005, it rose constantly since 2006 and reached 76 000 in 2010.

²⁰³ World Bank, World Development Indicators, 2003 – 2011. The gross enrolment rate is a figure for total enrolment irrespective of the age of children who begin school. In the case of Zambia, the enrolment rate is high and goes above 100%. This is explicable through multiple enrolments of children who repeat grades or intake of under- but especially over-age children.

Figure 4: Children out of school, primary, male²⁰⁴

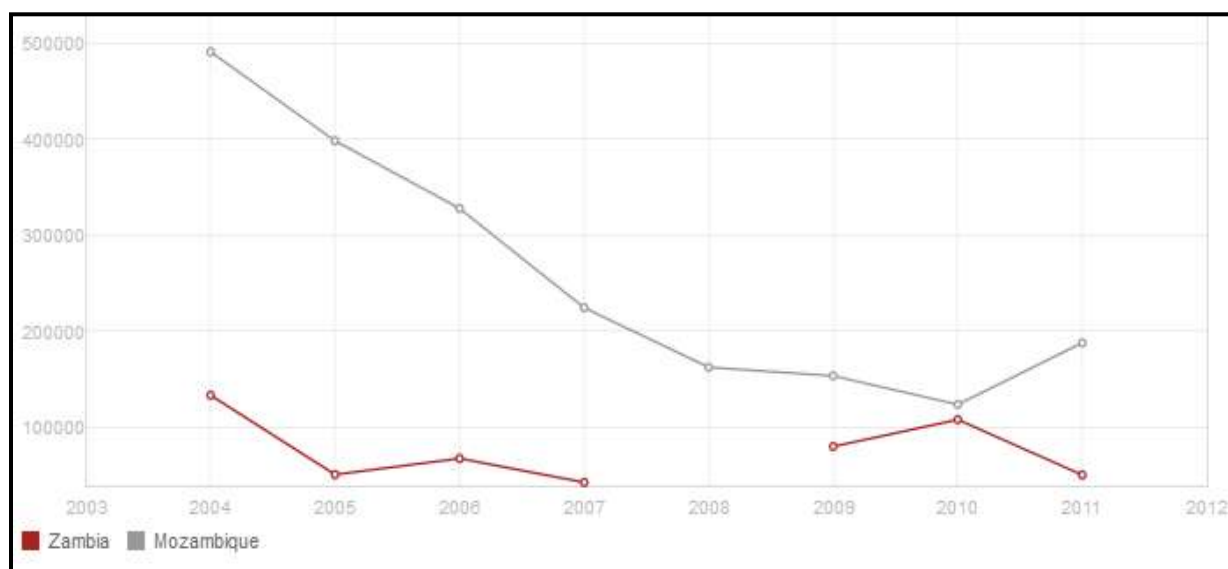
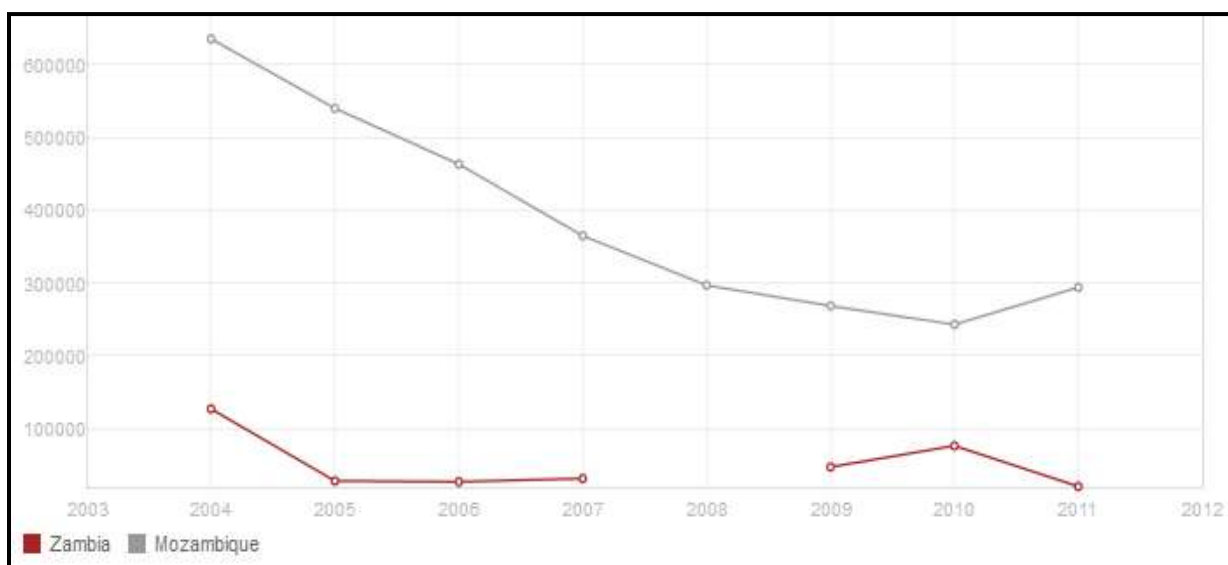


Figure 5: Children out of school, primary, female²⁰⁵



²⁰⁴ World Bank, World Development Indicators, 2004 – 2011.

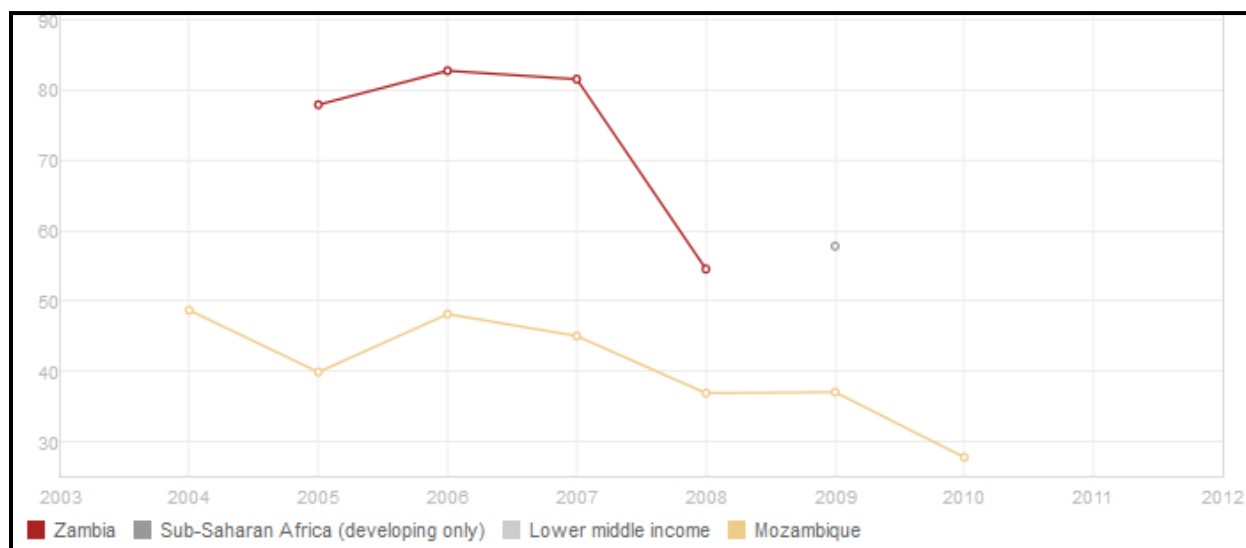
²⁰⁵ Idem.

For 2012, the figures are reported to have decreased by 74% for girls and 54% for boys. This would be a pleasant development were the data collected by the UNESCO not pure administrative data. If we look at survey data, the picture is much grimmer: the UNICEF and UNESCO Institute for Statistics report that in 2010, survey data collected on out-of-school children indicated much higher numbers. According to their estimates, more than 500 000 children of primary school age were out of school in Zambia. This is 20% of all children at primary school age as opposed to 6% reported by figures above.²⁰⁶

Regressive retention rates in primary schools and regional gaps

While the enrolments into primary schools have been boosted, a considerable number of Zambian children never reach the last grade of primary school. The survival rate to last grade of primary school has experienced a sharp downward trend from 2006 to 2008. While in 2006, 82.2 % of enrolled boys and 66.2 % of girls reached the last grade of primary school, they were only 54.6 and 51.6 % respectively in 2008 (See Figures 6 & 7).

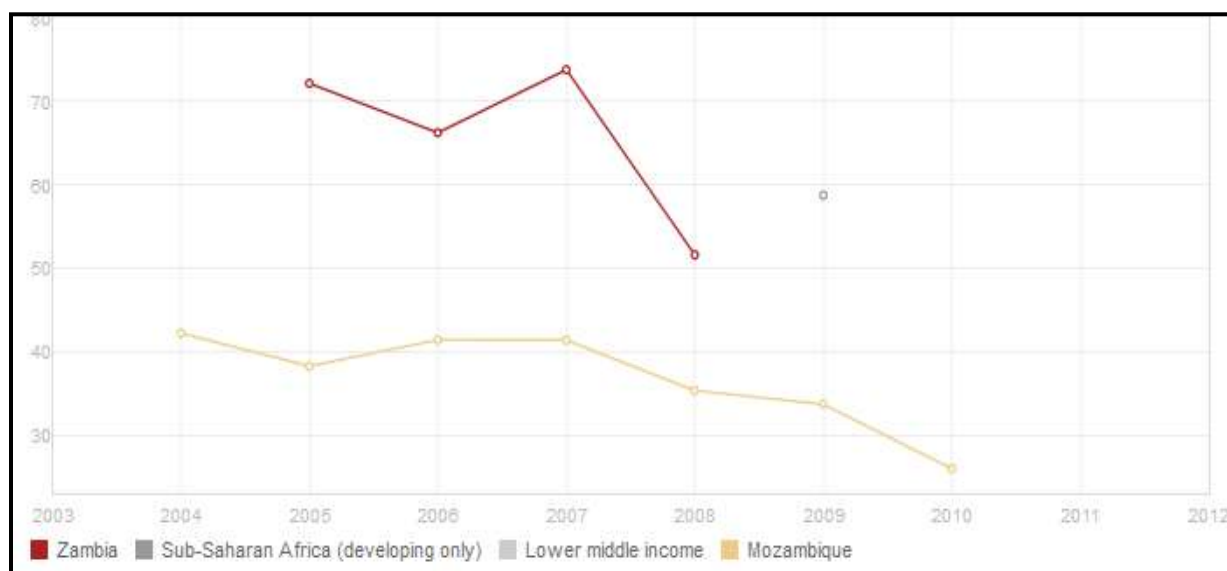
Figure 6: Persistence to last grade of primary, male (% of cohort)²⁰⁷



²⁰⁶ UNICEF & UNESCO UIS. Global initiative on out-of-school children, 2012 at <http://www.uis.unesco.org/Education/Pages/out-of-school-children.aspx> (consulted on 13 March 2013).

²⁰⁷ World Bank, World Development Indicators, 2004 – 2010.

Figure 7: Persistence to last grade of primary, female (% of cohort)²⁰⁸



Zambia has made progress in getting children in schools, but it cannot keep them and only half of primary school children start and finish school on time.²⁰⁹ It is interesting to look at its performance from a regional perspective. If we consider a larger time-span we can see that compared to Mozambique and Malawi, Zambia's two poor neighbours, Zambia has made much less progress regarding keeping children in primary schools. While it had a primary school drop-out rate of 26% in 1999, the rate rose to 46.9% in 2008.

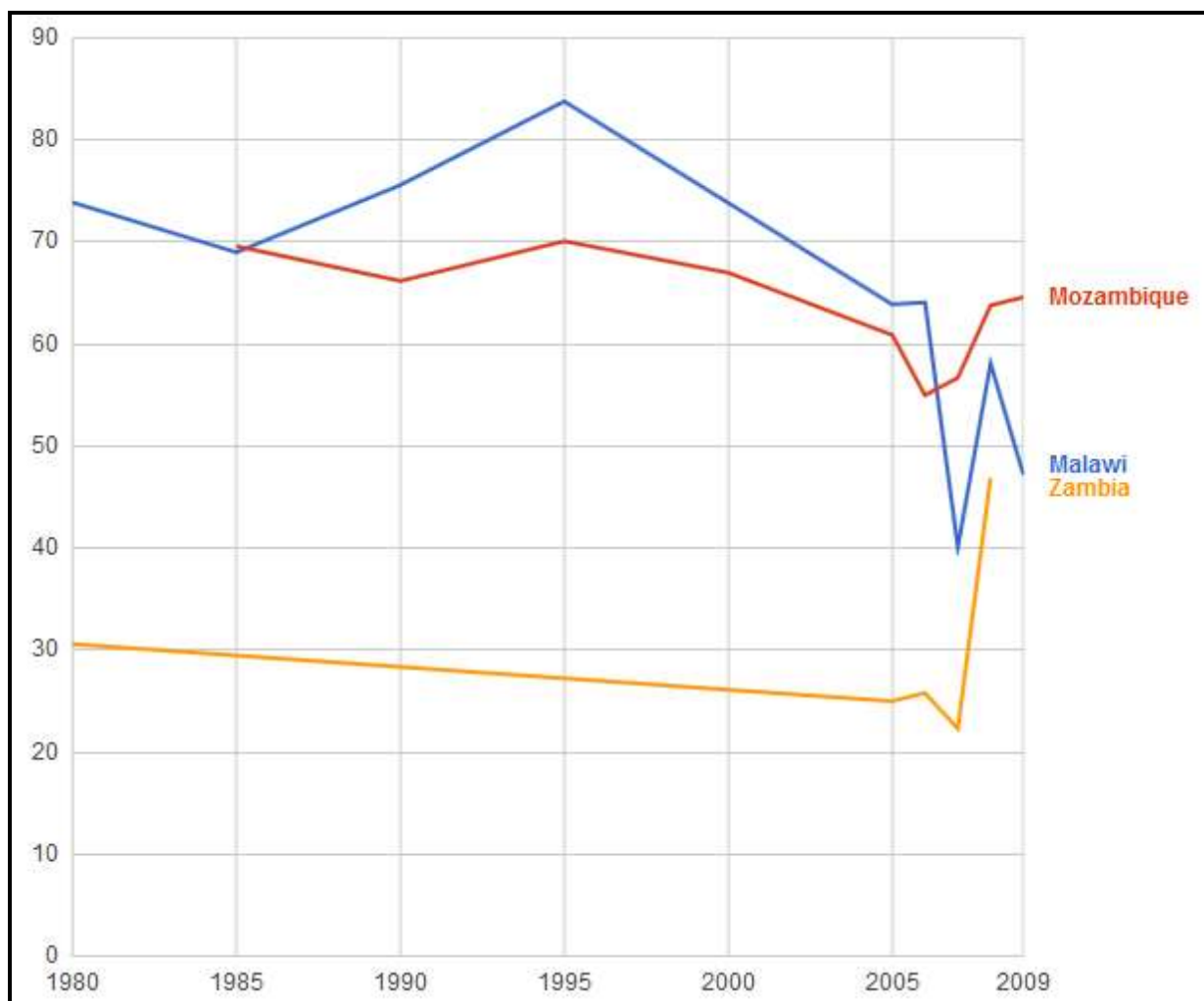
Malawi made a much larger progression in the same time and reduced its primary drop-out rate from 75.8% to 58.1%. Also Mozambique managed to reduce its rate slightly compared to 1998 (See Figure 8). Surveys conducted by schools in 2005 show that the primary reason for school drop-outs was the financial cost associated with it.²¹⁰

²⁰⁸ Idem.

²⁰⁹ Kumar et al., 2012, p. 28.

²¹⁰ Dutch Ministry of Foreign Affairs, 2008, p. 99.

Figure 8: Primary school drop-out rate (% of cohort)²¹¹



Neither Zambia's enrolment nor survival rates show a significant difference between girls and boys. Here, Zambia shows progression compared to 2006 when UNICEF reported to the Human Rights Council a gender gap of 11.6% for the primary school completion rate.²¹² There is also not much difference between boys and girls as regards out-of-school children like in Mozambique, where girls are much more affected than boys (as displayed in Figures 4 & 5). In

²¹¹ UNDP, Human Development Indicator, 1980 – 2008.

²¹² UNICEF, Inputs to the Universal Periodic Review of Zambia, 2007, Para. 9, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/ZM/UNICEF_ZMB_UPR_S2_2008_UnitedNationsChildr ensFund_uprsubmission.pdf (consulted on 20 March 2013).

fact, boys can be less often found in schools in Zambia as 30% less enjoyed primary school education in 2010 (See Figures 4 & 5).

Instead of a gender gap we can find huge regional gaps in Zambia. A study conducted by the World Bank in 2012 shows that the Human Opportunity Index, a measure of inequality of opportunity, shows enormous disparities between different regions. While the Human Opportunity Index for finishing primary school on time in the Eastern province was only 22.8, it was 67 for Lusaka, the capital, and even 75.8 for the Copperbelt province.²¹³ Thus, children's opportunities were hugely shaped by the region of residence and were much higher in richer provinces and significantly lower in the poorest province.²¹⁴ The drop-out rate for children from rural areas is almost double that in urban ones such as Lusaka or Copperbelt.²¹⁵ The World Bank study concluded that, *"the socioeconomic status of households, whether they reside in rural or urban areas, and the province they live in appear to be some of the strongest drivers of inequality across a broad range of opportunities in Zambia"*.²¹⁶

Widespread incidence of orphanage and child labour as impediments to universal primary education

While Lusaka displays much higher equality of opportunity, it is not a safe place for children. Already in the Universal Periodic Review from 2008 and the concluding remarks by the HRC, Zambia was criticised for not eradicating the high numbers of children that live and work on the streets of its capital Lusaka.²¹⁷ In their submission to Zambia's review under the UPR from 2012, NGOs reported that an increasing number of children between the age of five and seven live as street children in Lusaka.²¹⁸ The same NGOs reported that HIV/AIDS, poverty and lack of access to education were the main forces that pushed children on the streets.²¹⁹

²¹³ Kumar et al., 2012, p. 25.

²¹⁴ Idem., p. 26.

²¹⁵ Dutch Ministry of Foreign Affairs, 2008, p. 97.

²¹⁶ Kumar et al., 2012, p. 22.

²¹⁷ Edmund Rice International et al. Human Rights in Zambia. Stakeholder Submission to the Universal Periodic Review, 2012, Para. 30, at http://www.franciscansinternational.org/fileadmin/docs/UPR_Reports_2012/Final_UPR_joint_submission_-_Zambia_20_04_2012.pdf (consulted on 15 March 2013).

²¹⁸ Idem., Para. 35.

²¹⁹ Idem., Paras. 36 & 37.

Primary school education is becoming increasingly available in Zambia, but there are problems as can be seen by the high number of out-of-school, street and orphaned children with huge regional disparities in equality of opportunity. The situation of children is dire in Zambia and we need to ask who these children are that do not enjoy primary school education or drop out of school prematurely. Already in 2003, the UN CRC noted that children belonging to vulnerable groups such as girls, children with disabilities, orphans, and other disadvantaged children suffered in particular from discrimination.²²⁰ The UN CESCR criticised Zambia in 2005 for not possessing any statistical data on its most vulnerable social groups and recommended the Zambian government to submit “*in its next periodic report data collected on an annual basis, disaggregated by sex, age and urban/rural areas, paying particular attention to the most disadvantaged and marginalized groups of society.*”²²¹ The report is overdue since 2010.

Another extremely vulnerable group that is deprived of rights enjoyment in Zambia are children engaged in child labour. The relatively high out-of-school numbers and drop-out rates might be explained in part by the extremely high child labour estimates. UNICEF reports that the percentage of children aged 5-14 engaged in labour is 41%. This means that Zambia has almost the same rate as the Democratic Republic of Congo, its other war-torn neighbour.²²² On the other hand, the ILO in its most recent report on child labour reported a child labour rate of 28% (children aged 7-14 years).²²³ The statistics are surprising as to the school enrolment rate of child labourers. Contrary to the common assumption that these would be low, we can find more than 80% of working children in schools.²²⁴ A considerable number of children in Zambia is forced to bear the burden of work and education at the same time.

Recently, some progress was made in eradicating child labour. While in 2005 almost every second child aged 7-14 years was a child labourer²²⁵, the rate climbed down by 14% in 2008. So within 3 years Zambia managed to reduce its child labour rate by 270,000 children.²²⁶ Child

²²⁰ UNICEF Inputs to the Universal Periodic Review of Zambia 2012, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/ZM/UNICEF_UPR_ZMB_S14_2012_UnitedNationsChildrenFunds_E.pdf (consulted on 2 May 2013).

²²¹ UN Committee on Economic, Social and Cultural Rights, UN Committee on Economic, Social and Cultural Rights: Concluding observations: Zambia, 23 June 2005, E/C.12/1/Add.106, at <http://www.refworld.org/docid/43f3067911.html> (consulted on 15 May 2013).

²²² UNICEF State of the World's Children, 2012 as cited in UNICEF & UNESCO UIS, 2012.

²²³ ILO, Towards Ending Child Labour In Zambia. An Assessment of Resource Requirements, 2012, p. 12 at http://www.ucw-project.org/Pages/bib_details.aspx?id=12301&Pag=0&Country=232 (consulted on 15 June 2013).

²²⁴ Idem, p. 26.

²²⁵ Idem.

²²⁶ Idem., p. 30.

labour can predominantly be found in the informal sector of the Zambian economy with most children working in agriculture, stone crushing, fishing, forestry, trading on the streets and markets and caring for sick family members.²²⁷ All in all, there are still almost one million child labourers and most children are employed as cheap or free labour in the agriculture sector which accounts for 91.8% of Zambia's child labourers.²²⁸

Many of Zambia's most vulnerable children in general, and with a particularly high risk of becoming engaged in the most dangerous forms of child labour, are orphans who lost one or both parents due to HIV/AIDS. Currently there are more than 1.2 million orphans under the age of 15 years.²²⁹ In 2011, the ILO noted that *"children orphaned by HIV/AIDS and other vulnerable children are at an increased risk of being engaged in the worst forms of child labour"* and urged Zambia to specifically protect these children.²³⁰ Of the one million child labourers, the majority is HIV/AIDS orphans and more than 600 000 were reported to be engaged in the worst forms of child labour²³¹ by the International Trade Union Confederation in 2008.²³² A look at the school prospects for these particularly large and vulnerable groups of children reveals interesting insights.

Community schools as drivers of reaching universal primary education for disadvantaged children

Zambia reached high enrolment numbers only due to the rise of community schools which mainly cater for the most vulnerable children such as working children and HIV/AIDS orphans. During the 1990's and due to budgetary constraints from the economic and HIV/AIDS crises, community schools developed as an alternative to increasing numbers of out-of-school children. Since they were legally recognised in 1998, community schools increased school enrolment rates rapidly and were responsible for a 25% rise in 2004.²³³ In 2006, an estimated number of 500 000

²²⁷ ILO, Committee of Experts on the Application of Conventions and Recommendations, Direct Request on the Worst Forms of Child Labour Convention (Nr. 182), adopted at the International Labour Conference 2011.

²²⁸ United States Department of Labor, 2012, p. 676.

²²⁹ UNICEF Inputs to the UPR on Zambia, 2012.

²³⁰ ILO, Committee of Experts on the Application of Conventions and Recommendations, Observation on the Worst Forms of Child Labour Convention (Nr. 182), adopted at the International Labour Conference 2011.

²³¹ Art.3(d) of ILO Convention Nr. 182 defines worst forms of child labour as any "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

²³² United States Department of Labor, 2012, p. 676.

²³³ USAID, 2006, p. 2.

children (or 20% of all children) was reported to receive their basic education in community schools.²³⁴

What is the difference between public and community schools? While public schools are funded by the state budget, community schools are run on private initiative and receive little government support. Community schools fill the gaps that Zambia faces due to its topography, demography and widespread economic inequalities. The government cannot afford to run public school everywhere, and even if, hidden costs such as fees for the parent-teachers associations and uniforms, and the wide persistence of child labour, make it impossible for many children to attend schools.²³⁵

Local communities are filling this “*supply gap*” by contributing their own resources and labour. Most community schools are run on a volunteer basis and also most teachers are unpaid volunteers recruited among members of the communities.²³⁶ According to a study by the Dutch government, 34% of Zambian schools were community run in 2006 and accommodated 16% of all Zambian pupils.²³⁷ Another difference is that orphans are more likely to visit community schools than government run ones.²³⁸ According to USAID, in 2004 every third child in the community schools was an orphan.²³⁹

The circumstances in which these schools operate are highly worrisome as most of them are operated by parents and volunteer teachers without any formal teacher training. Resources are scarce but increasingly come from the Zambian government, foreign donors and especially religious organisations but they are not enough to improve overall conditions such as catastrophic sanitary facilities and lack of qualified teaching staff and books for the students.²⁴⁰

Another feature of the low quality of community schools is the high teacher pupil ratio. In 2005 the ratio for urban government schools was 44, while it was 74 for rural community funded schools. So, rural community schools had a 41% higher teacher pupil ratio than urban government schools. The North-Western province had the highest ratio of more than 110 pupils

²³⁴ Idem., p. 1.

²³⁵ See United States Department of Labor, 2012, p. 677.

²³⁶ De Kemp et al., 2011, p. 168.

²³⁷ Dutch Ministry of Foreign Affairs, 2008, p. 55.

²³⁸ Idem., p. 92.

²³⁹ USAID, 2006, p. 1.

²⁴⁰ Dutch Ministry of Foreign Affairs, 2008, p. 52.

per teacher.²⁴¹ According to the International Fund for Agricultural Development, it is at the same time one of the poorest and most isolated provinces in Zambia.²⁴² The situation is most likely to have aggravated now, as due to high intake ratios and shortages in teachers, teacher pupil ratios have increased over the years in rural areas.

Community schools have gained importance in Zambia for reaching the goal of primary school education. But they are chronically under-funded and operate in desolate or make-shift buildings with overcrowded classrooms and neither trained nor paid teachers. These schools represent a second-class education system for those for whom public schools are out of reach financially or geographically. Additional resources for scaling up their funding and creating equal conditions for all children - without discrimination and irrespective whether they are poor, orphans or child labourers - would need to be provided. There has been recent recognition of the problem including announcements of providing more resources to the community school sector.²⁴³

In the next parts I will analyse whether the Zambian government has made enough policy efforts to provide primary school education for all and whether the government has exhausted all available resources to finance the right to education.

Policy efforts

This step seeks to analyse the policy efforts made in realising human rights and whether the government has respected its obligations of conduct by targeting with specific policies vulnerable and discriminated groups. The duty to take steps is assessed against the background of legal and other commitments to reaching human rights standards. I will look into the quality of the content of the policies and their implementation but also into their formation and formulation.

²⁴¹ Dutch Ministry of Foreign Affairs, 2008, p. 158.

²⁴² International Fund for Agricultural Development, Rural poverty in Zambia, at <http://www.ruralpovertyportal.org/country/home/tags/zambia> (consulted on 23 June 2013).

²⁴³ Lusaka Times, Government to spend 1.5 trillion to upgrade community schools, at <http://www.lusakatimes.com/2012/11/01/government-spend-15-trillion-upgrade-community-schools/> posted November 1, 2012 (consulted on 18 June 2013).

Zambia's legal commitments to the right to education

When Zambia ratified the ICESCR on 10 April 1984, it made a reservation regarding Art. 13 (2) (a) and its provision of immediate implementation of the right to primary school education. Hence, the government declared that *“while the Government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.”*²⁴⁴

Zambia was alongside Madagascar the only country that declared a reservation on Art. 13 (2) (a) out of financial constraints. Even though Zambia made a reservation to the right to primary school education, it could never absolve itself from the obligation to take steps towards realisation of this right. A look at the Convention on the Rights of the Child (CRC) from 1989, which Zambia interestingly ratified without reservations in 1991, yields interesting insights. The right to primary school education as enshrined in Art. 28, Para. 1 of the CRC, recognises the right of every child to education and makes sure that primary education is compulsory and freely available to all children.²⁴⁵ While the right to education could be found in the Zambian Constitution from 1991, the same document never guaranteed the right to education. Thus there is to day no right to a remedy.²⁴⁶

Zambia was criticised for a long time for its neglect to make education free and especially compulsory for all its children.²⁴⁷ In 2002, it made a first step for making education available by abolishing school fees and making education free of charge. With the Education Act from 2011, Zambia for the first time introduced compulsory school education which applies to nine years of basic education.²⁴⁸ In the most recent UPR on Zambia, UNICEF commended Zambia for the legislative amendments which they said demonstrated Zambia's commitment towards implementing UPR recommendations from 2008 aimed at further improving the education system.²⁴⁹ While the legislative steps taken are laudable, the right to education is still not

²⁴⁴ UN Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-3&chapter=4&lang=en

²⁴⁵ UN Convention on the Rights of the Child, 1989, Art. 28, Para. 1 (d).

²⁴⁶ Right to Education Project. Right to Education Country Factsheet Zambia, October 2012, p. 4 & 8, at http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Right_to_education_country_factsheet_Zambia_October_2012_0.pdf (consulted on 17 June 2013).

²⁴⁷ UN Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.106, 2005.

²⁴⁸ UNICEF, 2012, p. 1.

²⁴⁹ Office of the High Commissioner for Human Rights (OHCHR), 2012, Para. 63.

constitutionally protected. It is expected that the current constitutional reform will yield constitutional rank for the right to education.

Zambia has very slowly, but successfully, taken legislative steps towards guaranteeing and protecting the right to education. As demonstrated in the previous chapter, there are still huge disparities in the enjoyment of the right and we need to ask whether the government is doing enough to identify disadvantaged children and whether the policies employed are effective and participatory.

International commitments and benchmarks

Zambia has committed to the Millennium Development Goals (MDG). The 2011 MDG Progress Report by the UNDP testifies that Zambia has already reached the target of reaching full access to primary school education.²⁵⁰ But as shown in the previous chapter on the example of drop-out and completion rates, Zambia cannot keep its children in schools. The quality of primary school education poses serious problems for the Zambian government.

In its effort to increase the quality of education, Zambia joined the Global Partnership for Education in 2008.²⁵¹ The most recent report reveals Zambia's failure to reach some of the benchmarks to which it committed itself. The teacher-pupil ratio is extremely high. While the Sub-Saharan average is 45, one teacher teaches 58 pupils in Zambia on the average. Thus, Zambia is way beyond the benchmark of 40 pupils per teacher.²⁵² This extremely high ratio is a sign that there are not enough teachers in Zambia. It is also a clear indicator for extremely overcrowded class-rooms. The MDG Progress Report from 2011 also found huge regional disparities: while in 2009, Zambia reached the required benchmark of less than 40 in urban areas, it failed to reach it in rural ones which still accounted for 58 pupils per teacher.²⁵³ Due to these

²⁵⁰ UNDP, Millennium Development Goals Progress Report 2011, at <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Zambia/Zambia%20MDG%20Report%202011.pdf> (consulted on 17 June 2013).

²⁵¹ UNESCO, Zambia EFA Country Profile 2012, at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/ZambiaEFAprofileoct2012.pdf> (consulted on 17 June 2013).

²⁵² Idem.

²⁵³ UNDP, Millennium Development Goals Progress Report 2011, p. 21, at <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Zambia/Zambia%20MDG%20Report%202011.pdf> (consulted on 17 June 2013).

constraints the quality of education suffers greatly and is reflected in low test scores for Zambian children, compared with their Sub-Saharan African colleagues.²⁵⁴ While Zambia's teachers are over-worked, they also earn only one third of their Sub-Saharan counterparts. Zambia is failing to double the salaries to reach the agreed benchmark of 3.5 units of GDP/capita.²⁵⁵

Zambia also committed itself to the objective of providing nine years of free and compulsory basic education for all in its National Action Plan from 2005.²⁵⁶ The National Implementation Framework from 2007 envisaged a national benchmark of reaching the goal of providing all out-of-school children aged 7-10 years with primary school education by 2008.²⁵⁷ Zambia has clearly failed in this respect too, as demonstrated by the high drop-out rates and out-of-school estimates. According to UNICEF and UNESCO Institute for Statistics, still 20% of all primary school age children do not enjoy the right to education.²⁵⁸

While Zambia has made progressive legislative changes to the right to education, with a constitutional guarantee most likely to be adopted this year, the government is failing at reaching self-set national and international benchmarks. We need to ask whether the government has devised strategies and policies to identifying and reaching the most vulnerable children - working children, and orphaned and street children. While in 2005, it was not clear how many children were out of school due to Zambia's neglect of measuring the country's disparities in rights-enjoyment, the picture is much better now. Zambia has voluntarily joined initiatives such as the Global Partnership for Education and the Global Initiative on out-of-school children, initiated jointly by the UNICEF and UNESCO. These are specialised in measuring rights enjoyment and deprivation of children, which shows the country's commitment to revealing the magnitude of rights deprivation and tackling it subsequently.

²⁵⁴ Idem.

²⁵⁵ UNESCO, Zambia EFA Country Profile 2012, at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/ZambiaEFAprofileoct2012.pdf> (consulted on 17 June 2013).

²⁵⁶ UN Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.106.

²⁵⁷ Republic of Zambia. National Implementation Framework 2008 – 2010 for the Fifth National Development Plan, October 2007, p. 101, at http://planipolis.iiep.unesco.org/upload/Zambia/Zambia_NIS.pdf (consulted on 17 June 2013).

²⁵⁸ UNICEF & UNESCO UIS. Global initiative on out-of-school children, 2012 at <http://www.uis.unesco.org/Education/Pages/out-of-school-children.aspx> (consulted on 13 March 2013).

Policies regarding orphaned children and child labourers

The United States Department of Labor concluded in its “*2011 Findings on the Worst Forms of Child Labor*” that the “*existing Government programs do not sufficiently address the most common worst forms of child labour in Zambia, particularly children engaged in hazardous work in the agriculture and mining sectors and those working on the streets.*”²⁵⁹

The problem is not lack of policies but that their implementation does not yield the necessary results. Zambia committed itself to fighting child labour in its Poverty Reduction Strategy Paper from 2002, the Fifth National Development Plan from 2005, and ILO initiatives such as the Decent Work Country Program.²⁶⁰ The government managed to set up Child Protection Units and District Street Children Committees in order to identify working and street children, but due to lack of resources and infrastructure there were no regular inspections possible.²⁶¹ For financial reasons the government failed to enforce its laws and fulfil its policy commitments.

Another attempt at eradicating child labour was the EU and ILO funded project TACKLE which ran from 2008 to 2012. It provided support to government officials, teachers and families on child labour related issues: “*The project supports work aimed at developing non formal education programmes for out of school children, including in areas where there may be no formal schools. In this respect, activities include collection of base line information and identification of key target areas, identification of programme partners, and development of programmes which provide appropriate education, training, and other services enabling children to be withdrawn or prevented from child labour.*”²⁶²

The strong emphasis on education played a major role in the project’s strategy to eradicate child labour.²⁶³ The project was very successful and ended regularly in February 2012. Though its continuation was planned, the Zambian government could not afford it, due to lack of funding.

In order to assist orphaned and working children to attend primary schools, the government of Zambia also introduced social cash transfer schemes but has failed to establish a comprehensive

²⁵⁹ United States Department of Labor, 2012, p. 677.

²⁶⁰ Idem., p. 679.

²⁶¹ United States Department of Labor, 2012, p. 678.

²⁶² International Program on the Elimination of Child Labour (IPEC), Tackling child labour through education in African, Caribbean and the Pacific (ACP) States (TACKLE), at <http://www.ilo.org/ipec/projects/global/tackle/lang--en/index.htm> (consulted on 17 June 2013).

²⁶³ United States Department of Labor, 2012, p. 679.

social protection policy.²⁶⁴ During the UPR on Zambia, UNICEF reported to the HRC of two cash transfer schemes that were piloted in Zambia in 2010 and 2011 respectively. These child grants were paid to households with orphaned and vulnerable children, disabled children and under-five year olds. While it was received positively that they were distributed to the most vulnerable of out-of-school children and covered the most impoverished five districts²⁶⁵, critics have claimed that it needed scaling up as only 10 000 families benefitted from these grants. So while social protection was expanded to some spots in Zambia, it benefitted only a few and failed to reach an increasing number of vulnerable children. This was also confirmed in a study by Boston University and Zambia University which concluded that, while support was extended to orphaned and vulnerable children *“the major challenge in service provision is that the demand for services is far greater than available resources and capacities; with inadequate funding being the greatest constraint.”*²⁶⁶

In summary we can say that policies employed to extend education to all children without discrimination have been implemented and some of them were successful, but to date they could not reach all children because of lack of resources.

Resources

The third step seeks to assess the progressive realisation of human rights by looking at the specific issues of resource generation, allocation and expenditure. I will assess whether the maximum available resources have been used and whether resources at disposition been used transparently, equitably and effectively. I will also analyse the structure of the fiscal system and who bears the tax burden as well as transparency and participation in the budget process.

It is true that Zambia had a resource constraint due to the economic downturn and HIV/AIDS epidemic, but as has been stated elsewhere, human rights violations are very often the result of conscious political decisions rather than only constrained by resource scarcity or other limitations.²⁶⁷ Wrong macro-economic and fiscal policies that do not prioritise the right to

²⁶⁴ UNICEF Inputs to the UPR, 2012, p. 6.

²⁶⁵ Idem., p. 5.

²⁶⁶ Boston University Center for Global Health and Development, Zambia Research Situation Analysis on Orphans and Other Vulnerable Children Country Brief, 2009, p. 5, at <http://www.bu.edu/cghd/files/2009/12/Zambia-Research-Situation-Analysis-Country-Brief.pdf> (consulted on 23 May 2013).

²⁶⁷ Seymour & Pincus, 2008, p. 388.

education are very often the core of human rights violations.²⁶⁸ So while taking into account resource constraints, we need to ask whether all possible efforts been made to increase necessary resources and whether all the resources at disposition have been used to reach universal primary school education.

Public expenditure on education

In order to find out whether the maximum available resources have been used, we need to look at how much money the government has spent for this purpose. In their analysis of tax policy in developing countries over the past thirty years, Bird and Bahl found that it is precisely this issue - budget expenditure - that is mostly not considered when countries design their tax policies. They conclude that *“tax policy is largely considered in almost complete isolation from the expenditure side of the budget in most developing countries.”*²⁶⁹

Hence, before looking at the generation side of government revenue and its tax system specifically, we need to look at the expenditure side of the budget to see how much money Zambia has allocated over the time, whether this has been enough, and whether there has been any progression over the time compared with international benchmarks and Zambia's neighbours.

Zambia has one of the lowest expenditure ratios for education in all of Africa. While in 2000 it was 2% of GDP, the government managed to raise it to 2.8% in 2004. From 2007 onwards there is a steep fall to only 1.3% in 2008 (See Figure 9). Every other comparable country had a much higher expenditure on education. Ghana, a country with a similar GDP per capita as Zambia, managed to increase its education spending to 8.3% in 2011. Tanzania succeeded in maintaining spending over 6%, and Uganda its much poorer African counterpart, spent 2.5 times more on education than Zambia (Compare with Figure 10).

²⁶⁸ Tomasevski, 2006, p. 18.

²⁶⁹ Bahl & Bird, 2008, p.288.

Figure 9: Public spending on education, total (% of GDP)²⁷⁰

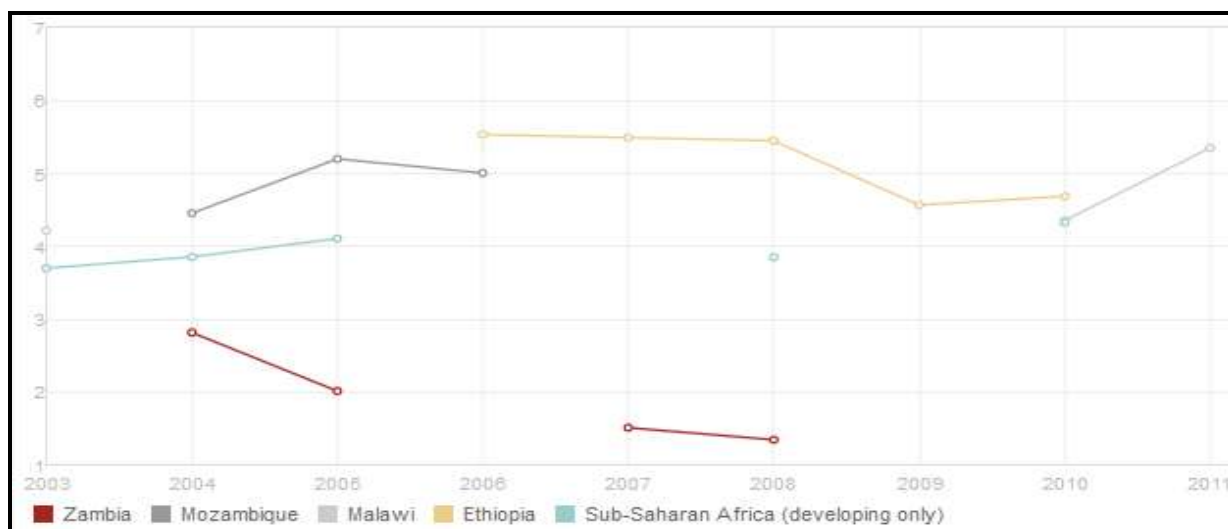
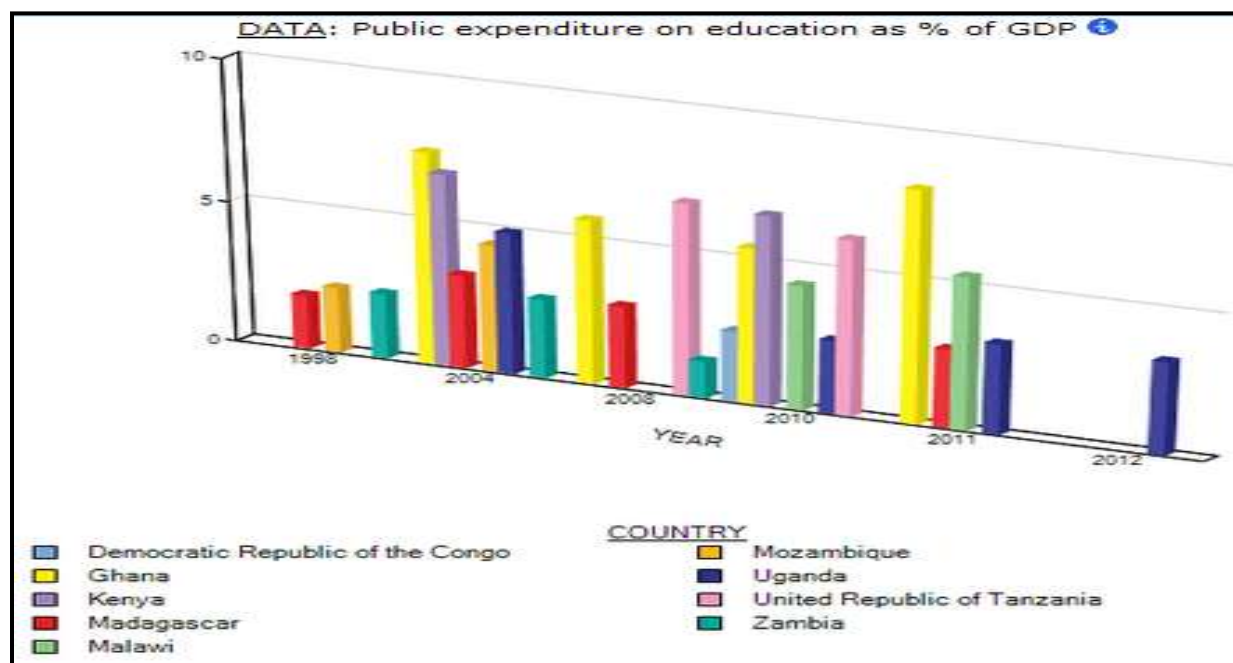


Figure 10: Public expenditure on education as % of GDP²⁷¹

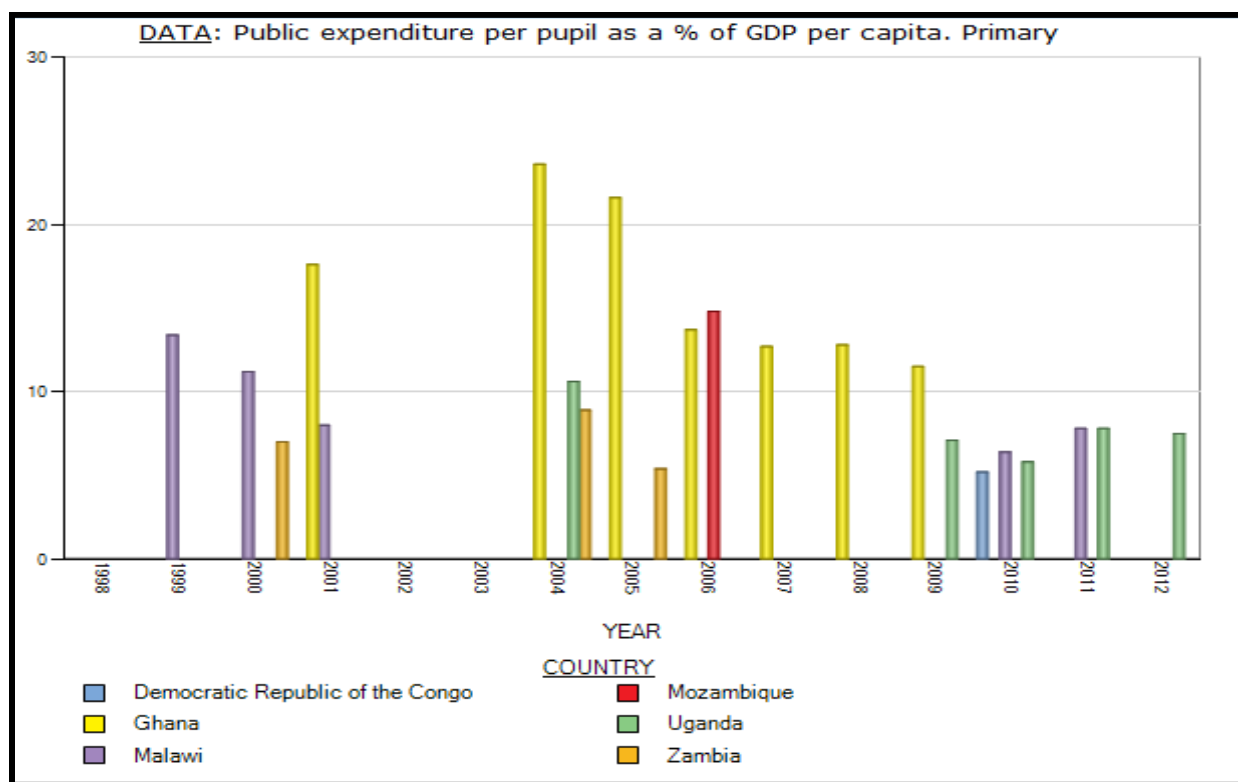


²⁷⁰ World Bank, World Development Indicators, 2003-2011.

²⁷¹ UNESCO Institute for Statistics Data Centre, 1998 – 2012.

Also, expenditure per primary school student as % of GDP per capita was very low in Zambia compared to its neighbors. While it was 8.9% in 2004, it fell to 5.4% one year later. More recent numbers are not available. All other countries had a two or three-fold higher expenditure.²⁷² Ghana for example, spent 23.6% of its GDP per capita on its primary school students. Zambia's expenditure decreased by 40% in 2005 reaching only 5.4%. So, the country had the same ratio to its GDP per capita as the Democratic Republic of Congo in 2010 (5.2%) (See Figure 10).

Figure 11: Public expenditure per primary school pupil as % of GDP per capita²⁷³



Education expenditure as percentage of overall government expenditure was for a long time below the Sub-Saharan African average of 18%.²⁷⁴ Zambia spent on education only 14.8% in 2004 and it made the commitment to increase the education budget steadily until 2010. In 2006 education made up 15.7% of overall government spending. The National Implementation

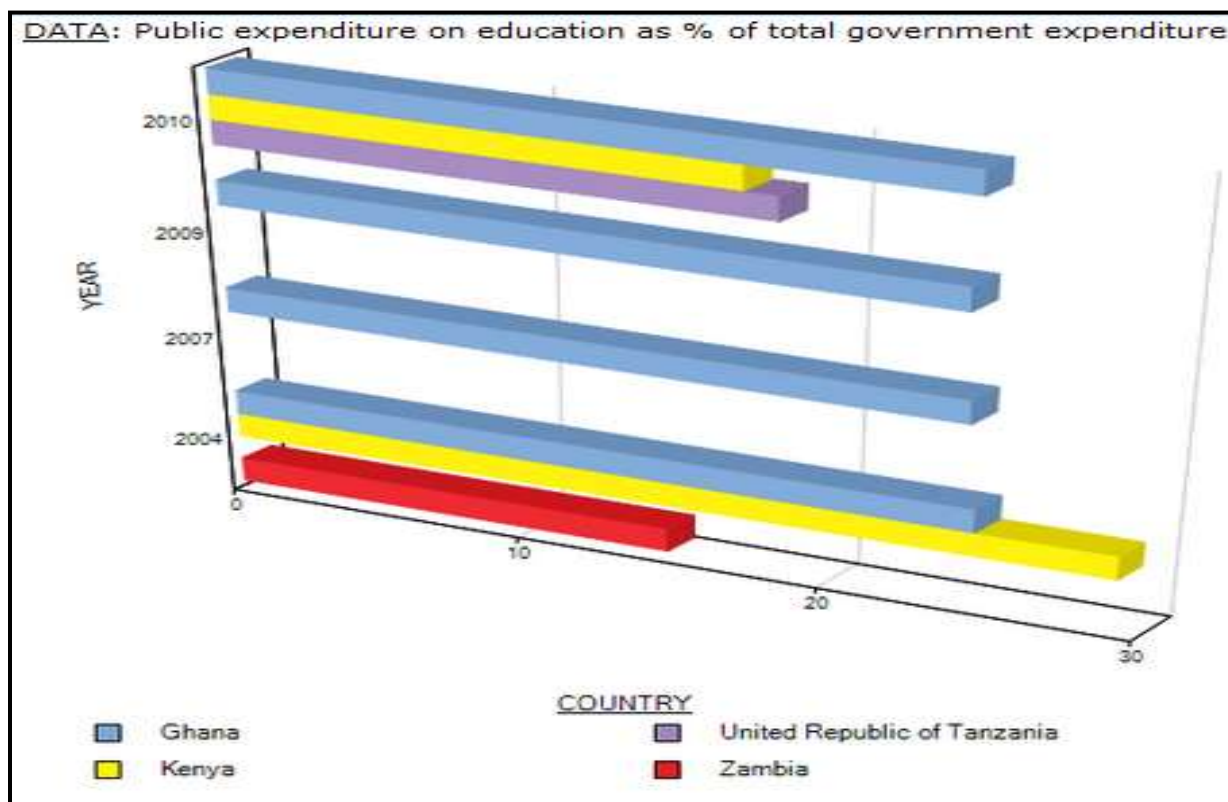
²⁷² World Bank, World Development Indicators, 2004 – 2005.

²⁷³ UNESCO Institute for Statistics Data Centre, 1998 – 2012.

²⁷⁴ World Bank, World Development Indicators.

Framework for the National Development Plan projected an increase until 2010 to 21.9%.²⁷⁵ Zambia managed to reach this target in 2010 but it was suggested that comparable countries devoted much more, around 25 %, of their budget expenditure, to education (For a comparison see Figure 12 below).²⁷⁶

Figure 12: Public expenditure on education as % of total government expenditure²⁷⁷



Zambia failed scaling up education expenditure as proportion of GDP to 4.4%, another important target declared in the Fifth Development Plan for the year 2010.²⁷⁸

²⁷⁵ Republic of Zambia. 2007, p. 101.

²⁷⁶ De Kemp et al., 2011, p. 147.

²⁷⁷ UNESCO Institute for Statistics Data Centre, 1998 – 2012.

²⁷⁸ Right to Education Project, Right to Education Country Factsheet Zambia, October 2012, p. 6, at http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Right_to_education_country_factsheet_Zambia_October_2012_0.pdf (consulted on 23 May 2013). For more details see also Republic of Zambia, 2006, p. 25.

A World Bank study from 2012 also noted that in spite of increases, education expenditure was too low in Zambia. The study also found that there was no difference in the expenditure allocation to different social groups of children. Children from the richest quintile (20%) were allocated the same amount of spending as children from the poorest 20% of the population which made spending equitable in absolute terms.²⁷⁹ But it looks like spending in Zambia is benefitting disproportionately children from the richer parts of the society. By not spending more on the most vulnerable, it is questionable how Zambia wants to create more equitable opportunities for all children.

While there has been some positive development in the proportion of resources allocated to the education budget, given the drastic decrease of education spending to 1.3% of GDP, it is evident that government spending has been regressive since 2008. Instead of raising the share of resources allocated to education to 4.4% as promised in the Fifth National Development Plan from 2005, Zambia reduced its spending enormously. This spending decrease could be immediately felt by the schools which cater for the most vulnerable children. The Millennium Development Goals Progress Report of the UNDP reported drastic cuts in budgetary support for schools. In Luwingu in the Northwestern Province, the Fikonkota Basic School operated many months without any government support in 2008 and 2009. As a consequence *„the school also suspended further admission of orphans and vulnerable children supported from the grants it receives.”* Local district officials reported that in 2009 they received less money than in 2008. This was a consequence of the decline in tax collection, which in turn was a direct result of the economic crisis.²⁸⁰

Zambia is spending too little on education and it needs to scale up its expenditure in order to reach the goal of primary school education for all. A look at revenue generation reveals whether the state has made all possible efforts to increase needed resources.

Zambia's performance in raising “maximum available resources”

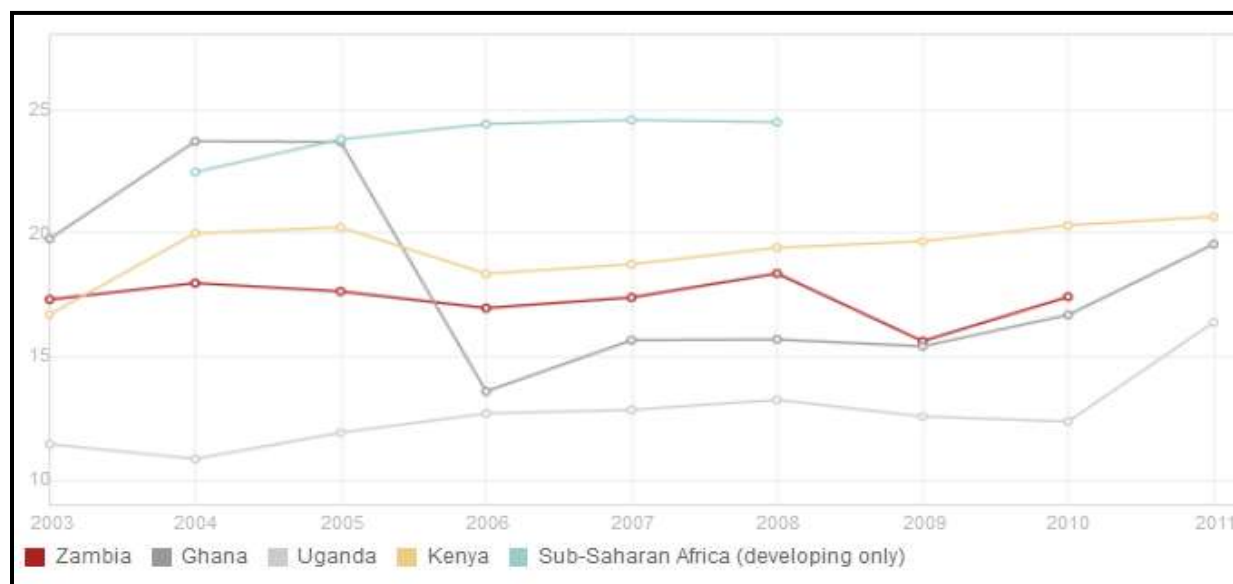
Zambia has an average performance in raising revenue. While the share of government revenue to GDP was higher than in Ghana and especially in Uganda (which only collected little above 10% of GDP in revenue), Zambia's performance declined and the revenue/GDP ratio

²⁷⁹ Kumar et al., 2012, p. 27.

²⁸⁰ UNDP, Millennium Development Goals Progress Report 2011, p. 11.

experienced a steady decrease. Most probably in consequence of the global economic crisis, it even fell to 15.4% in 2009. From 2010 it experienced a recovery to 17.4% but still remained below the previous levels (See Figure 13).

Figure 13: Revenue, excluding grants (% of GDP)²⁸¹



A study of the tax burden in Zambia by the International Finance Corporation and the World Bank concluded in 2004 that tax revenues in 2003 amounted to 80% of government income.²⁸² Elsewhere it was reported that shares in the period between 1998 and 2007 were 60% on average.²⁸³ The Sixth National Development Plan published figures from 2006 to 2009 according to which the share of taxes in total government revenue was more than 90% throughout the whole period.²⁸⁴ If we take the simple macroeconomic measure of tax efficiency, the tax to GDP ratio, we can see that Zambia is quite a successful country in collecting taxes. Zambia mostly managed to maintain a tax/GDP ratio of 18 percent since 2000.²⁸⁵

²⁸¹ World Bank, World Development Indicators, 2003 – 2011.

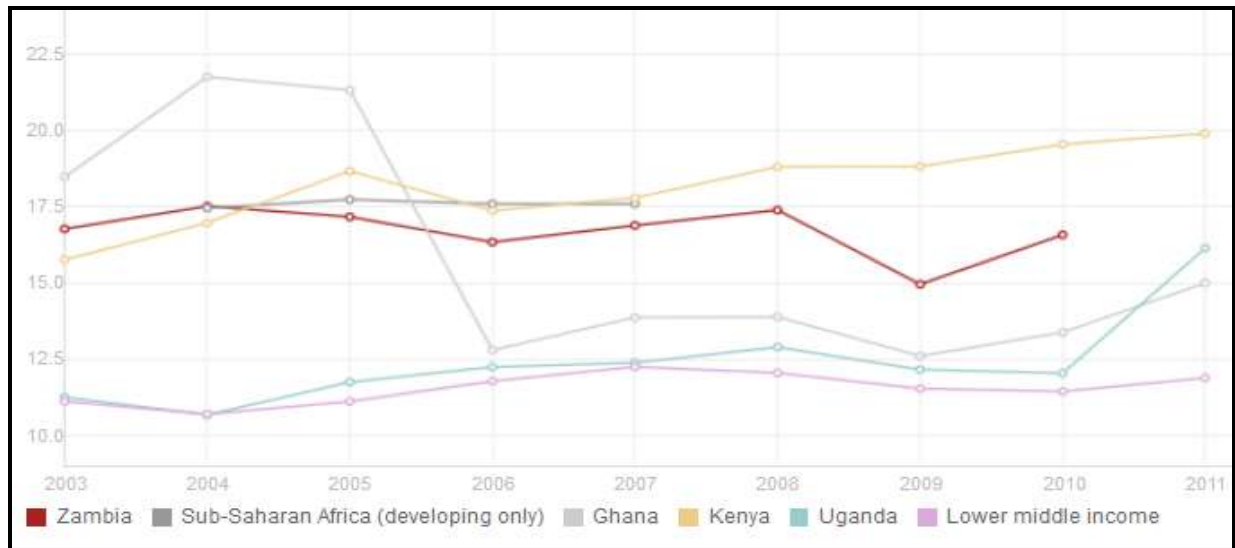
²⁸² Foreign Investment Advisory Service. Zambia: Sectoral study of the effective tax burden, International Finance Corporation & The World Bank, 2004. p. v.

²⁸³ Di John, 2010, p. 13.

²⁸⁴ Republic of Zambia, 2010, p. 4.

²⁸⁵ Foreign Investment Advisory Service, 2004, p. v.

Figure 14: Tax revenue (% of GDP)²⁸⁶



The country is also much better at collecting taxes than Uganda and even Ghana, but it cannot hold up with Kenya, which has been increasing its tax share steadily over the years to almost 20% of GDP in 2011. As could be seen in Figure 14, Zambia remains below the average of developing Sub-Saharan states. In spite stable economic growth rates of more than 6%, tax collection declined and in 2009 even dropped to just 15% of GDP, half of Zambia's tax take at the beginning of the 1970's.²⁸⁷ In its most recent Article IV consultations with Zambia, the IMF reported an increase to 16.4% in 2010, but Zambia remained constantly below any of the levels since 2003 (See Figure 14).²⁸⁸ Of all the comparator countries, Zambia was the only one experiencing a decline in its revenue from non-natural resource taxation. While all other countries such as Ghana, Mozambique, Senegal, Tanzania and Uganda could improve their tax take, Zambia's ratio declined from 19.1% in 2000 to 14.9% in 2010.²⁸⁹ The low performance in collecting revenues is to blame on losses from the taxation of goods and services and losses in trade taxes. Di John in 2010 also reported that the IMF blamed VAT evasion for the low tax take.²⁹⁰

²⁸⁶ World Bank, World Development Indicators, 2003 – 2011.

²⁸⁷ Von Soest, 2007, p. 631.

²⁸⁸ IMF, Zambia 2012 Article IV Consultation, July 2012, at <http://www.imf.org/external/pubs/cat/longres.aspx?sk=26123.0> (consulted on 14 March 2013).

²⁸⁹ Idem., p. 14.

²⁹⁰ Di John, 2010, p. 15.

Who bears the tax burden in Zambia? Structure of the tax system

The country relies on quite a diverse tax system in the sense that major taxes, such as personal and corporate income tax, VAT and trade related taxes such as customs, are represented in the revenue system.²⁹¹ While according to the International Finance Corporation, personal income taxes in 2003 represented the largest source of tax revenue (31%)²⁹², they rose steadily to 52% in 2009 according to the Sixth National Development Plan figures.²⁹³

Personal taxes fill the major part of the budget but Zambia has the disadvantage of a very narrow tax base and even the economic revival since 2004 could not expand it. Taxation in Zambia is extremely reliant on personal income taxes. This can partly be explained by the large public sector Zambia has been maintaining over the years and which makes up 36% of the formal sector. Hence, according to Di John's own calculations, the top 10% earners in the public sector accounted for 21% of overall tax revenue in 2006.²⁹⁴ This is quite a high burden on such a low base.

Value Added Tax (VAT)

A VAT was introduced in 1995 at a standard tax rate of 20%, later it was reduced to 17.5% and in 2008 to 16%. VAT is said to be most efficient when levied at a simple uniform tax rate. As VAT is not oriented on the ability to pay principle it can be considered as a regressive form of taxation as bread is taxed at the same rate as luxury items. At the beginning,

Zambia followed this rationale and exempted only exports from VAT but with time more sectors such as agricultural products, foods, medical supplies and drugs were added.²⁹⁵ In the 2013 budget proposal, bread and wheat were exempted from VAT altogether.²⁹⁶ This policy change is considered as a move towards a more pro-poor tax system. By zero-rating basic

²⁹¹ Idem., p. 8.

²⁹² Foreign Investment Advisory Service, 2004, p. v.

²⁹³ Republic of Zambia, 2010, p. 4.

²⁹⁴ Di John, 2010, p. 11f.

²⁹⁵ IMF, Fiscal Affairs Department, Revenue Mobilization in Developing Countries, May 2011, p. 70, at <http://www.imf.org/external/np/pp/eng/2011/030811.pdf> (consulted on 15 May 2013).

²⁹⁶ PwC Zambia, The Next Steps: 2013 Budgetary Changes, p. 15, at <http://www.pwc.com/zm/en/pdf/zambia-budget-2013-the-next-steps.pdf> (consulted on 18 June 2013).

necessities such as bread, the Zambian government is exempting large parts of the population from paying tax on basic commodities.

Revenues from VAT were quite high in the initial phases of its introduction and according to the IMF's Fiscal Affairs Department even reached 6.1% in 2001.²⁹⁷ Figures presented in the Sixth National Development Plan suggest that revenue generated from VAT has been in decline since then. While it was still at 4.6% of GDP in 2006, it declined to only 3.8% in 2009.²⁹⁸ The IMF has blamed this decline on the widespread evasion by companies of VAT liabilities.²⁹⁹ The decrease in the rate might also be a reason for the decline, but revenues from VAT have been declining before the cuts of the tax rate in 2008.

Corporate taxation

Zambia's economy is not very diversified. Since independence the country has relied on natural resource extraction, and especially copper. Mining is among the main economic driving forces in Zambia and was responsible for 75% of all exports in 2012.³⁰⁰ The country has also large agriculture, manufacturing and construction sectors. In 2011 the Zambian Development Agency reported that the construction sector contributed the largest share to GDP (13%). While agriculture and manufacturing contributed 12.2% and 11.2% respectively, mining had a share of 8%.³⁰¹

As regards corporate taxation, the World Bank's Doing Business Indicator attests Zambia a very good performance and has ranked the country 94th out of 183 rated countries. Zambia fares even better regarding the World Bank's assessment of tax liabilities for companies. Worldwide the country takes the remarkable 47th rank and is 7th out of 46 rated Sub-Saharan countries. The time needed to prepare and pay taxes was 2.5 times lower in Zambia than in Kenya for 2012 (See Figure 15).³⁰² This comes as no surprise as Zambia has for years strived to improve its investment climate by lowering corporate taxes and simplifying the tax structure. Nevertheless,

²⁹⁷ Foreign Investment Advisory Service, 2004, p. v.

²⁹⁸ Republic of Zambia, 2010, p. 4.

²⁹⁹ Di John, 2010, p. 15.

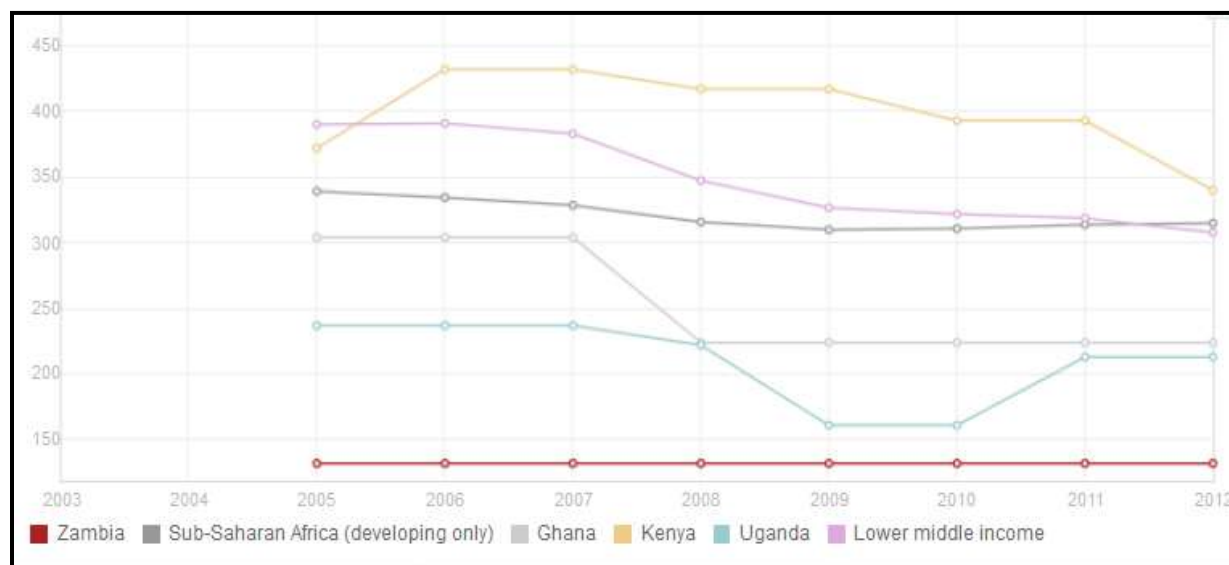
³⁰⁰ PwC Zambia, The Next Steps: 2013 Budgetary Changes, p. 7, at <http://www.pwc.com/zm/en/pdf/zambia-budget-2013-the-next-steps.pdf> (consulted on 18 June 2013).,

³⁰¹ Zambian Development Agency (website), Economic Review, at <http://www.zda.org.zm/content/economic-review> (consulted on 18 June 2013).

³⁰² The first three ranks are taken by the United Arab Emirates, Qatar and Saudi Arabia – countries that have zero rates on corporate and profit taxes.

the World Bank has been criticised for its Doing Business Indicator because it favoured disproportionately flat tax structures and low rates. Zambia seems complying with it more than any of its neighbours.

Figure 15: Time to prepare and pay taxes (hours)³⁰³



The indicator also gives an overview of applicable taxes and their tax rates. If we look at corporate tax rates we can see that Sub-Saharan countries have quite high statutory tax rates of 25-35% for profits on corporate income. Zambia is no exemption in this regard and has a statutory tax rate of 35%. But if we look at the total amount of taxes paid as a share of before-tax profit, it appears that Zambia's effective corporate tax rate (or the share which companies actually pay on the average) is quite low – indeed it is only less than half of the statutory tax rate of 35% and was 15.2% in 2012. All its other counterparts such as Kenya (28.1%), Mozambique (27.7%), Malawi (23.6%), Tanzania (20.2%), and even Ghana with 17.7% imposed much higher burdens on the corporate sector.³⁰⁴

³⁰³ World Bank, World Development Indicators, 2003 – 2012.

³⁰⁴ The Doing Business Indicator defines the total tax rate on corporate income as “the total amount of taxes borne is the sum of all the different taxes and contributions payable after accounting for allowable deductions and exemptions.” Taxes withheld by the employer such as personal income tax and all other contributions paid by others but collected by the company (such as VAT) are excluded. It is noteworthy mentioning that the Doing Business Indicator goes beyond the classical definition of taxation as “it measures imposed charges that affect business accounts, not government accounts”. World Bank, Doing Business Indicator: Paying Taxes Methodology, at <http://www.doingbusiness.org/methodology/paying-taxes#total> (consulted on 20 June 2013).

Because of generous refunds on VAT and deductions on various forms of expenses such as investments, Zambia has quite a low tax take from its corporate sector. While there has been an increase in revenue stemming from corporate income, Zambia has still a low corporate tax take as measured by its share in GDP. In the last five years it oscillated between 2 and 2.5% of GDP and was less than half of personal income tax revenue of over 5% on the average.³⁰⁵ For the year 2011, the Zambia Revenue Authority (ZRA) reported an increase to 3.8% of GDP.³⁰⁶ It has been reported that in reality only around 350 companies pay more than 70% of corporate related taxes such as corporate income, VAT and personal income contributions regularly due by employers.³⁰⁷ So we have a similar situation as in the public sector – a small number of tax payers contributed the largest share of the corporate income tax.

Contributions of the mining industry

Mining is the driving force of the Zambian economy and, as mentioned above, accounted for 75% of all exports. As opposed to the corporate sector in general, the mining sector is taxed at a 30% tax rate. According to Di John, *“up until the early 1990s, copper taxes contributed on average nearly 60 percent of government revenues”* but the role of copper mining taxes has decreased with the time and has been lower in Zambia than in comparable countries.³⁰⁸ How much does the mining industry contribute to the Zambian tax revenues? The Zambia Revenue Authority (ZRA) reported on its website that for the year 2011, extraction royalties accounted for only 3.8% of total tax revenue. This is an extremely low figure and if we take it as a share of GDP, Zambia gets only 0.7% in royalties, most of which come from mining.³⁰⁹ In 2012, the share doubled to 1.3% but this is still very low. An increase in the royalty rate from 3 to 6% announced in the 2013 budget is expected to yield further revenue.

Revenue generated from mining has been described as *“inadequate”* with only a few mines actually contributing to the Zambian budget.³¹⁰ A look at Zambia’s strategy to attract investors reveals some of the pitfalls of the Zambian fiscal policy. The Zambian Embassy in the US

³⁰⁵ Fjeldstad, 2011, p. 11.

³⁰⁶ Zambia Revenue Authority (website), Tax Revenue Statistics 1995 – 2012, at http://www.zra.org.zm/Statistical_Bulletin.html (consulted on 21 June 2013).

³⁰⁷ Di John, 2010, p. 12.

³⁰⁸ Idem., p. 10.

³⁰⁹ Zambia Revenue Authority (website), Tax Revenue Statistics 1995 – 2012, at http://www.zra.org.zm/Statistical_Bulletin.html (consulted on 21 June 2013).

³¹⁰ Conrad, 2012, p. 14.

promises mining investors generous arrangements – 100% of losses can be offset against the profits and carried forward up to 10 years; duty free import of capital equipment and utility vehicles; zero rates on mining products for export; capital allowances, and many other incentives for exploration companies.³¹¹

Di John believes that the small share is due to benevolent terms in the development agreements and the “*most investment-friendly mining deals ever known*”.³¹² These agreements were made with foreign investors in the mining sector in order to attract their investments after privatisation that started in 1999. Large exemptions and refunds on VAT have featured prominently in their terms.³¹³

Zambia is thus characterised by large exemptions on tax liabilities and especially foreign investors profit from these.³¹⁴ The mining royalty for companies which were attracted by so called Development Agreements is only 0.6% (for all others it currently is 6%).³¹⁵ Moreover, companies who benefit from these agreements pay no corporate income tax in the first five years and 50% less in years 6 – 8. After that, they pay a 25% reduced rate.³¹⁶ Details that go beyond this are generally not known to the larger public and are kept secret.

In spite of these generous agreements, the biggest and most profitable mines pay virtually no tax and the past years have seen allegations of tax evasion and avoidance being raised by civil society in Zambia.³¹⁷ The biggest mining company Mopani Mine, which is operated by Glencore International, has been accused of tax avoidance in 2011.

³¹¹ Zambian Embassy to the USA, Incentives for Investors, at <http://www.zambiaembassy.org/index.php?page=incentives-for-investors> (consulted on 26 June 2013).

³¹² Di John, 2010, p. 15.

³¹³ *Idem.*, p. 10.

³¹⁴ Di John has reported about the widespread use of ad-hoc exemptions for certain government officials as well, especially when it comes to import duties. *Idem.*, p. 14.

³¹⁵ Conrad, 2012, p. 28.

³¹⁶ *Idem.*

³¹⁷ A documentary by Danish film maker Christoffer Guldbrandsen describes the allegations and investigations around the tax evasion complaints against the Mopani mine and Glencore International. See Guldbrandsen, Christoffer, *Why Poverty – Stealing Africa*. Documentary, 2012, at <http://www.whypoverty.net/en/video/34/> (consulted on 13 March 2013).

A case filed on grounds of the OECD Guidelines on Multinational Enterprises with alleged breaches of Chapter II, § 1, 5 and 6, and Chapter XI³¹⁸, yielded no result. The complaint was supported by the government of Zambia who commissioned an international accounting company beforehand to screen the company's activity. Their report concluded that the company had breached the arm's length principle in its sales to sister companies outside Zambia. Hence, the Mopani mine was accused of under-pricing its exports and sales to Glencore International based in Switzerland, so it would minimise its tax liabilities in Zambia. In a mediation procedure by the OECD, the government and the companies accused of tax evasion, could not reach any agreement over the issue. The OECD Watch from June 2013 reported that the government had complained that the companies had not complied with the rules of procedure as they did not provide sufficient information on their tax receipts.³¹⁹

Despite positive price developments for copper and increasing rents for the mining companies, the mining sector bears the lowest tax burden of all corporate sectors. Although it is the leading sector of the economy, it has been difficult to capture for the Zambian tax authorities. But Zambia's low tax take from corporate income in the mining sector cannot only be attributed to weak capacity of the tax administration, although there is some truth to that. Widespread tax incentives and the absence of a truly global tax agreement to regulate the aggressive tax policies of internationally active companies, including alleged use of tax haven jurisdictions for these purposes, make it virtually impossible for the authorities to investigate whether taxes have been avoided or evaded. A paper by the FAD of the IMF from 2011 recognises the problem of profit shifting as one in need of a multilateral solution: *"Profit shifting by multinationals is an increasing concern; strengthening capacity and legislative frameworks is important, but, absent fundamental changes in international tax policies, there are no easy solutions."*³²⁰

³¹⁸ Chapter X of the OECD Guidelines on Multinational Enterprises imposes following taxation-related obligations: "It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations. This would include such measures as providing to the relevant authorities the information necessary for the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle." See Organisation for Economic Cooperation and Development, OECD Guidelines for Multinational Enterprises, 27 June 2000, p. 25, at <http://www.refworld.org/docid/425bd34c4> (consulted on 30 June 2013).

³¹⁹ OECD Watch, Quarterly Case Update of OECD Guidelines Cases filed by Civil Society, June 2013, at www.oecdwatch.org (consulted on 20 June 2013).

³²⁰ IMF Fiscal Affairs Department, Revenue Mobilization in Developing Countries, March 2011, p. 18, at <http://www.imf.org/external/np/pp/eng/2011/030811.pdf> (consulted on 12 May 2013).

Taxing agriculture

Zambia is highly reliant on copper mining and has thus tried to diversify its economy through various means. Much potential is subscribed to the agriculture sector which in 2011 contributed over 12% to GDP.³²¹ Since a few years, Zambia has separated profits generated from income on agriculture from corporate profits. The statutory rate for this type of income was gradually lowered from 35% to 15%, and with the reforms from 2012 to 10% the lowest rate ever.³²² Even though most Zambians live on farming, the concern has been raised that low tax rates in this sector benefit disproportionately large farmers and processing companies.³²³ But again, as in the case with tax incentives to the mining sector and in spite the low tax rates, a big agricultural producer has been accused of shifting the profits it made in Zambia abroad. Associated British Sugar, a big processor of sugar who is accused of not having any farm plantations, managed to establish itself as a farming company after it took the Zambian government to court in 2007.³²⁴ Action Aid, a UK based NGO, has reported that this way it enjoyed the special low tax rate on agricultural income of only 15%, which they claim was meant to benefit real farmers. It appears that the company paid no tax on its profits from 2008 to 2010 and the case is currently under judicial review in Zambia. The NGO also accused this international food company of profit shifting via subsidiaries in tax haven jurisdictions such as Ireland, Jersey and Mauritius.³²⁵ According to them, this is possible through a double-taxation agreement between Ireland and Zambia concluded 40 years ago, which foresees that, withholding taxes on profits which are moved from Zambia to Ireland, are not to apply.³²⁶ Due to lack of reporting obligations by companies on the taxes they pay in each country where they operate, it is not really possible to track where the taxes have been paid.

Beside the low taxes that benefit mostly large agro-processors, the Zambian tax system is also characterised by almost complete absence of property taxation. From 2001 to 2005 property taxation made only 0.4% of GDP and was mostly levied by local governments. The little amount

³²¹ Zambian Development Agency (website), Economic Review, at <http://www.zda.org.zm/content/economic-review> (consulted on 18 June 2013).

³²² PwC Zambia, The Next Steps: 2013 Budgetary Changes, p. 2, at <http://www.pwc.com/zm/en/pdf/zambia-budget-2013-the-next-steps.pdf> (consulted on 18 June 2013).

³²³ Di John, 2010, p. 18.

³²⁴ Action Aid, Sweet Nothings: the Human Cost of a British Sugar Giant, 10 February 2013, p. 2, at http://www.actionaid.org.uk/doc_lib/sweet_nothings.pdf (consulted on 20 March 2013).

³²⁵ Idem., p. 18.

³²⁶ Action Aid, 2013, p. 26.

that is collected is said to benefit rich and large land-owners disproportionately as the tax rates are rather uniform in nature and thus not progressive.³²⁷

Role of Informal Taxation

It appears from the above analysis that Zambia's tax system is mainly sustained by contributions of a small share of the population, namely public sector employees who pay the largest share of the personal income tax. Some contribution is made by businesses in form of corporate income taxes and royalties on mining, but this share is as we have seen very low; indeed the bulk of corporate taxes is contributed by a few hundred companies. The large mining sector has disappointed the hopes of producing an increased tax take for the Zambian state – its share has decreased with time and was notoriously low after privatisation. Other taxes such as consumption taxes (VAT) and international trade related taxes (customs, tariffs, import VAT) also make some contribution.

Another evident feature of the formal tax system is that the vast majority of the population appears to be outside the tax net. This has to do with a large informal sector that has developed into a persistent characteristic of the Zambian economy. Only, developing countries do not just finance themselves with taxes but employ other methods of resource generation, such as foreign aid. Another symptomatic characteristic of developing states that has not yet been thoroughly investigated, is the role of informal taxation in state financing. In many developing countries, local residents make huge financial contributions but also contribute in kind or labour to help setting up or maintaining the provision of public goods for the enjoyment of their respective communities.³²⁸ In their cross-country study on the role of informal taxation in ten countries³²⁹, Olken and Singhal found that on average more than 20% of the surveyed households were informally taxed and thus contributed informally to their local government's provision of public goods.³³⁰ Contrary to the assumption that informal taxation has to do with the informal economy, they define it as *“a system of local public goods finance coordinated by public officials but enforced socially rather than through the formal legal system.”*³³¹ In many countries people

³²⁷ Di John, 2010, p. 18.

³²⁸ Olken & Singhal, 2011, p. 1.

³²⁹ The sample included Albania, Ethiopia, Guatemala, Indonesia, Nicaragua, Nigeria, Panama, the Philippines, Vietnam and Zambia.

³³⁰ Idem., p. 25.

³³¹ Idem., p. 2.

contribute quasi voluntary to building infrastructure, running schools, etc. Social enforcement is multifaceted and can include e.g. shaming of non-contributors by announcing their names publicly, sending letters or asking religious leaders to remind non-payers during sermons, etc.³³² Olken and Singhal also observed that this form of taxation was quite regressive. Wealthier households contributed quantitatively more in informal taxes, but the share of this contribution in their expenditure was much lower than in poorer households.³³³ Nevertheless, they hold that informal taxation can be considered redistributive. First, because of social enforcement, wealthier households participate in these schemes more often and second because local communities have better information than the tax authorities about the real income and wealth levels of their residents. On the basis of this knowledge, they can informally enforce tax payment, something frequently out of reach for regular tax authorities.³³⁴

As regards Zambia, the study found that informal taxation was prevalent in 23% of the surveyed households.³³⁵ The study also concluded that Zambia had higher contributions in labour than money. More than 18% of the surveyed households contributed their labour to the provision of public goods.³³⁶ This figure was even higher for rural households, which were 35% more affected than urban households – in total 23% of them contributed labour to the local communities.³³⁷ It is noteworthy mentioning that the sample for Zambia is derived from Living Condition Monitoring Survey made in the year 1998. The situation today is not comparable with the one in 1998, which might impact on the relevance of the survey for the current state of affairs. Nevertheless, as we can see on the example of community schools, contributions in labour are still prevalent in today's Zambia.³³⁸ It has been reported that 34% of all schools in Zambia were community run.³³⁹ The Zambian budget does provide some financial resources for the running of community schools, but the needs of the schools could never be met by these under-resourced funds. This is why parents run schools for free in many rural areas of Zambia and local community residents provide their labour as builders for schools or teachers. These

³³² Olken & Singhal, 2011, p. 4.

³³³ Idem., p. 15.

³³⁴ Idem., p. 2f.

³³⁵ The survey sample for Zambia was 16 788 and nationally representative.

³³⁶ Idem., p. 8.

³³⁷ Olken & Singhal, 2011, p. 9.

³³⁸ Community schools were legally recognised in 1998 and experienced a rise after 2004, a period of increased efforts on the side of the state to boost primary school enrolment rates in pursuit of the Millennium Development Goals. This means that their contributions were probably not accounted for in the 1998 survey used in Olken's and Singhal's study.

³³⁹ Dutch Ministry of Foreign Affairs, 2008, p. 55.

contributions are not registered anywhere in the revenue system, yet they are a vital to the running of public services such as the education system.

A tax, as defined in the beginning of this study, is “*a compulsory contribution with no direct service in return*”. Poor Zambians, especially in rural areas, cannot be defined as tax payers to the formal tax system but they seem contributing substantially through means of informal tax payments to the maintenance of the most essential public services. Although the quality of these services is quite low and the teachers are not formally trained, the goal of universal primary school education would without them be even more out of reach for Zambia.

Transparency & participation in the design of fiscal policy

The Zambian public is increasingly realising the importance of taxation for human rights and poverty alleviation. It is considered as unfair that children cannot afford to go to school or, if they are lucky enough, sit in overcrowded poorly constructed classrooms, while in the neighbouring estates millions of profits are made by companies which do not contribute to tax revenue, and ultimately the financing of education.

The two cases described above are illustrative of the increasing civil society engagement with taxation in Zambia. The case of the Mopani mine was brought up by a coalition of NGOs including the Center for Trade and Development Policy from Lusaka and the Berne Declaration from Switzerland. In 2008, the government started publishing non-state actor's tax policy proposals to the budget which is said to have increased their participation and the transparency of the policy-making process.³⁴⁰ In their study on non-state actor's participation in decisions on tax matters, Bwalya et al. found that civil society had quite a high success rate in having their tax proposals accepted in the tax code. Out of ten proposals, it is reported that 80% have been taken into account in the 2008 budget. But they were very modest and general in nature and did not address costly redistributive issues.³⁴¹ This implies that there is much scope for more self-confident civil society engagement in bargaining for a fair tax code.

Di John has described the Zambian tax system as “*relatively well-performing*”.³⁴² Tax payers are not coerced to pay their dues and there have been no noteworthy rebellions or tax raids.³⁴³ The

³⁴⁰ Bwalya et al., 2009, as quoted in Di John, 2010, p. 13.

³⁴¹ Bwalya et al., 2009, p. 18.

³⁴² Di John, 2010, p. 13.

contributions to the tax system appear to be voluntary. But there are huge issues with transparency as it is not really known to the larger public who contributes what to the revenue system. Zambian law prohibits publication of tax payments so the Zambia Revenue Authority (ZRA) cannot disclose anything.³⁴⁴

An issue that would need immediate action is the secrecy around most development agreements concluded in the wake of the privatisation wave from 2000. In order to have a meaningful voice, civil society needs to be informed about the tax burden and its share among the different societal groups. Terms and conditions of these agreements need to be published so they can be scrutinised. The public needs to know how much and what companies have been granted from the public budget in concessions, exemptions, etc. The public also needs to put pressure on the government to alter the terms in these agreements. Weeks and McKinley have argued that “*re-imposing levies*” on the mining sector would, in light of huge increases in copper production and prices, be justified.³⁴⁵

So far the government has not made any such steps although there has been talk of renegotiating the terms, which has been met by stark opposition and threats of arbitration from the beneficiaries of development agreements.³⁴⁶

Assessment of structural impediments

Genuine human-rights based approaches always seek to take into account power dynamics in their analyses.³⁴⁷ This part is dedicated to exploring structural factors that have had adverse effects on the Zambian government’s ability to fulfil its minimum human rights obligations. I will argue that the Zambian revenue system has been used to create rents for the elite instead for human rights financing. Donors have influenced tax policy design for a long time, and have partly undermined transparency of the process and participation of the Zambian public. Finally, the global tax system is a huge impediment as it lacks regulation that combats profit-shifting and tax evasion and avoidance.

³⁴³ Idem.

³⁴⁴ This was recently exposed by Swedwatch, a Swedish non-profit organization that reports on Swedish business relations in developing countries. See Sperling, 2013.

³⁴⁵ Weeks & McKinley, 2009, p. 197.

³⁴⁶ The most prominent example is the imposition of windfall taxation in 2008, which was withdrawn due to threats of arbitration by foreign investors.

³⁴⁷ Seymour & Pincus, 2008, p. 402.

The tax system as a source of patronage

One of the factors that can help explain the declining in tax revenue in Zambia and the under-taxation of certain sectors such as the corporate sector, is the nature of the political regime itself. Di John has suggested that historically the Zambian one party state built its legitimacy on providing cheap food to urban Zambians who were its main support base.³⁴⁸ All this changed after 1991, when Zambia, a highly indebted country, introduced multiparty democracy for the first time after 1972. In the course of the political opening, widespread economic liberalisation reforms were launched with the privatisation of large state-owned enterprises as their main driving force. Until then, the Zambian political elite could generate rents through interventions in the state-owned sector. The bargain was to award allies with posts in state-owned enterprises, subsidised credits or protection of infant industries by imposing trade barriers.³⁴⁹ As the Zambian political economy changed with the beginning of the 1990s so did the “*elite bargain*” and the tax system became a source of generating rents for the elite.³⁵⁰ Large tax exemptions as parts of secret deals between the corporate sector and the government became a source of rent for the elite. The evolution of the Zambian tax system has been described as “*an ever growing source of dispensing patronage and privilege*”.³⁵¹ Di John has reported about the widespread use of ad-hoc exemptions for certain government officials as well, especially when it comes to import duties.³⁵² Instead of prioritising public revenues for human rights fulfilment, the Zambian state has been accused of using revenues to uphold the elite.

Debt and donor influence as constraints of fiscal policy in Zambia

Zambia has been said to have exercised very little control over its own fiscal policy due to debt restructuring and debt repayment. John Weeks and Terry McKinley found that since its opening in 1991, Zambia’s “*fiscal policy has closely been linked to debt servicing and constrained by loan conditionalities*” and there was little space for Zambia to choose its own fiscal policy.³⁵³

³⁴⁸ Di John, 2010, p. 3.

³⁴⁹ Idem., p. 14.

³⁵⁰ Idem., p. 14; Se also Von Soest, 2007, p. 628.

³⁵¹ Di John, 2010, p. 14.

³⁵² Di John, 2010, p. 14.

³⁵³ Weeks & McKinley, 2009, p. 180.

Another case in point is that donors have increasingly become directly involved in recipient countries' policy making.³⁵⁴ Prichard, Brun & Morrissey have singled out the World Bank and especially the IMF as the most famous proponents of tax policy reform.³⁵⁵ Donors not only provide financial resources but act increasingly as knowledge brokers by providing their expertise. As a highly indebted country, Zambia has since its democratisation received international assistance and technical advice in tax matters. Donors like the World Bank and the IMF have sought ways how to improve the performance of the economy but also the tax system in order to secure repayments of previously granted loans.

It is worrisome that donors and tax experts tend to subordinate human rights priorities to the availability of resources. Damme, Orel & Misrahi found that there were only weak links between policy concerns identified in their Poverty Reduction Strategy Papers by developing countries and those identified by the IMF in their Article IV consultations with these countries. The same was criticised by the IMF's own Independent Evaluation Office in 2007, which found that poverty reduction should be incorporated more into tax advice.³⁵⁶

While the exchange of technical expertise can be beneficial for international development cooperation, there are accountability problems associated with donor and foreign expert advice. Even such highly technical fields as tax policy need public discussion and scrutiny in order to ensure participatory and transparent decision making. Including wider segments of society, especially civil society and local governments in the debate, creating transparency of the tax policy making process, and equity and fairness as its guiding principles, should be introduced into donor and expert supported tax reforms.³⁵⁷

Donors can and should play a more decisive role in facilitating tax justice. The IMF for example, supported Zambia in 2007 when it increased its mining royalty from 0.6% to 3%.³⁵⁸ Similarly, when Zambia removed windfall taxes, which would have taxed copper extraction at a higher rate in times of high copper prices, the IMF urged Zambia to increase overall taxation on the copper

³⁵⁴ Prichard et al., 2012, p. 5; See also Von Soest, 2007, p. 622.

³⁵⁵ Idem.

³⁵⁶ Damme et al., 2008, p. 15.

³⁵⁷ Prichard et al., 2012, p. 7f. as cited in Fjeldstad, 2013, p. 12.

³⁵⁸ Lusaka Times, IMF backs Zambia on Raising Mineral Royalty, 27 September 2007, at <http://www.lusakatimes.com/2007/09/27/imf-backs-zambia-on-raising-mineral-royalty/> (consulted on 2 July 2013).

mining sector in order to create resources to finance education and infrastructure.³⁵⁹ Donors should not only pressure developing countries to meet revenue targets but also seek to “*complement the traditional ‘technical’ approach to tax reform with measures that encourage constructive engagement between governments and citizens over tax issues.*”³⁶⁰

Just as any other policy field, economics and especially resource mobilisation, needs a normative framework on which it can be built.³⁶¹ As such, human rights financing and fulfilment should be incorporated as a guiding principle for technical cooperation in resource mobilisation and tax matters, and the process of technical advice made transparent so it can be scrutinised by the public. Donors and experts can give valuable advice on how to best approach tax reforms. Nevertheless, it is not up to experts to rule on these matters but to the democratic bargaining process and to citizens ultimately.

Lack of global tax regulation as impediment for financing human rights

Zambia is slowly realising the challenges to its revenue system imposed by the lack of global tax regulation. Despite unprecedented economic growth, the country is faced with declining revenues on all sides, foreign aid and tax, while the goal of universal primary school education for all has not yet been met. These challenges arise from a very narrow tax base and a large tax exempted sector of foreign investors as we have seen in the previous chapters.

The problems of international tax avoidance challenge revenue systems of countries around the world as we could see on the example of just two companies which are alleged of using tax haven jurisdictions in order to shift profits and minimise tax liabilities in Zambia.³⁶² According to the NGO Global Financial Integrity, from 2001 to 2010, Zambia has experienced licit and illicit financial outflows of 8.8 billion US\$.³⁶³ This means that Zambia lost double its budget

³⁵⁹ Lusaka Times, IMF urges Zambia to up Mine Taxes to fight Poverty, 5 March 2010, at <http://www.lusakatimes.com/2010/03/05/imf-urges-zambia-to-up-mine-taxes-to-fight-poverty/> (consulted on 2 July 2013).

³⁶⁰ Fjeldstad, 2013, p. 2.

³⁶¹ Seymour & Pincus, 2008, p. 403.

³⁶² Prichard et al., 2012, p. 25.

³⁶³ Freitas, Sarah, What Billions in Illicit and Licit Capital Flight Means for the People of Zambia, 13 December 2013, at <http://www.financialtransparency.org/2012/12/13/what-billions-in-illicit-and-licit-capital-flight-means-for-the-people-of-zambia/> (consulted on 3 July 2013).

revenue from 2011 on illicit financial outflows.³⁶⁴ Of course not all illicit financial outflows can be attributed to tax avoidance but there are reasons to assume that it features prominently. Zambia's ability to raise revenue is constrained by its own economy, governance and social challenges caused by the HIV/AIDS epidemic but also by structural factors such as the international tax system, which lacks multilateral regulation.

The recent global economic and financial crisis has triggered an unprecedented discussion on the global tax system as countries across the globe struggle to finance themselves. Budgets on social spending like education, health, and foreign aid have been drastically cut as a reaction to increased spending in form of bailouts for ailing banks and economic recovery programs. Not least because of the missing foreign aid, developing countries are more than ever interested in how to fill their coffers to meet development goals such as the Millennium Development Goals and human rights obligations. But also rich states are becoming more aware of problem of revenue mobilisation in developing countries as they struggle themselves how to meet aid targets amid austerity measures on all fronts.³⁶⁵

As governments work hard to make ends meet, the recent G8 and G20 meetings have addressed the issue in an unprecedented manner by putting the reform of the international tax system on top of their agenda. This mainly concerns the existence of tax havens exploited by multinational corporations, rich individuals and often also terrorist networks, for purposes of tax avoidance or secret financing.³⁶⁶ At the G8 summit in Northern Ireland in June 2013, the seven leading industrial nations and Russia recognised the fact that taxation is essential to reaching "*fairness and prosperity for all*". This is why they agreed on establishing a multilateral system for automatic information exchange on tax data. Hence, tax authorities will be informed automatically about their citizen's economic activities and especially tax payments abroad. G8 leaders equally agreed on bringing more transparency into legal arrangements of companies, who really owns them and whether and where they pay taxes. They also called upon the Organisation for Economic Development and Cooperation (OECD) to start designing a template for the introduction of "*country-by-country*" reporting procedures for multinational companies. The

³⁶⁴ Idem.

³⁶⁵ It is remarkable to mention that the International Development Committee in the House of Commons has submitted a full report in autumn 2012, stressing that tax collection was key to development, and elaborated on how the UK could contribute to building developing countries' revenue raising capacities. See House of Commons, 2012.

³⁶⁶ Christian Aid has reported that 50 % of the world trade goes through tax havens. See Christian Aid, 2008.

idea is to make multinational companies report where exactly they make their profits and where they pay their taxes, so that issues of avoidance or evasion might be detected easier.³⁶⁷

As recently claimed in *The Economist*, preventing bribes and profits from leaving developing countries could lead so far as to substitute for development aid.³⁶⁸ The relevance of taxation for development financing is gaining unprecedented importance as evidenced by its discussion as prominent international forums, like the recent G8 meeting. Governments are realising that a truly multilateral solution to the issue of tax avoidance can yield remarkable results.

Conclusion

The aim of this study was to elaborate the conceptual links between taxation and human rights, and to demonstrate these on the example of Zambia and its fiscal policy commitment to human rights obligations with a focus on primary school education.

Due to financial constraints, Zambia has not managed to mobilise enough resources to finance the right of all children to primary school education. Although education is becoming increasingly available and steps have been taken to boost primary school enrolments, the minimum core human rights obligations have not been fulfilled due to the government's inability to raise additional resources. Today, still 20% of all Zambian children in primary school age are out of school and almost 50% of those who begin primary school drop out.

Community schools have helped a great deal to increase primary school enrolments for the most vulnerable children HIV/AIDS orphans, labourers and rural children in general. A characteristic of community schools is that they are chronically underfunded and almost entirely run by amateur teachers. The quality of education in these schools is questionable as exemplified by the extremely high pupil/teacher ratios and disastrous infrastructure. We also need to question the acceptability and adaptability of their teaching. Community schools also present a somewhat segregated education system, as they cater mostly for orphans and rural children. While there is no formal discrimination, it is evident that children who visit these schools are more affected by lack of resources as mirrored in high teacher/pupil ratios and lack in general learning materials such as books.

³⁶⁷ G8, 18 June 2013, p. 1.

³⁶⁸ The Economist, The transparency summit, 15 June 2013.

Policies employed to extend education to all children without discrimination have been implemented and some of them were successful, but to date they could not reach all children because of lack of resources. Child cash schemes that reported positive outcomes, only reached a small number of households, which has not been sufficient to realise primary school education for all. Projects such as the EU and ILO funded TACKLE project, that helped remove children from the streets, could not be prolonged by the Zambian government because of lack of resources.

In Zambia, progressive realisation of economic, social and cultural rights does not coincide with the progressive economic growth of the last couple of years. Spending on education has been regressive in spite of economic growth. Spending was equitable in absolute terms, meaning that the Zambian state spends the same amount of money on all children, irrespective of their vulnerability. It appears that spending in Zambia is benefitting disproportionately children from the richer parts of the society. By not spending more on the most vulnerable, it is questionable how Zambia wants to create more equitable opportunities for all children.

Zambia appears to have quite an effective and diverse tax collection system at the first sight. For years, the country has had one of the highest tax takes as measured by the tax to GDP ratio. In recent years, this ratio declined while it was on the rise in other countries such as Kenya. The most important taxes were personal income taxes which form the biggest part of the tax revenue. Although Zambia has a huge mining sector and mining is responsible for 75% of its exports, taxes from corporate income and mining royalties have played a very marginal role in Zambia's revenue system. If we look at its composition, the revenue system in Zambia cannot be considered equitable as some of the biggest producers and exporters hardly appear as contributors to the Zambian budget. This is due to large exemptions from taxation that featured so prominently in Zambia's development agreements with foreign investors. Instead, Zambia relies on a very narrow tax base such as the public sector and some few hundred companies who pay taxes on their incomes. But as could be demonstrated on the example of community schools, Zambian local communities especially in rural areas, have established a system of informal taxation which "*charges*" financial and labour contributions of local community members so that basic public goods such as primary school education can be maintained.

The failure to fulfil the right to primary school education for all children without discrimination is not committed intentionally by the Zambian government. Rather, it is the product of "*acts of omission*". By failing to increase maximum available resources Zambia has neglected its obligation to fulfil minimum core human rights obligations. There is evidence that Zambia could create more fiscal space for human rights financing by increasing its tax effort in under-taxed

sectors, such as the corporate sector, and especially mining and agriculture. Generous tax exemptions granted to foreign investors in secret deals would need to be revealed to the public, to make sure that policy decisions can be scrutinised. The same applies to donor and expert advice in tax policy matters, whose policy advice needs to be subject to the democratic bargaining process with the public ultimately deciding on the legitimacy of tax policy. Lastly, if tackled internationally, the issue of capital flight and profit shifting from Zambia would generate great benefits for poverty alleviation. It is clear that Zambia cannot stop profit shifting alone, as this problem needs a multilateral solution. By increasing taxation to adequate levels and encompassing undertaxed sectors in the tax net, Zambia would be able to make more resources available so that the fruits of economic development during the last decade can be translated into the fulfilment of minimum human rights for the most vulnerable.

The example of Zambia shows that the government has failed to raise the maximum available resources and to prioritise spending for the most vulnerable groups of children, orphans and child labourers. By failing to increase resources, most notably through taxation, the government has violated minimum core human rights obligations in the area of education.

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Politics: Advantages Taken from Religion - A Study for Europe, the Middle East and North Africa

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Introduction

As long as the mankind remembers its history from the very beginning of its creation, it cannot but accept the important and at some stages the vital role of religion that the latter plays in everyday life of people with regards to their behaviour, decision taking and motivations. Starting from the ancient times when people were pagans and worshiped different Gods and Goddesses, praying for harvest, for rain etc., up to our times, when people pray for all these things to one God, the subject is not changed. No matter which stage is under investigation, there is one major point that goes through the chronology of human race as a red line knitting the consequences of events in a way that brings us to the same guess.

However, religion doesn't go alone throughout the history of mankind development as it can be supposed. By no means there are a lot of aspects and branches of the social life that accompany it and go hand in hand with it, as human life is not only about religion which is a kind of nurture for one's soul, but also it is about the daily struggle for a piece of bread and a roof above one's head. However, this struggle leads and is led by different people and for different reasons and not

only for the mere bread and naked roof as naïve it may seem. For some people, at different periods of time, the struggle, in different forms, was a kind of a way of expression of his/her indignation and wish to change this or that social order.

Yet, those, who were truly devoted to the idea of changing something and believed in it, like Janna d'Ark or Maximilien de Robespierre, were not given the chance to fulfil their goals. Those who were standing behind the failure of the formers were already at the power and were very reluctant to see any change in the existing norms and regimes and were afraid of any subtle changes that might undermine their authority and bring them down from the throne. To these people belongs the so called layer of people who are the decision-makers in the given country for the given period of time. These are the people who hold the power in their hands and decided whether to let or to forbid a change take place. These are the holders of the power which predominates at certain Age, and which may be political or religious. In case of Janna d'Arc the political power and the ability to make decisions and fulfil them belonged to the Catholic church in the middle ages, during the stage of great inquisition, which was using all its power to kill the heretics, reformers and witches of that time. And in spite of the numerous victories Janna brought to her people and to the king, she was burnt on fire in the name of the Son, the Father and the Holy Spirit. The reason for that was the growing popularity and support she was enjoying from the masses.

Before the birth of Jesus Christ up to the Renaissance the power to make decisions belonged to the church which was the Catholic Church in Europe. In Jerusalem, which was under the rule of the Roman Empire, the religious authorities were afraid of Jesus's gaining authority as a religious leader at 1 A.D. Though the country was ruled by Pontius Pilate, the prefect of that part of Roman Empire, the Jewish religious authorities managed to convince Pontius that Jesus was a threat to the Roman Empire itself and as a result he was crucified.

Moving forward through the history, in the 20th century we come across to other examples of conspiracy against those who had power and masses' support and could change the existing political and social regimes but faced the wall of the ruling powers and were forced to admit their defeat. To these people belong such names as Mahatma Gandhi, an Indian religious leader who was propagating India's independence, Martin Luther King, a USA social activist, least but not last Bob Marley, a Jamaican musician and song-writer, whose songs were full of discussions and hints to the social inequality. All these unique and genius people were killed because of what they were supporting and suggesting. Their suggestions were introducing and promoting such values as independence, equality, freedom of speech, etc.

As it can be seen, in different centuries depending on the social order and on the side to which the power belonged, the decisions were taken accordingly by the side it belonged to. During the middle ages in Europe the power to make decisions belonged to the Catholic Church, after the Renaissance church loosened its position and became more vulnerable by giving its position to the state. Industrial revolution, development of mass communication, development of mass culture, change in the world order, World Wars, globalization, secularization brought the religion under the control of the state. Using religion as a tool the states can initiate war between Christians and Muslims, which may result in Genocide of one nation by the other, as in the case of the Armenian Genocide of 1915 in Ottoman Empire. Or the state can initiate a war within its borders, causing massive upheavals between the followers of the same religion, as e.g. was in the case of Sunni and Shia Muslims.

Taking into consideration all the above said, the following paper will try to describe why the state, i.e. the political power, becoming more developed, takes control over the religious power by making it a tool with the help of which it controls masses, maintains order or causes disorder.

Hypothesis

The more developed a nation is the more is the control of politics over religion in the given nation.

Methodology

The methodology used for the development of the study is mainly the descriptive data (which is one of the limitations of the paper) taken from different scholars of the field, however, some data is used taken from the world survey on religion the reference for which will be given later.

Who is who?

In order to move forward in the discussion, we need to define the religion and politics. As Haynes states: “politics is about the pursuit of power and the struggles involved trying to wield in authoritatively” (Haynes, 2009). As to the definition of religion, a more detailed analysis from the point of view of social science religion can be defined as “a body of ideas and outlooks- that is theology and ethical code; a type of formal organization- that is ecclesiastical church or comparable entity; or a social group- that is a religious organization, movement or party” (Haynes, 2009).

When we look with a more scrupulous eye at the definition of the religion and politics we can find the similarities in both of them. To be able to hold a power, the political authorities need to

have a large number of supporters, conventionally called ‘an army of supporters’, for a religion to be able to function as religion there is also a need for a big number of the so called ‘army’; both politics and religion need to struggle, each one within its boundaries to be able to hold its positions on the pedestal and continue convincing the followers that they had made the right choice when they chose to affiliate to this or that political party or religion.

Hayes in his “Religion and Politics Europe, the Middle East and North Africa” speaks about the influence of the religion on the world from the point of view of what is *says* and/or *what it does*. However, we would like to stress the difference of the interpretation of religion from the perspective of what it IS and how it IS USED.

When we speak about what a religion is we mostly connect it to an individual, one particular human being who is concerned about what a religion is for him/her; who is concerned about understanding and striving to find God in religion, in church and in himself (according the Christianity the body of a human being is the church itself) and follow Him. The interesting part of the religion is that the way of each individual through which he/she goes in the search of the truth is unique, but the end result for those who managed to find it is similar. Some people do it via art, some via music, and some with the help of writing or even using science. Some people just choose to devote themselves to the service of God and ostracize themselves from the world and people. Almost all the masterpieces belonging to this or that sphere of life belong to people who were getting the inspiration from a kind of an energy that they were later calling God, because they did understand it not all of their life but reached it at some point of it. To these people belong such geniuses as L.N. Tolstoy, the famous Russian writer, who was also well-known for his philosophical views, A. Enstein, J. S. Bach and many others.

In one of his stories called “Father Sergius” Tolstoy describes and depicts the inner transformation of an individual who had to fall from ‘top’ to ‘down’ to reveal God for himself. At the end of the story one can really feel that L. Tolstoy knew what kind of enlightenment a person must reach to be able to find the light of God in himself and to live accordingly.

A. Einstein, who is mostly considered to be an atheist, didn’t consider himself as such, moreover he gave clear a explanation of what God means to him. He didn’t believe in “personal God” as he stated: (http://www.stephenjaygould.org/ctrl/quotes_einstein.html), the one who is watching us and giving rewards or punishment, rather, whatever one gets is the matter of cause and effect relationship.

However, as said above, he was not an atheist and truly stated that: “I have never imputed to Nature a purpose or a goal, or anything that could be understood as anthropomorphic. What I see

in Nature is a magnificent structure that we can comprehend only very imperfectly, and that must fill a thinking person with a feeling of humility. This is a genuinely religious feeling that has nothing to do with mysticism” (http://www.stephenjagould.org/ctrl/quotes_einstein.html). At last, there is the very famous story which is about a conversation of an atheist professor and a student who proves at the end of the discussion that God exists, and the student turn out to be Einstein. The story is written in Einstein’s book God vs. Science (<http://yes-23.com/other/albert-einstein-god-vs-science/>).

Among the famous people mentioned above there is also the German famous composer of the 18th century Johann Sebastian Bach. To cut the discussion short and move to the next stage, it is just worth mentioning that he was and is still considered as a composer of Christian worship music. He is said to get the inspiration to write his music from a spirit which is “Bach's love of God” (http://www.christians.com/inspirational/jsbach_for_the_glorry_of_god).

Speaking about the religion from the viewpoint of how it is used, it is more associated with collective or as Haynes calls “group religiosity.” If we draw a line between politics and religion, we will see that this point, the point of groups, masses and crowds shows the similarities in both most vividly. Both religion and politics are concerned in recruiting as many members as possible, because within the same domain, be it religion or politics there are always differences and disagreements, competition and struggle for power to reach to the desired aim and to be able to maintain it. All the clashes among the religions and within the same religion provide politics with positive grounds to be capable of taking the religion under control by making it a political issue in a nation.

The aim of this paper as stated above is to show how politics overwhelms the religion and uses it for its own aims especially in more developed countries. However, it must be stressed that there is no underestimation of the level of religiosity in general and even in those countries. The issue is that with the economic development, well being, spread of information, the right of choice and whole range of other factors both social and economic, people become somewhat not concerned about the religious values to be preserved and pushed forward, and this argument is beneficial for politics.

The discussion of religion and politics must be shaped in way that will make the things more specific, and for that purpose and there is a need to specify that while referring to politics the power of the state (the government and the parliament) to have the authority and legitimacy to create and exercise laws for the maintaining of national stability and security is meant. And, for the purpose of the study *religion* is referred the church, i.e., the national church that had and is claiming to have the ability to make decisions and exercise those decisions in the boundaries of

the country that particular religion is accepted on the governmental level. By mentioning more *developed countries* the stress will be made on the level of secularization which is measured by the “religious participation, religious values and religious believes” (Swatos, Olson, 2000); and income level. As world bank defines the countries with high level of GNI (gross national income) (<http://data.worldbank.org/about/country-classifications>) are the countries of high level of development. These countries of Western Europe will be the subject of investigation.

Findings

The decline of religiosity, i.e., secularization connected with the development of science and the usage of rationality in explaining different phenomena of our life was a topic of hot discussions among such scholars as Max Weber, Peter Berger, David Martin, and Brian Wilson. It is a widely known fact that the era of Enlightenment triggered the “a rational view of the world based on empirical standards of proof, scientific knowledge of natural phenomena, and technological mastery of the universe” (Swatos, Olson, 2000).

These newly adopted standards of world understanding were a ground for the countries of Western Europe to free themselves from the religious dogma imposed by the Catholic church they had to obey for centuries. With the development of such sciences as biology, geography, chemistry, medicine, engineering, mathematics and others people began to explain why and how things happen. They refer certain natural phenomena to the changing of the climate, chemistry discovered medicine to cure diseases, etc. With the development of industrialism in the 19th century mankind was inclined to think that it was holding nature under its control more, rather than referring certain events to the will of God (Fox, 2008).

Another point that refers to the development of secularization is the so called “loss of purpose” (Swatos, Olson, 2000), which means that when speaking about the church in the middle ages people mean one body that was not only taking care of the spread of knowledge about the Bible and God, but also an institution that was an essential part of such daily processes like marriage, divorce, birth, death, ceremonial processes during holidays and others.

However, with the industrialization in the Western Europe, all the above mentioned activities were carried out with special people who were getting education in engineering, medicine, politics, sociology, etc. Gradually, institutions holding the position and authority to fulfil the mentioned activities replaced the monasteries, churches, monks in Western Europe; and as it is mentioned in (Swatos, Olson, 2000): “Priests, ministers, popes, rabbis and mullahs appealing to divine authority became only one source of knowledge in modern societies, and not necessarily

the most important or trusted one in many dimensions of life, when competing with the specialized expertise, certified training, and practical skills of professional economists, physicists, physicians, or engineers.”

Moving forward in the discussion of secularization which measured by the three parameters which are: religious participation, religious values and religious beliefs, we need to switch to the explanation of each of these components. Second, we will show some numbers taken survey on religion from (Fox, 2008).

As stated above, developed countries for the purpose of the study are referred to as countries with high level of secularization and high level of gross national income. These two values go hand in hand with each other. As we discuss the secularization with its three measures *religious values, religious participation and religious beliefs*, we need to differentiate each of them.

Values, in general, are thought to be and as are explained in the survey are the goals that people prioritize for themselves depending which layer of people is considered. For example, there are family values, national values that are very often a part of a mentality of the given nation, friendship values, religious values which may vary even from individual to individual and may include the feeling of one's belonging to this or that religion or a trend within the same religion like Christian Catholic, Apostolic or Orthodox. Since, secularization is undermining the so called 'feeling of belonging' or as it is called in the Secularization Debate of Swatos, Olson "traditional religious identities" and is lessening the importance of "spiritual matters" (Swatos, Olson, 2000), the Religious values are measured in the study of the world survey with the following questions: "How important is God in your life?; How important is religion in your life?" (Swatos, Olson, 2000).

Religious participation is measured with asking such questions as: "Apart from weddings, funerals and christening, how often do you attend religious services? ; How often do you pray to God outside of religious services?". These questions help to understand the changes in religious behaviour of people, and we will see that they vary in agrarian countries, industrial and post-industrial countries.

The last factor, religious beliefs was measured with: "Do you believe in Heaven; Do you believe in hell?; Do you believe in life after death?, Do you believe people have a soul?" These questions helped to see to what extent secularization managed to erode the theological beliefs. Before depicting the tables with the result of analysis, it must be mentioned that the world value survey was done in seventy-four countries where the data was available and all the tables posted below belong to (Norris, Inglehart, 2004) research.

It must also be mentioned that countries belonging to post-industrial societies are the countries that according to the World Bank are highly developed countries. As mentioned above this paper will only be discussing Western European countries which are France, Belgium, Netherlands, Germany, Italy, Luxemburg, Denmark, Ireland, Britain, Greece, Portugal, Spain (http://data.worldbank.org/about/country-classifications/country-and-lending-groups#OECD_members).

Table 1. Religiosity by Type of Society					
	Agrarian	Industrial	Post-industrial	Eta. (ANOVA)	Sig.
Religious Participation					
Attend church at least weekly	44	25	20	.171	**
Pray “every day”	52	34	26	.255	***
Religious Values					
Religion very important	64	34	20	.386	***
Religious Beliefs					
Believe in life after death	55	44	49	.229	*
Believe in that people have a soul	68	43	32	.169	***
Believe in heaven	63	45	44	.094	*
Believe in hell	59	36	26	.228	***
Believe in God	78	72	69	.016	n/s

Notes: Significance (Sig.): ***P=.001; **P=.01; *P=.05; n/s= not significant

This table is built on the analogy of the one that is mentioned and described in *Sacred and Secular* by Ronald and Norris (2004). As mentioned above the data used are taken from the World Value survey in 1981-2001. The table shows the overall picture of the measurement of secularization in percentages according to the society types which was done with the help of ANOVA test. As it can be seen from the table, the lowest percentages in almost all variables belong to post-industrial cultures, and since the earlier mentioned countries of Western Europe belong to post-industrial type, it is obvious that these countries have suffered decline of religiosity.

Why taking religion under control?

On the above sections we saw that in most of the developed countries of the Western Europe the level of religiosity have declined during the last decades. In the following part we will see why that is important for a state to have a state based religion rather than a church or religion based religion in the country. If we try to differentiate the relationship between the state and politics in the frame of religiosity we can say there can be such kind of combinations like: “religious politics with a religious state; secular politics and a secular state; secular politics and a religious state, and a religious politics with a secular state” (<http://www.crosscurrents.org/Demerath.htm>).

As the scope of the paper is limited to the countries of the Western Europe from all of the above mentioned combinations the one that matches to the West will be discussed. According to N.J. Demerath and Karen S. Straight mention the secular politics and a secular state refer to the countries of the Western Europe. (<http://www.crosscurrents.org/Demerath.htm>). To these countries belong Germany and France in spite of the fact that there has for a long time existed Christian Democratic parties. If we look at some Scandinavian countries we will see a similar situation. There is a tendency to “disestablish” the religiosity in all of the mentioned that are considered to be somewhat religious. A lot is being done to make religion “an autonomous political force, since many church folk now regard the relationship as inhibiting their prophetic roles.” (<http://www.crosscurrents.org/Demerath.htm>) A vivid example is that of Sweden where, the politics used the church to gather information about the social conditions and the number of people in the country, i.e. church acted like “an unofficial census bureau” (<http://www.crosscurrents.org/Demerath.htm>)

Another reason for taking the religion under control is because religion is itself a form of social control. By saying social control we mean that religion is a tool which allows the elites or those that are at the power have control over the masses to maintain order in the country. The order in

its turn must be maintained in a way that will spread some feeling of fear towards the object of worship. In Christianity it is the Bible, the word of God and the Ten Commandments that are roughly speaking necessarily to be followed to be able to appear in Heaven after death.

Conclusion

As a crown of God's creation a human being remains a human being no matter to which religion he or she belongs to. The will of God reached the mankind through by His different representatives and various means throughout the time. For Christianity it was Christ, Mohammed for the Muslim religion, Buddha for Buddhism etc. These prophets were endowed with the abilities to learn and spread the word of God to the nations and peoples of the planet. As time passed there appeared and vanished a lot of civilizations believing or not believing to the existence of God, and as has already been mentioned at the beginning of the paper time has its influence not only having a new type of religion to appear but also on a variety of things that include power and domination of power. With time that power which had many transformations and finally we call it a political power realized that it can reach a lot more if it controls as many layers of the social life as possible. Nowadays it controls almost everything and religion being only one tool of it lets it control the masses, maintain order and gain support from the church as much as possible, and even start war and as already mentioned above in the paper cause a Genocide of a nation as in the case of Armenians, Jews, Rwandans, Serbians etc. It can also impose various policies that were not formerly accepted by the church as normality. To these policies belongs the law that permits the same sex marriages that is banned and is considered as a deadly sin from the point of view of Christianity, and not only Christianity.

All these sorts of laws are thoroughly examined and are being promoted especially during the electoral campaigns just before the elections. In this regard, as it is already mentioned in the paper there is a great difference between what a religion is and how it is used. Using the surveys on religion and politics we saw that the countries of Western Europe suffer the decline of religiosity and on these countries politics and political life is of much importance than that of religion. So, to some extent the Hypothesis that was offered found support in several points, However, this cannot be referred to the entire world and generalized as there are a lot of places in the world where the level of religiosity with the proposed above measures is very high. To these countries belong a range of Muslim countries as well as the USA.

It would be a great benefit to all of the people in the world if people really understand and appreciate the meaning of religion which is not aimed at killing, subordinating or assimilating

others. Being an Armenian and knowing the past events at the beginning of the 20th century concerning the policies of the Turkish government that were directing towards the elimination of Christians in the Ottoman Empire, I don't have any personal hatred towards the Turks and general people, especially when I get to know people from Turkey living in different parts of the world.

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<http://www.crosscurrents.org/Demerath.htm>

Possible Reasons for Democratization, Stemming from Acemoglu's Model

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Gohar Yeranyan holds an MA in Philosophy and Psychology from Yerevan State University, Armenia and another MA in Political Science and International Relations from American University of Armenia. Gohar worked as a trainer at the Foundation for the Preservation of Wildlife and Cultural Assets, Armenia. Currently she is a trainer at Armenian Caritas NGO, Armenia. Meanwhile, she is also assistant in editing scientific books at LIBERTAS - Europäisches Institut GmbH. The current paper is an extract from her eBook “Acemoglu’s Model and Reality: Dynamics of Economic and Political Power in the Former Soviet Union Countries”, which came out in Germany in 2013.

In their research Acemoglu & Robinson (2006c) try to find out the economic reasons for democracy and dictatorship in their fundamental research. Their model is based on three assumptions:

1. It is “economic-based” meaning that it takes into consideration the individuals’ preferences and interests.
2. There is a conflict among different groups, because different social groups have opposing interests over political outcomes.
3. The role of political institutions for solving the problem of commitment and thus affecting future distribution of de jure political power is central.

Hence, they (Acemoglu & Robinson, 2006c) construct a model which gives the explanation why the non-democratic elite becomes democratized. They define democracy as the conditions when

free and fair elections are held and there are no barriers to entry into politics. Correspondingly, the non-democracy is the situation where a quite limited number of people or even just one person, the dictator, runs the country and makes decisions. From this perspective, it is understandable that democracy is more beneficial and desired by the majority of the population, while non-democracy is beneficial to a very limited number of people.

Thus, the elite are reluctant towards democracy, while the majority of the population is in favour, and vice-versa. But why in some cases do the elite make changes in the political institutions and follow the path of democratization and in some not? The elite make changes in political institutions, because they are threatened to lose their power. Since it is costly for the elite to survive and overcome riots and social unrest, they try to prevent from them. Of course, they may follow another path and use repression to stop social unrests, and yet remain undemocratic. However, repression may be even costlier than coming to the concession. But coming to the concession doesn't still mean that the elite will become democratized.

However, in many cases the population will require democratization and not concession. The majority will require democratization, because they care about not only today but also about tomorrow. It is more about the regulation of the political power in future. The citizens should be sure that the changes will be consistent in the future as well. That's why they need change in the underlying institutions. Therefore, democratization is more likely when

- a) The possibility of sufficient social unrest is high, and the concessions won't satisfy citizens. It, in its turn, depends on the strength of civil society, the non-democratic conditions and so on;
- b) The costs of turning from non-democracy to democracy are not pretty high for the elite and the elite don't have a lot to lose from the institutional change.

As determinants of democracy they (Acemoglu & Robinson, 2006c) distinguish several factors. The first is civil society. When the citizens have solved their collective action problem and are well-organized, the threat of revolution is high, and then the future democratization is more possible as well. The second determinants are shocks and crises. Economic depression, wars and so on may be considered as shock and crises. During such periods, it is easier to coordinate the opponents. Hence, they (Acemoglu & Robinson, 2006c) distinguish three possible development paths. The first path is the one which gradually but necessarily turns non-democracy into democracy. Once the democracy is created it is consolidated and safe. The best illustration for this kind of development of democracy is Britain. Thus, Britain became democratic because its economy was mainly based on physical and human capital. As such assets were easily destroyable by a conflict; the elite couldn't make recession as it was pretty costly for them. Thus,

they found the best solution to become democratized. However, afterwards these changes brought undesirable outcomes for the elite. The second one is the situation when once democracy is created, it doesn't become consolidated and collapses. By saying consolidated, they (Acemoglu & Robinson, 2006c) mean the set of institutions that persist through time. The forces that have enforced democracy try to re-asset themselves, but democracy breaks down again, and the cycle repeats itself.

The best illustration for this kind of developments is Argentina during the 20th century. Argentina became democratized because of some riots and revolts caused by economic and financial crisis. However, as Argentina's elite benefited from the boom in the world trade a lot, the value of losing it was much higher. And as the economy wasn't diversified well enough, the elite were able to make converse changes in political institutions. The third path is the situation when democracy is either not created at all, or its creation is much delayed.

The reasons for such development paths are different. Countries don't turn into non-democratic to democratic ones because societies in such countries are more or less egalitarian and people are satisfied by these institutions. Singapore may refer to such development path. Either, societies are so highly unequal and exploitative that the elite being afraid of democracy and institutional changes try to keep away from such developments by all means. Some countries from southern Africa may serve as the illustration of this. The Republic of South Africa didn't become democratic for a long time because the society was rather "apartheid"-oriented about the inequality and therefore it was relatively cheap for the elite to prevent riots and changes.

After discussing all these paths of development and considering the underlying reasons for this or that kind of development, they (Acemoglu & Robinson, 2006c) try to make predictions for the future of democracy. They present several reasons why democracies will become consolidated.

The first reason why democracies will become consolidated is that the world now more and more practices an increasing importance of human capital rather than land or physical capital. In addition, nowadays the average citizen is relatively more educated worldwide than fifty years ago. So, the middle class will emerge thus facilitating distributional inequalities and stabilized democracies in higher extent.

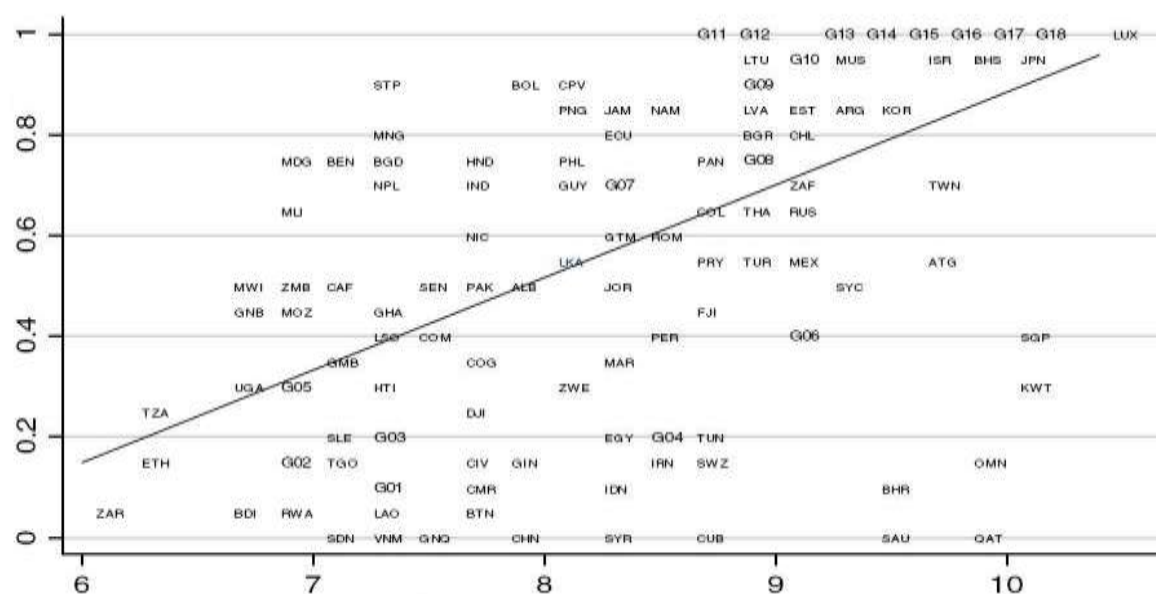
The second reason is globalization. The argument assumes that international economic and financial ties in terms of open markets will help democracies to become more consolidated. And lastly, they state that as the Cold War is over, the financial and political support that some non-democratic countries have been receiving over years don't make sense any more helping these countries to become democratic easier. Thus, they (Acemoglu & Robinson, 2006c) draw the

conclusion that democracy will become consolidated in the countries where it is not and non-democratic countries will turn to democratic path as well. Hence, this model can explain the political developments and emergence or not-emergence of democracy in the FSU countries. As it is rendered by evidence, the countries like Latvia, Lithuania and Estonia were able to consolidate democracy, because the interest groups and the civil society were quite strong and interested in creating and consolidating democracy. The elite in these countries had to consolidate democracy despite their anti-democratic intentions.

In contrast, in the countries where the civil society was weak such as Turkmenistan, Uzbekistan and so on, the elite didn't commit to democracy, but became authoritarian. Coming to the question how changes happened, it is important to note that these changes are explainable via this model as well. Changes in Georgia and Ukraine happened because the elite was committed to leave their offices as the possibility of taking power via social unrest and revolution was high. As contrast, as the civil society wasn't well developed in Russia and the stakes of turning to democracy were too high, because the elite would lose a lot of economic power as well as political power, the political elite on behalf of V. Putin strengthened the authoritarian regime in order to ensure the further reproduction of the same elite. As it is seen from this evidence the countries that are relatively rich are not necessarily the pioneers of democracy. For instance, Turkmenistan is a relative rich country among the FSU countries, but it is not a pioneer of democracy, and a very authoritarian country.

This enquiry is important from Acemoglu's perspective, because it becomes pivotal in constructing his dynamic model of institutions. According to the modernization theory there is a positive causality between democracy and income level. Acemoglu et al. (2008) argue that, first, the causality whether democracy causes economic growth or vice-versa is not clear. Second, it is possible that some other variables cause both of them. For exploring whether the association between democracy and income will disappear if a fixed effect like historical variable is introduced, Acemoglu et al. (2008) do cross-country correlation while including the historical factor as well.

FIGURE 2: DEMOCRACY AND INCOME, 1990s



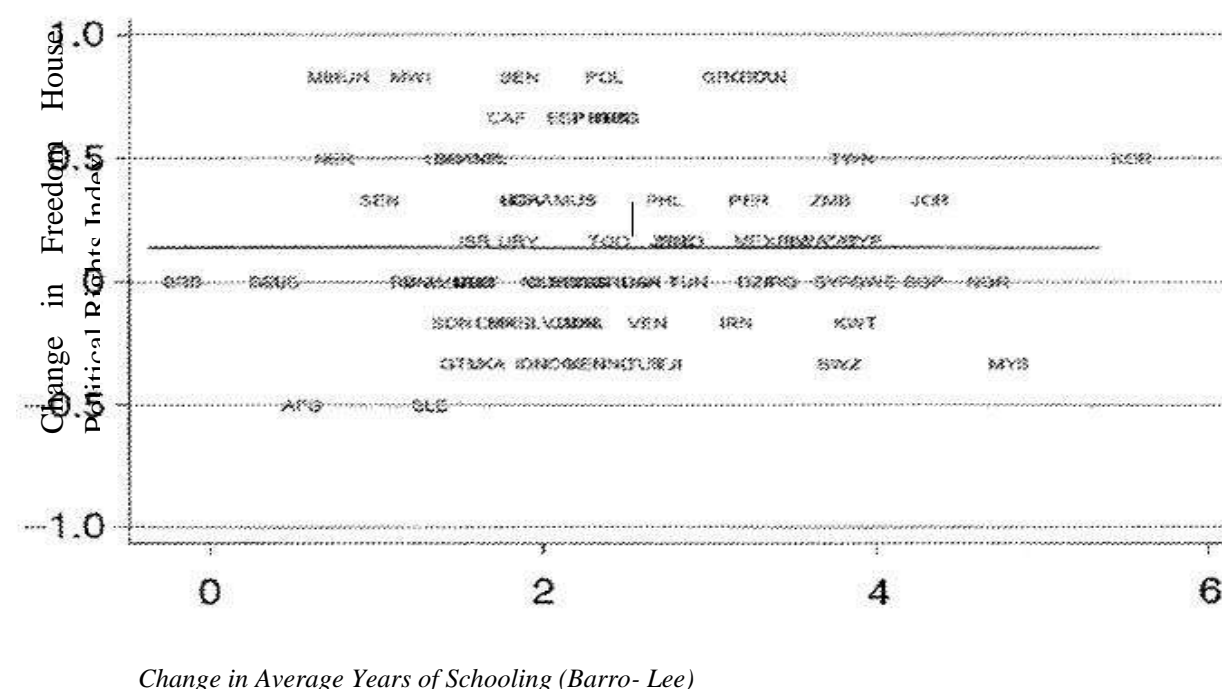
Log GDP per capita (Penn World Tables)

Notes: See Appendix Table A1 for data definitions and sources. Values are averaged by country from 1990 to 1999. GDP per capita is in PPP terms. The regression represented by the fitted line yields a coefficient of 0.181 (standard error 5 0.019), $N = 147$, and $R^2 = 0.35$. The “G” prefix corresponds to the average for groups of countries. G01 is AGO and MRT; G02 is NGA and TCD; G03 is KEN and KHM; G04 is DZA and LBN; G05 is BFA, NER, and YEM; G06 is GAB and MYS; G07 is DOM and SLV; G08 is BRA and VEN; G09 is BWA, DMA, POL, and VCT; G10 is HUN and URY; G11 is CRI and GRD; G12 is BLZ and LCA; G13 is KNA and TTO; G14 is GRC and MLT; G15 is BRB, CYP, ESP, and PRT; G16 is FIN, GBR, IRL, and NZL; G17 is AUS, AUT, BEL, CAN, DEU, DNK, FRA, ISL, ITA, NLD, NOR, and SWE; and G18 is CHE and USA. (Source: Acemoglu et al., 2008)

Thus, after doing the regression, while including the historical factor, other results come out. It turns out that after introducing some fixed factors in the correlation, the association between democracy and income level becomes insignificant. Hence, the paper (Acemoglu et al., 2009) jumps to the conclusion that there is no evidence of causal relationship between democracy and income level. By developing these ideas, Acemoglu et al. (2009) call for revaluation of a modernization hypothesis putting emphasis on the factor that may determine both of them and stressing that both democracy and income level are endogenous. Moreover, Acemoglu et al.

(2005c) argue that education is not a source of democratization and it is not a precondition for democracy. Again, the modernization hypothesis, which is based on cross-sectional regression, doesn't take into consideration the fixed effect. Acemoglu et al. (2005c) do a cross-sectional regression while including fixed effects. The results render that the correlation is not robust. Thus, they again come up with the suggestion that there is something, a third factor, which determines both educational level and democratization.

FIGURE 4. DEMOCRACY GROWTH AND EDUCATION GROWTH, 1970-1995



This argument goes in line with the evidence brought from former Soviet Union countries. According to Frye (2006) the causality between democracy and economic growth is not salient in the FSU countries. In order to find out how economic growth and democracy are connected he examines the democratic and economic developments of the former Soviet Union from 1990 till 2002. Thus, according to some evidence, the average level of economic growth in the former Soviet Union countries from 1990 to 2002 was negative 1.88 percent. However, a big part of economic decline happened from 1992 to 1994. The growth rate was significantly negative 9.25 percent during this time. However, the trends changed from 1995 to 2002. The average annual

growth rate was 3.5 during this period of time. For example, Estonia, Latvia and Lithuania had average annual growth rates after 1994 of 5.0, 4.9, and 4.1 percent, respectively. However, democracy in these countries doesn't vary in accordance with their economic growth. The correlation between the Freedom House scores of political rights and annual rates of economic growth renders that there is no direct relationship between democracy and income level in former Soviet Union. So it seems that Acemoglu's perspective finds arguments in former Soviet Union countries.

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Hidden

Joan Wallach Scott: *The Politics of the Veil*

Princeton University Press, April 2009, 224 pages, eBook \$14.57., ISBN 9780691125435

In *The Politics of the Veil*, there is active voice on contemporary questions of gender equality. Joan Wallach Scott addresses the ideological conflicts behind the 2004 French ban on the ‘ostentatious’ religious symbols in public schools, pointed directly at young French Muslim girls. Laïcité, the French brand of secularism so unique it claims to have no translation, is a classic example of how French Republican values of universalism and equality over identity foster the inability and cradle the unwillingness to adapt to an increasingly diverse populous.

Beginning at the end of France’s colonial reign in Northern Africa, Scott explains that the French display a pattern of inability to integrate post-colonial subjects and this targeted ban on headscarves is simply an example of how the importance of true ‘Frenchness’ only perpetuates a long tradition of racism and gender inequality. Scott unapologetically asks the questions that inevitably accompany any debate on the so-called ‘Clash of Civilizations’: maybe Western values are not as progressive as they seem. Indeed in the case of the feminist justification for the headscarf ban is a classic example of western feminists imposing their privilege and values on women of the periphery. While French feminists hailed the removal of the scarf from the public sphere- a most hallowed French territory - as a victory for womankind, the tracing of the headscarf through the contemporary forces one to realize that the headscarf of the French student has different motivations and implications than the full burqa of the West’s islamophobic nightmares.

It becomes increasingly clear that the flavor of this debate is not driven by a Western desire for gender equality, for as Scott points out, since when does patriarchy only exist in Islam? When France, and in the greater picture Europe makes the decision to stubbornly cling to *Liberte*, *Egalite*, and *Fraternite*, they stunt their own potential in the face of a social reality that is developing towards a place of strength in the celebration and empowerment of diversity, rather than the suppression and aversion of it.

Astrid Aune

Secret

Joseph Alagha: Hizbullah's Documents: From the 1985 Open Letter to the 2009 Manifesto

Pallas Publications-Amsterdam University Press, Amsterdam, April 2011, 224 pages, € 39,95, ISBN 978-90-8555-037-2

In Hizbullah's Documents, Joseph Alagha sets out to give more than just a literal translation of the political documents of the Shi'a religious party. The book is able to offer an extremely comprehensive understanding of Hizbullah to a variety of readers through a compilation of different sources of information and background on the party. A deep and encompassing perception of the party and its goals and history is reached through Alagha's supplementary introductory paragraph. Beginning with the 1985 Open Letter, through the party's eight conclaves and 2009 New Manifesto, the pivotal points of the documents are outlined and explained. The latter portion of the book is a translation of the primary documents, election programs, agreements and pacts, ending with the New Manifesto and chronology of events.

Hizbullah's Documents not only provides an accurate translation from Arabic to English of the numerous documents associated with the party, but also offers a much deeper understanding of the party for the reader who wishes to gain a contextualized view. The author achieves all goals of giving the public a precise translation of the documents associated with Hizbullah, while also providing the methodical means to readers and academics alike to come to their own conclusions and opinions.

Ida Assayesh

Not-so-Open

Mark S. Manger: Investing in Protection

Cambridge University Press, New York, USA, September 2009, 284 pages, \$35.99, ISBN: 978-0-521-74870-4.

Mark Manger, an assistant professor at the University of Toronto's Munk School of Global Affairs and Department of Political Science, discusses the sudden diffusion of Preferential Trade

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Agreements (PTAs) in place of traditional bilateral and multilateral agreements following the implementation of NAFTA in 1994 and its impact on the subsequent development of global trade alliances. Manger attempts to contrast the previous multilateral liberalization of trade relations with the protectionist nature of North-South PTAs by revealing the significance of multinational corporations in the negotiation process. He cites the heavy influence of transnational corporations in lobbying for the manipulation of the scopes of each agreement to ensure protective export allocations and strict rules of origin (ROOs) for future market actors. Manger claims the particular involvement of certain US corporations in the NAFTA intervention, especially the Big Three automobile firms (Chrysler, Ford, GM), allowed them to gain, using various quota and tariff collaborations, near monopolistic control over Foreign Direct Investment in Mexico and to defend market share from corporations from non-NAFTA nations.

This offensive action heightened the first-mover advantage for US corporations in Mexico and has enticed rival industrialized nations, EU Member States and Japan, to develop similarly structured defensive PTAs with Mexico, for cheaper, back-door access to the American market, and with other developing nations, i.e. EU-Chile, Japan-Chile, and Japan-Thailand. While many scholars cite the expansion of the World Trade Organization and the consequent slowness of its negotiations as the main impetus for the increased popularity of PTAs, Manger claims their proliferation began before the WTO talks of multilateral liberalization failed, making the shortcomings of the WTO a much less significant factor or even a false post-hoc justification. Furthermore, Manger concludes the generation of PTAs has been a series of reactionary measures following NAFTA to protect Foreign Direct Investment access as opposed to the generally held belief that such agreements serve principally to open up export markets in that host nation.

Manger ultimately challenges the belief that PTAs have the chief functions of market liberalization and of economic development and convincingly asserts that their increased prevalence highlights the amplified influence of multinational corporations in formulating global trade patterns.

Stefan Walz

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