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# Investigating the Role of Identity Documents in Refugees' Access to Education in South Africa

Elvis Munyoka

*E-mail address: [munyokae1@gmail.com](mailto:munyokae1@gmail.com),*

*University of South Australia, Justice & Society, Australia*

## Abstract

This article examined the role of identity documentation in refugees' access to education in South Africa. Identity documentation has become a necessity in modern societies. Proof of identity is required to demonstrate who one is, and to gain access to various government services such as health care, employment, and financial assistance. However, the role of identity documents in refugees' access to education in South Africa has received less attention. Few studies have demonstrated that without identity documents, refugees confront multiple barriers to accessing primary and secondary education in South Africa. This article reviewed available studies and recent literature on the role of identity documents in accessing education and revealed that refugees struggle to enrol in academic institutions and are denied access to basic education due to a lack of identity documents, which has serious consequences for their access to employment and livelihood opportunities in future. This article suggests that the South African government must expedite the processing of identity documents for refugees and asylum seekers to ensure that humanitarian immigrants have access to services in the country.

## **1. Introduction**

Education is a basic right for all people worldwide. Every child, regardless of circumstance, has the right to quality education. According to the United Nations High Commissioner for Refugees, education empowers refugees by providing them with the skills they need to live successful and independent lives. Education safeguards refugees from forced recruitment into militant groups, sex trafficking, and early marriage (United Nations High Commission for Refugees, 2019). Even though education is a basic human right, as enshrined in the 1951 Refugee Convention, only 61 per cent of refugee youth are enrolled in primary school, 23 per cent in secondary school, and 3 per cent in tertiary education (Rich 2016). Educating refugees is an investment that will benefit both future generations and communities (Jones et al. 2022). Several refugees in both the Global North and the Global South find it difficult to access education. One main barrier to refugees' access to education is lack of identity documents, which is often overlooked, particularly in the Global South, where the processing of identity documents takes longer, leaving many unable to prove their identity. This article presents findings from a review of relevant published studies on the role of identity documents in refugees' access to education in South Africa, which was and continues to be an appropriate case study due to its status as a refugee hub in Southern Africa.

Apart from receiving a large number of asylum seekers in Southern Africa, South Africa has no encampment policy, so refugees can live alongside South Africans, making it difficult for them to access education in public schools. Furthermore, acts of violence against refugees and migrants have increased in recent decades, owing in part to the economic slump and xenophobia. Given the importance of education to livelihoods, this article hopefully contributes to debates about refugee integration in South Africa, considering the growing mobility of refugees among countries in the Global South.

## **2. The importance of Education for Refugees**

Education is a fundamental human right, as stated in the Convention on the Rights of the Child in the 1989 and the 1951 Refugee Convention. Education is both empowering and protective, it provides refugees with the knowledge and skills they need to live productive, fulfilling, and independent lives (Dryden-Peterson & Giles 2010). Avery and Said (2017), argue that education offers a pathway to employment and self-sufficiency. Education promotes self-sufficiency and socio-economic development through the development of human capital, which is essential for the future reconstruction and growth of displaced individuals' countries of settlement or origin. Furthermore, education gives a better understanding of society and individual rights and responsibilities, resulting in stronger communities that inevitably protect refugees and their children (Dryden-Peterson 2003). Moreover, education has been identified as an important factor in the acculturation of refugees in host communities. Acculturation refers to the process of learning and incorporating the values, beliefs, language, customs, and mannerisms of the new country immigrants and where there their families are living, including behaviours that affect health such as diet, lifestyle, and substance use (Mody 2007).

Through education, it is believed that refugee women and girls are less vulnerable to sexual abuse, gender-based violence and exploitation, child marriages, and teenage pregnancy (Rizo et al. 2019). Since young people spend so much time in schools, schools can be an excellent place to reach out to them with information about early marriages, sexual exploitation, teenage pregnancies, and human trafficking (National Research Council 2013). Another important role of education is to assist refugees in meeting their psychological needs; in other words, it is a psychological treatment for displaced people who might have little optimism about the future. As result of the disruption of refugees' lives caused by war and displacement, there is a great need for organised activities that give a sense of normalcy. Education performs such a role. Through participating in society, refugees' sense of belonging may be restored. Sheikh and Anderson (2018), systematically reviewed nineteen articles on the relationship between acculturation and education. Their study discovered a positive relationship between acculturation, integration, and education.

A growing body of evidence indicates that education can facilitate or impede the process of acculturation (López & Yamashita 2018). Refugees with higher education, for example, can quickly integrate into society by finding work and being economically independent, whereas those without education may face difficulties adapting to the new environment. This, however, is dependent on the context and type of education received. Refugee employment and integration cannot be guaranteed or solely ensured through education. Many factors contribute to refugees' assimilation in new environments. For example, the ability to communicate in the host country's language is a critical factor in one's ability to find employment. While education cannot be the sole determinant of displaced people's success, it remains important for refugees and their livelihoods.

### **3. The Legal Frameworks for the Right to Education in South Africa**

Although the right to education has a long history in international treaties and discussions, it has proven challenging to implement in many nations including South Africa. Every child has a right to an education, according to the United Nations High Commissioner for Refugees (2010). Because of this, everyone should receive an education, in spite of their status, nationality, or level of socioeconomic development. Education is a fundamental right for refugee children and serves as a powerful instrument for helping them recover from the social and psychological traumas that their countries' instability would have otherwise caused (Meda, Sookrajh & Maharaj 2012). South Africa has ratified several international educational treaties, which will be discussed further in this section. South Africa has legislation that recognises the right to education for all, regardless of status or nationality, at both the national and international levels. However, refugees and asylum seekers have faced numerous challenges in gaining access to education in the country. Poor documentation, inefficient implementation of policy, discrimination, and an inefficient refugee and asylum seeker processing system are among the barriers deterring refugees from accessing education.

In terms of legal frameworks for the right to education, South Africa ratified the Universal Declaration of Human Rights. The Universal Declaration of Human Rights Article 26 stipulates that everyone has the right to education. It further states that education should be free, at least at the primary and secondary levels. Elementary education will be mandated. Technical and professional education will be made widely available, and higher education will be open to all based on merit. Furthermore, Article 22 of the Convention relating to the status of

refugees, to which South Africa is a signatory, states that refugees have the right to receive an education. In particular, Article 22 states that contracting states must provide refugees with the same treatment as nationals in terms of elementary education. However, the right to education for asylum seekers is not clearly and unambiguously mentioned in Article 22. This complicates the rights of those who are still in the process of obtaining refugee status. Regardless of the lack of a direct provision addressing the rights of asylum seekers to education, South Africa is not empowered to discriminate against asylum seekers because this is prohibited under Article 1 of the Convention against Discrimination in Education.

In addition, South Africa also accepted the International Covenant on Economic, Social and Cultural Rights. Article 13 subsection 1 of the International Covenant on Economic, Social and Cultural Rights stipulates that member states are required to realise the right to education for all individuals to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups. The international Covenant on Economic, Social and Cultural Rights further states that higher education shall be made equally accessible to all, based on capacity, by every appropriate means, and by the progressive introduction of free education. Members of this convention are obligated to provide all persons with primary and elementary education, and the infrastructure required for primary and secondary education. Other international treaties that protect the right to education for refugee children in South Africa include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR). All these conventions guarantee the protection of basic human rights (education included) regardless of context or situation, whether in limbo or on the migration journey.

Regionally, South Africa is a signatory to the African Charter on Human and Peoples' Rights, which was established in Banjul in 1981. The African Charter on Human and Peoples' Rights is a regional special convention that requires all member states to recognise the right to education for all people, including refugees and asylum seekers. The Charter explicitly says that states parties to the Charter shall have the duty to promote and ensure the respect of the rights and freedoms contained in the Charter through teaching, education, and publication, as well as to ensure that these freedoms and rights, and corresponding obligations and duties, are understood (Nanima 2021). Furthermore, the African Charter protects all children from discrimination under the principle of non-discrimination. When it comes to the protection of children in displacement, the principle of non-discrimination is a cornerstone of the African Charter. The African Charter argues that states and governments who are treaty signatories must respect and promote the rights of children, including the right to education, which is a basic human right. The principles enshrined in other international treaties, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, are reinforced by the African Charter.

At the national level, the South African Constitution, the country's supreme law, states that everyone has the right to basic education. Section 29 of the South African Constitution enshrines the right to education and outlines the state's positive responsibilities in this regard. The section stipulates that everyone has the right to a basic education, including adult basic education (South African Human Rights Commission 2012). The South African Constitution is regarded as a transformative document because it seeks to change the nation's affairs, including improving the education system after the apartheid regime left an inequitable and unequal education system (McConnachie, Skelton & McConnachie 2017). The ordinary South African citizen had no access to education because the education system was

dysfunctional and only served the needs of white people. Following independence in 1994, the new government recognised that everyone in South Africa needed access to education to address the discrimination and social injustice fostered by apartheid. Aside from the Constitution, another profound piece of law that enables asylum seekers and refugees to study in South Africa is the Refugee Act of 1998, which allows refugees and asylum seekers to access education in South Africa. South Africa has a progressive refugee policy that includes basic refugee protection principles such as free movement, the right to work, and access to basic social services (Ramjathan-Keogh 2017).

In South Africa, the right to education is viewed as an empowering right because it has the potential to enable disadvantaged populations to participate actively in their communities and to improve their economic and social conditions in order to lift themselves out of poverty. The South African government has since been committed in investing in education. However, regardless of the huge investment South Africa has made to ensure equitable education for all, refugees and asylum seekers still experience some barriers to admission in primary and secondary schools. One of the main obstacles is a lack of identity documentation and the politicisation of the application process as a result of the influx of individuals seeking asylum in the country. Lack of financial resources is also linked to a lack of identity documents (Rugunanan & Smit 2011). Families who lack proof of identity find it difficult to find work and thus cannot pay their children's school fees. Even if financial assistance is available in some cases, undocumented immigrants may be unable to receive it.

#### **4. Barriers to Education for Refugees**

South Africa has ratified several international treaties protecting refugees' and asylum seekers' right to education. It has also signed a number of regional treaties requiring it to protect humanitarian immigrants such as the African Charter on Human and Peoples rights. Apart from international and regional treaties, South Africa has progressive domestic policies that protect refugees' right to education, such as the Refugee Act and the Constitution. It is clear that the country is obligated to provide basic education to all citizens, regardless of refugee status, identity papers, nationality, or ability to pay school fees. Unfortunately, despite all the legislation, the right to education in South Africa is not fully promoted and protected. Refugees and asylum seekers continue to face barriers to education. Problems with admission to public schools, a lack of school fees, a lack of identity documentation, language barriers, and a failure to release previous school reports are among the barriers (Nanima 2021).

According to the South African Schools Act and Section 39 of the National Education Policy Act, students must be admitted to any public schools of their choice without discrimination of favour. The South African Schools Act goes on to add that parents must be fully informed about the governance of schools including participation in activities such as budgets and school fees. However, many refugees are denied admission to public schools due to lack of required documentation. Refugees, for example, may be unable to provide documents such as birth certificates or immunisation cards. The reasons for this are that they may not have had the opportunity to collect their particulars when fleeing war, or that the type of documentation they have does not meet South African government standards. This makes it difficult for refugee children to gain access to basic education, which is guaranteed by both international and domestic law.

Refugees and asylum seekers frequently have financial difficulties, which may arise as a result of people fleeing war-torn countries and losing all sources of income. It takes time for

refugees to rebuild and adjust in host countries after being displaced. School fees are a major barrier to education for refugees due to financial constraints. School fees are monetary sums that parents agree to pay to the school for their children to receive an education. The money is used to improve the quality of education for students. In South Africa, foreign pupils might have to pay additional fees before being enrolled to the school. Administrative fees, registration fees, and fees for specific subjects such as practicals are examples of these payments (Ramjathan-Keogh 2017). Extra fees may put additional strain on parents who are already dealing with the financial stress of resettlement. As a result, children are denied their right to an education, which is essential for empowering them to achieve financial freedom.

Furthermore, some South African schools reject refugee students who do not have previous school reports. Previous school reports are required to determine a student's level of education or to place students in the appropriate grade (Amit 2012). Learners cannot be turned out of school because they do not have a previous school report, according to the law (Hathaway 2021). According to the South African Constitution and the Refugee Act, for instance, every citizen has the right to an education free of discrimination, so refugee and asylum seekers children should not be segregated due to lack of previous educational records.

Not only are children of refugees and asylum seekers having difficulty accessing education in South Africa. Children of economic migrants, and some South African children, face barriers to education (Mohamed 2020). This is due, in part, to increased social inequality between the rich and the poor, poor infrastructure, particularly in rural areas, poverty, xenophobic violence, and lack of access to sanitation and electricity. The report published by Amnesty International in 2020, highlighted that South Africa has one of the most unequal school systems in the world. According to the report, children in the top 200 schools obtain more distinctions in mathematics than children from the next 6600 schools combined (Mohamed 2020).

The broken education system was left by the apartheid regime, when social inequality was rampant and black children were restricted to schools in remote areas with inadequate infrastructure. While the South African government has made commendable progress since its independence in 1994, the number of children dropping out of schools and those unable to attend school remains high, resulting in lower educational outcomes. A recent international survey, for example, discovered that more than three-quarters of children aged nine years are unable to read for meaning (Mohamed 2020). Many schools in other areas, such as the Eastern Cape and Limpopo, lack adequate resources for quality education. They lack basic facilities such as toilets, clean water, and laboratories, making the experience of learning a great challenge for low-income families.

## **5. The Role and Difficulties of getting Documentation in South Africa**

In contemporary societies, the need for some form of personal documentation is a requirement of daily life. Depending on the administrative arrangements in place, establishing one's identity may be essential for a variety of activities, like obtaining employment, housing, health care, qualifying for social benefits, enrolling in educational institutions, registering births and deaths, marriage certificates, or the issuing of official documents and permits (United Nations High Commissioner for Refugees 2015). Many countries around the world have established systems for providing people with identity documents to uphold public order and civil status. Documentation plays a fundamental role in accessing a wide range of services for nationals and foreign citizens. Under international



law, all citizens, including aliens, have the right to be provided with documentation or permits recognising their existence in a country. Documentation also assists governments in determining the size of the population to which they should provide basic services. A lack of accurate statistics frequently leads to governments and local councils failing to provide basic services to their citizens, such as clean water and health care.

Identity papers are an essential part of life for refugees, and the lack of such documentation could be more than just an inconvenience. Yaron (2009) argued that identity papers empower and impede persons and that their absence can liberate people in the same way that it can be used to categorise and govern them. On the other hand, Brecht highlighted that identity papers have the potential to fetishize people by being their representation but also an object superior to them and capable of erasing them (Urian 2006). In some nations, foreigners without appropriate documentation face detainment and, in some cases, compulsory expulsion. Such measures are especially serious for a refugee, who may face deportation to his country of origin as a result of lacking proper documentation. This makes identity documents extremely important in the lives of displaced people. The lack of documentation causes a variety of problems, ranging from being unable to prove one's identity to being unable to access essential services.

Identity documentation processing is complicated and difficult in South Africa, as it is in any other country that receives huge volumes of refugees and asylum seekers. In Southern Africa, South Africa receives many asylum seekers and refugees from all over the continent. According to the United Nations High Commissioner for Refugees (2019), South Africa hosts around 250,250 asylum-seekers and refugees. The main countries of origin of asylum-seekers and refugees comprise Zimbabwe, the Democratic Republic of the Congo, Burundi, South Sudan, Rwanda, and Somalia. Unlike other southern African countries such as Namibia and Botswana, South Africa has a no-camp policy, which allows refugees and asylum seekers to exist side by side with South Africans. While the South African government is committed to protecting humanitarian entrants, the Department of Home Affairs, which oversees issuing identity documents, is overwhelmed by the large number of applicants they receive daily. The Department of Home Affairs has a massive backlog of applicants who have yet to be cleared due to a lack of adequate resources and efforts to centralise the visa application system (Krensel 2022). The World Bank estimated that there are about 137 million stateless people without identity papers in South Africa (Rulashe 2022). These people are mostly refugees and asylum seekers, who live on the outskirts of society. They struggle to find work, get an education, purchase a house and property, see a doctor, or even marry. The number of undocumented people has more than quadrupled. The population without identification documents stood at 37 million in 2010, with the number expected to double in the next ten years (Rulashe 2022). The backlog of applications makes the process of applying for and getting identity papers in South Africa complicated.

The difficulty of obtaining identity papers in South Africa is exacerbated by xenophobic attitudes against foreigners by South Africans. Since the apartheid regime, xenophobic tendencies and narratives have been perpetuated in South Africa against nationals from other African countries. This propaganda is directed not only at refugees and asylum seekers, but also at economic migrants. The Human Rights Watch (2020) highlighted that South Africa continue to experience instances of xenophobic violence and prejudice against non-citizens, despite the government's National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance being introduced in 2019. Since 2008, when xenophobic violence first appeared, animosity towards African newcomers in South Africa has increased.

The provision of basic services to foreigners, particularly those from African nations, has been impacted by anti-immigrant sentiments, and white immigrants are less marginalised than black migrants (Tella 2016). Xenophobic attitudes have also played a crucial role, even though other administrative problems may have had a negative impact on the processing of identification documents for refugees and asylum seekers in South Africa. Particularly, politicians in South Africa have used the narrative of foreigners versus South Africans to advance their political aspirations by demonising immigrants who are there for humanitarian reasons. The politicisation of refugees and immigrants entering South Africa is the result of a lack of political will to handle the problems the department of home affairs faces, corruption, and the misuse of public funds for personal gain (Solomon & Kosaka 2013). Consequently, refugees have struggled to acquire identification documents, making it difficult for them to access services such as education, employment, and health care.

## 6. The Role Documentation Plays in Accessing Education in South Africa

South Africa ratified international legal frameworks such as the United Nations Declaration on Human Rights and the Dakar Education for All (Meda, Sookrajh, & Maharaj 2012). However, refugees experience stern discrimination in schools and higher learning institutions in the country (Ackermann 2017). One of the significant barriers is the lack of identity papers that hinder matriculation, employment, accommodation, and freedom of movement (Willie & Mfubu 2016). Wedekind, Fakoush and Alla-Mensah (2019), argued that identity documents mean everything to refugees; they are a prerequisite for better livelihoods. The education of non-South African nationals is limited to a few individuals with up-to-date legal papers. Walton *et al.* (2020), indicated that regardless of the sound and well-intentioned policies, exclusion from schools and within schools remains the experience of many children and young people in South Africa.

Education is considered a vital tool in the fight against poverty. In spite of its centrality in poverty alleviation, the South African government does not offer enough support to refugees, which makes it hard for them to attain education although the constitution allows every citizen to have equal access to education (Crush & Tawodzera 2011). The problem is worsened by the lack of identity documents because, without proof of residency, the enrolment of refugees in public schools is complicated (Rutherford 2020). Wedekind *et al.* (2019), argued that education enhances autonomy, socio-economic development, and psychosocial needs. Also, refugees cannot get high-paying jobs, mostly due to a lack of academic qualifications and English language skills (Taylor & Sidhu 2012). However, the lack of identity documents remains the chief obstacle along with financial challenges in paying school fees for refugees (Singal *et al.* 2018).

On the other hand, refugees continue to be extremely marginalised in South Africa's public education system merely because they do not have legal documents (Tikly 2019). Admission to public schools depends on the presence of identity documents and reports from previous schools for continuing pupils. Meda *et al.* (2012), highlighted that refugees and asylum seekers face problems when enrolling in schools because most schools ask for documentation such as passports and refugee IDs. Failure to present identification documents may result in denial of a school placement. School principals may reject documentation such as asylum permits and Emergency Travel Documents in some cases (Meda *et al.* 2012). Parents frequently give up, and their children fail to complete basic education in South Africa.

Vigneswaran (2008), revealed that refugee students find it difficult to be admitted to public schools on a regular basis because of a lack of identity documentation and school fees. The requirement that refugees prove their residency, age, and immunisation records before being admitted to schools systematically limits their access to education systems (Buckland 2011; Greenberg, Adams & Michie 2016). When learners manage to enrol, they are mostly accommodated in refugee-designated schools such as Sangoma School of refugees (Meda et al. 2012). South Africa deprives refugees of their fundamental rights protected by law. In certain cases, access to refugee education is subject to decisions and discretion by school principals who may reject applications based solely on nationality (Rutherford 2020). Legal documents are difficult to obtain and can take more than a decade to be released by the Department of Home Affairs (DHA) (Ekambaram 2020). Consequently, refugees may not have access to education during the pending period, no matter how long it might take. It is incredibly difficult for refugees to attain education because of a lack of proof of identity and funds (Meda et al. 2012). In the long run, refugees continue to establish their distinct villages within the native population because they are unable to assimilate into the new societies.

Access to education is believed to be essential for ensuring better livelihoods, political participation, health, and gender equality (Santini 2017). Magos and Margaroni (2018) argued that education plays a vital role in social integration, economic progress, building confidence, and improving the chances of earning sustainable incomes that are critical to poverty alleviation. Nicolai, Wales, and Aiazzi (2016), note that refugee children must not be put in separate schools or classes conducted in vernacular languages. Non-South African children are alienated and offered places in schools intended for foreigners, such as the Sangoma refugee school (Meda et al. 2012). When admitted to mixed classes, they are often characterised by low performance, and most of them do not qualify for tertiary studies (Magos & Margaroni 2018). Mohamed (2020) indicated that few than fifteen of the students, who begin school in remote South Africa, will go to university.

Meanwhile, refugees may not have time to carry identity documents such as birth certificates and transfer letters for their children when they are fleeing violence. Most of the refugee departures are unplanned. They tend to forget about their identity documents. Upon arrival in host countries, it is often difficult for them to secure admission to South African schools and start new lives (Willie & Mfubu 2016). The Scalabrini Centre of Cape Town (2019) reported that 40 per cent of undocumented children had no access to education in 2018, with the lack of identity documents being the main reason. Furthermore, many children have dropped out of school because they failed to provide identity documents to school administrators (Howden 2018). Their dreams of becoming prosperous people in the future are deterred by the lack of education. For example, refugee children were forced out of schools across South Africa in 2018, following the Ministry of Education and Home Affairs directive, that children without identity documents could not attend school (Howden 2018). Following this situation, Crush and Dodson (2017) ascribed that uneducated children are trapped in perpetual poverty, unable to liberate themselves from marginalisation, find jobs or employ themselves.

The lack of access to education for refugees living in South Africa renders them more vulnerable to discrimination and xenophobia, which can be deconstructed by learning (Rugunanan & Smit 2011). Educated refugees cannot be seen as a burden on society because they can participate in productive work that can develop their communities. Crush and Skinner (2017) further argue that tertiary education can create economic opportunities through entrepreneurial activities in both the formal and informal sectors. Often times, non-

South African children are denied fundamental freedoms that subject them to exploitation, racism, alcoholism, poverty, and drug abuse. Refugees indulge in risky behaviours because they have few opportunities after dropping out of school (Willie & Mfubu 2016). For instance, in 2018, refugee students from Zimbabwe and Mozambique, who were studying Business and Administration the University of Johannesburg, were sent home for lack of identity documents (Howden 2018). The students emphasised that the decision taken by the Home Office to deny them access to education, the rights given to them under domestic and international law, ruined their dreams (Howden 2018). Lack of education impedes refugees to participate in politics and decision-making processes in so doing reinforcing their exclusion in all walks of life (Rutherford 2020).

Apart from lacking identity documents, refugees do not have enough financial resources to support themselves even when they are admitted to school (Taylor & Sidhu 2012). Most of the refugees struggle to get places. When they do, they often fail to pay school fees, which leads them to be unable to sit for exams or continue with their education (Vandeyar & Vandeyar 2015). Refugees rely on donor funding for survival. When there are no assistance parents cannot afford to pay for the educational costs of their children (Meda et al. 2012). Besides, refugees generally work in the informal economy due to the lack of legal papers where they earn low salaries that cannot sustain their livelihood needs.

Refugees struggle to get enough food and other essential commodities; hence parents end up sacrificing to feed their children, rather than sending them to school (Rutherford 2020). In some cases, exorbitant examination registration fees prevent refugees from sitting for examinations. In some years, students would study the entire term and fail to sit for external examinations in their final year because of the absence of donors to pay for their examination fees. That has resulted in many students dropping out of school or resorting to seeking employment to raise money for their education (Meda et al. 2012). However, disabled youth are among the most vulnerable and discriminated populations in South Africa (Walton et al. 2020). Disabled children have extremely lower attendance and completion rates at school in South Africa (Singal et al. 2018). Lower attendance is caused by lack of support and infrastructure to accommodate students with impairments. The dynamics of exclusion and marginalisation cut across all disabled children irrespective of refugee status.

In addition, disabled refugee children tend to suffer more from poverty due to their legal status and infrastructural difficulties, which promote higher school dropout rates (Wodon, Male, Montenegro, & Nayihouba 2018). The Human Rights Watch (2015) indicated that 500 000 children with disabilities were excluded from school in South Africa in 2015. The exact number of children removed from school is not known. However, this figure suggests a significant gap in access to education for young refugees in South Africa. The lack of reliable data remains a major obstacle in the migration debate in South Africa (Gordon 2016) and the globe alike. The lack of education negatively impacts the livelihoods of refugees through increased discrimination, unemployment, prejudice, violence, and lack of accommodation. Nearly 48 per cent of refugees were rejected as job applicants because they were non-South African citizens in 2008 (Vigneswaran 2008). Some applications were unsuccessful even though they had valid working rights in South Africa.

## **7. Conclusion**

In conclusion, this article argues that without identity documents refugees face several challenges in accessing education in South Africa, including the inability to enrol in schools

and prove their age and identity. This is contrary to the South African Constitution, which allows every citizen to have access to education irrespective of nationality, status, or financial resources. Refugees and asylum seekers who do not have documentation are not allowed to register in schools unless they show proof of identity. Denying refugees and asylum seekers access to basic education is also contrary to the 1998 Refugee Act and other international conventions such as the Universal Declaration of Human Rights. The lack of education means that undocumented refugees cannot get high-paying jobs in the formal economy of South Africa. Additional obstacles and barriers that refugees and asylum seekers encounter in South Africa include poor English language skills, lack of school fees, and poor infrastructure thereby making refugees vulnerable to poverty and food security. It is believed that access to education for displaced people plays a crucial role in improving the chances for refugees to earn sustainable incomes that are vital to their livelihoods. Besides, children with special needs suffer more than other children when it comes to learning because of their disabilities and the lack of infrastructure to accommodate them. The South African government has made significant progress in ensuring equal access to education for all children. However, undocumented children have never received adequate support; as a result, many children are dropping out of school and succumbing to vulnerability. This article argues that the South African government should provide adequate assistance to refugees and process their identity documents in a timely manner to ensure that they have access to education and other amenities in the country.

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## **A Pandemics Treaty: A Boon for Africa**

**Kafumu Kalyalya**

*Southern African Institute for Policy & Research*

[kafumukalyalya88@me.com](mailto:kafumukalyalya88@me.com)

### Abstract

This article illustrates the weaknesses of the current global health framework. It highlights two pillars<sup>1</sup> a new treaty regime ought to be built upon. The analysis seeks to establish how these pillars could have helped Africa during the pandemic and can indeed help Africa in future pandemics. The analysis suggests the need for a unified global health regime or pandemics' treaty that promotes a level legal and political playing field regarding future pandemics. The treaty could focus on coordination of research and development; build a stronger global framework that reinforces legal obligations and norms; provide for universal access to medicines, vaccines, and medical infrastructure.

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<sup>1</sup> This is not an exhaustive list of pillars rather they are the 2 pillars this paper seeks to highlight.

## 1. Background

On 30 March 2021, twenty-five heads of government and international agencies came together and proposed that the international community ought to work collectively “towards a new international treaty for pandemic preparedness and response” (World Health Organization [WHO], 2021a). The call for an international treaty follows from the reality that the COVID-19 pandemic is the biggest challenge faced by the international community since WW2 (WHO, 2021b). This is not mere conjecture because the COVID-19 pandemic has had a profound and disastrous impact on human existence. The COVID-19 pandemic caused national, regional, and international shutdowns, ground global economic activity, and brought a virtual halt to human movement. Further, millions of lives have been lost worldwide.

Nonetheless, some observers argue that rather than developing a new global framework there is need to find ways to reform existing frameworks so that they serve the global community better (Svet Lustig Vijay, 2021). The argument against a pandemic’s treaty is based on the observation that there is no shortage of frameworks or treaties, and these frameworks and treaties are adequate mechanisms for dealing with pandemics<sup>2</sup> and there are other political solutions, initiatives, not requiring a treaty, that would accelerate pandemic response.<sup>3</sup>

However, the experience of the COVID-19 pandemic demonstrates that the current international framework is insufficient to properly respond to global health crises (Grossman, 2021). As a result, “the international community must explore what can be done before, during, and after an epidemic to strengthen our collective ability to effectively respond to a health crisis” (Grossman, 2021, p.133). Moreover, in all likelihood, there will be other pandemics and health emergencies in the future, and it is necessary for the international community to be able to predict, prevent, detect, assess, and effectively respond (WHO, 2021b). These goals can be achieved by establishing a robust international health architecture – a legal and institutional regime such as a pandemics treaty.

## 2. The Weaknesses of the Current Global Health Regime

The management of global public health threats – such as health threats posed by pandemics – has long been regulated by international law (Oona Hathaway & Alasdair Phillips-Robins, 2020). The International Health Regulations (IHRs) are considered to be the governing framework for global health security (Lawrence O. Gostin & Rebecca Katz, 2016). The IHRs are the global rules on pandemics, and they set requirements for how states ought to report outbreaks, manage diseases within their national borders, and cooperate – amongst each

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<sup>2</sup> According to Kelley Lee, Chair in Global Health at Simon Fraser University in British Columbia, Canada, the TRIPS agreement and accompanying TRIPS flexibilities create frameworks under which countries can gain access to lifesaving products during health emergencies. Additionally, according to Outi Kuivasniemi, Finland’s Director for International Affairs, the IHRs is a useful framework in that the IHRs is a legally binding framework that mandate states to report on disease outbreaks and share information with the World Health Organisation (WHO) and other member states (Svet Lustig Vijay, 2021).

<sup>3</sup> These “range from the WHO co-sponsored COVAX global vaccine facility to proposals for an IP waiver under the TRIPS rules of World Trade Organisation the COVID-19 Technology Access Pool (C-TAP), and tech transfer initiatives” (Svet Lustig Vijay, 2021).

other – to prevent the spread of diseases. The WHO and state parties to the IHRs are responsible for implementing the IHRs. (See Appendix A for an overview of the IHRs).

As the world has been ravaged by COVID-19, the IHRs have proven ineffective in shaping the response of states, and the WHO to the pandemic (Oona Hathaway & Alasdair Phillips-Robins, 2020). The COVID-19 pandemic has exposed the deficiencies – elucidated the ineffectiveness – of the IHRs and also illuminated the fragmentation of international law as concerns pandemic management and regulation. COVID-19 has exposed a multitude of problems concerning the current global health regime.

#### A. WHO Laxity

The WHO is an institution plagued by laxity. As been observed by Hathaway and Alasdair Phillips-Robins (2020), although the WHO serves as an invaluable role as a center for scientific expertise and a champion for global health it is often powerless in the face of its biggest funders and is unable to criticize them when they violate WHO rules – the WHO lives in fear of retaliation from its biggest funders obligations. For instance, it has been alleged that the Chinese government attempted to cover up the initial spread of the coronavirus. Further, the WHO took a whole month to declare a public health emergency after learning about the outbreak – this delayed response led to accusations that the WHO was acting too slow.

#### B. Flawed IHR Design

The IHRs are flawed in design. First, the IHRs take a siloed approach to health (that is the IHRs take a restrictive approach to managing a pandemic.) For instance, under IHR article 44 although states have an obligation to collaborate this obligation only applies to health issues (Jaemin Lee, 2020). In another instance, IHR article 2 provides that “[t]he purposes and scope of [the IHRs] are to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.” This is clear evidence that the IHRs are only to be applied to health issues (Jaemin Lee, 2020).

Second, by design, the IHRs delegate an unprecedented amount of legal authority to the Director-General of the WHO – the Director-General has the power to declare a public health emergency of international concern (PHEIC) and issue temporary recommendations of urgent measures to prevent or reduce the international spread of disease and avoid unnecessary interference with international traffic (Gian Luca Burci, 2020). Thus, the IHRs grant a single international figure – the Director-General of the WHO – great authority to undertake decisions that have considerable political implications outside an inter-governmental framework (Gian Luca Burci, 2020). The definition of a PHEIC is vague and thus provides flexibility to allow adaptation to an unpredictable range of events and specific factual contexts that are present during pandemics (Gian Luca Burci, 2020). On the one hand, the vagueness of what constitutes a PHEIC gives the WHO Director-General discretionary authority to intervene before this international spread occurs – the Director-General can in this sense preempt the international spread of a disease by declaring a public health emergency of international concern. On the other, history shows that WHO's practice has been inconsistent as to the criteria necessary for a PHEIC to be declared. This inconsistency has opened up the WHO to criticism for the WHO's apparent politicisation and for not providing much clarity for future disease spreads. “Even though the delegation of authority is premised

on a non-political role by the Director-General, PHEICS carry evident political implications for the country concerned and beyond. It seems legitimate that the Director-General takes the political context into account in managing specific risks, while ensuring the integrity and credibility of his technical role” (Gian Luca Burci, 2020, 209).

Fourth, the IHRs lack “teeth.” Although the IHRs are binding on WHO member states the IHRs contain no enforcement mechanism and because the IHRs contain no enforcement mechanism the WHO is unable to hold states to their obligations – the WHO is unable (and sometimes unwilling) to discipline, or rather punish, states that have failed to meet their obligations (Oona Hathaway & Alasdair Phillips-Robins, 2020). The current IHR regime functions more as a system of recommendations than of binding obligations (Grossmann, 2021, p.133).

Fifth, The IHRs do not contain an effective dispute settlement mechanism issue (Jaemin Lee, 2020). Although IHR article 56 provides for the settlement of disputes it has been pointed out that: “The current WHO regime lacks sufficient mechanisms to solve disputes, and it functions more as a system of recommendations than of binding obligations” (Grossmann, 2021, p.133). This is because unlike other more well-developed dispute settlement regimes, IHR article 56 presents options that seem to be too unpredictable and unstructured such that they would be ineffective when handling the magnitude of issues that arise during a pandemic (Jaemin Lee, 2020).

### C. Inadequate Cooperation

Although the IHRs do contain a couple of provisions that attempt to give effect to cooperation those provisions are either shallow or merely repeat principles – “the provisions do not provide adequate response guidelines for states or the WHO during an emergency.” (Jaemin Lee, 2020).

In reality, the current global health regime lacks cooperation – be it between states or between states and the WHO. This is most likely because the IHRs do not contain provisions that can ensure meaningful cooperation and close coordination among states, between the WHO and states, and between the WHO and other international organizations in the specific context of a pandemic (Jaemin Lee, 2020). Global coordination and cooperation are essentially critical when dealing with pandemics, however, the absence of meaningful coordination and cooperation mechanisms in the IHRs impedes a robust global response to pandemics (Jaemin Lee, 2020).

Tied to inter-state cooperation is the need for cooperation between states and the WHO and this is because the efficient prevention of pandemic (with transboundary dimensions) requires that states comply with recommendations of the WHO. However, history shows that, as a general rule, states only half-heartedly follow WHO recommendations – states rarely comply with the IHRs. (Morten Broberg, 2020). Three reasons are often cited when trying to explain why states rarely follow WHO guidelines and these are: “Firstly, several [states] simply do not have the requisite resources to follow the rules. Secondly, certain states are either unable or unwilling to quickly notify the WHO of disease outbreaks. Thirdly, [states] may introduce travel and trade restrictions of their own, even if these initiatives may be unnecessary or may conflict with the recommendations of the WHO” (Morten B., 2020).

## D. Fragmentation of International Law

The COVID-19 crisis has demonstrated pandemics implicate various aspects of international law. This is to necessarily say that when looking at the COVID-19 pandemic, through the lens of international law, the pandemic cannot be merely considered a health crisis – COVID-19 is an international law crisis of profound magnitude. The COVID-19 crisis is multifaceted and concerns various aspects of international law, including but not limited to: State responsibility; climate change; state obligations to refugees and migrants in detention; refugee law and the principle of non-refoulement; vaccine theft, disinformation, and the law governing cyber operations; human rights law concerning civil and political rights; human rights law concerning right to life; and international humanitarian law concerning the treatment of detainees and humanitarian access. These areas of international law are governed by different legal regimes. The international law landscape is fragmented. The COVID-19 pandemic has laid bare the fact that pandemics affect several distinct – but interlinked – rights. COVID-19 has affected multiple areas of human existence regulated by varied fields of international law.

The IHRs – as presently constituted – embed the principle of fragmentation in their structure. This is because: First, IHR (2005) article 56(4) provides that “[n]othing in these Regulations shall impair the rights of States Parties under any international agreement to which they may be parties to resort to the dispute settlement mechanisms of other intergovernmental organizations or established under any international agreement.” Second, IHR (2005) article 57 provides that “the IHR and other relevant international agreements should be interpreted so as to be compatible” and that “the IHR shall not affect the rights and obligations of any State Party deriving from other international agreement.” Third, under IHR (2005) article 3 states must act in accordance with the Charter of the United Nations. Taken together, the IHRs make it clear that the IHRs do not affect other treaties and agreements and that states ought to abide by the norms and rules found – or rather codified – in other treaties and agreements. This problem of fragmentation is also evident elsewhere in the IHRs. For instance, IHR article 3(4) – quoted above – “underscores all states sovereign right to legislate and to implement their health policies.” *Prima facie*, IHR article 3(4) is an appropriate statement of sovereign discretion however, it nonetheless, confounds the states when, during a pandemic (such as the COVID-19 pandemic), the states are compelled to deal with a wide range of potentially conflicting obligations under different treaty regimes and other international agreements (Jaemin Lee, 2020).

As illustrated above, the current global health framework contains several defects, which should be cured so that pandemic management becomes more effective. One way of curing the defects of the current global health framework is the establishment of a treaty that: Addresses the issues plaguing the WHO; Repairs the IHRs flawed structure; Encourages – or even coerces – interstate cooperation and cooperation between the states and the WHO; and harmonises the law governing pandemics.

### 3. Pillars of A New Treaty & the Benefits to Africa

The COVID-19 pandemic exposed the deficiencies in the prevailing global health regime. This in itself should provide African States the impetus for a pandemic’s treaty. If that is not enough, African states should be cognisant that a well-structured treaty can have a profound – positive – impact on African states health infrastructure and also provide African states means of redress when African States are not responsible for the outbreak of a pandemic (as

was the case with COVID-19). If these benefits are to be realised the pandemics treaty ought to be built on two pillars: the “right to health,” and the principles of state responsibility and reparation. (This is not an exhaustive list of pillars, rather they are the 2 pillars this article seeks to highlight.)

### A. Right to Health

If Africa is to benefit from a pandemics treaty, the pandemics treaty must be able to ensure that African nations are provided with tools and resources to minimise loss of life and protect and restore livelihoods if a pandemic ensues. Additionally, if Africa is to benefit from a pandemics treaty it is necessary for the treaty to contain mechanisms that ensure that African health systems have adequate capacity (that is public health infrastructure, trained medical professional, adequate funding, equitable vaccine access, among other things.) A pandemics treaty should provide for large scale domestic and international resource mobilization that will support fragile national health systems.

Any singular pandemic treaty regime should have the “right of health” as its core. The present framework – the IHRs – do many laudable things but it is not “right to health” centric. This is not mere conjecture but is based on the very articles of the IHRs. The IHRs are comprised of 66 articles and 9 annexes of which most of the subject matter relates to capacity building, communication, and available measures (Jaemin Lee, 2020). For example, the IHRs contain numerous provisions regarding “the core capacities of countries to detect, assess, notify, report, and respond to health risk events” (Jaemin Lee, 2020).<sup>4</sup> Regarding communication, the IHRs are comprised of multiple provisions that deal with notification to the WHO and a two-way dialogue procedural mechanism between nation-states and the WHO (Jaemin Lee, 2020).<sup>5</sup> As relates to other measures, the IHRs contain provisions that speak to the determination of a PHEIC<sup>6</sup> and national measures that deal with regulating health measures at ports of entry.<sup>7</sup> Further, as regards national measures, the IHRs contain provisions that regulate state conduct regarding travelers<sup>8</sup> and the IHRs also regulate health documents<sup>9</sup> and financial charges associated with national measures<sup>10</sup> (Jaemin Lee, 2020).

The preceding IHR framework is not useless, but it is not entirely useful either. A key component of a pandemic is the fact that it is a health crisis. (This is not to say it is solely a health crisis). As health is a central – a cardinal – aspect of a pandemic any pandemic treaty must be built upon the right to health. A pandemics treaty must be modeled on a human rights-based approach with the central right in question being the “the right to the enjoyment of the highest attainable standard of physical and mental health,” a right which is one of the most important rights implicated (and/or affected) by a pandemic.

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<sup>4</sup> Referring to IHR 2005. art. 5,1; art. 13; Annex 1, A, 1(a), 4, 5, 6; Annex 1, B, 1, 2.

<sup>5</sup> Referring to IHR 2005. art. 6, 7, 8, 9, 10, 11, Annex 2.

<sup>6</sup> IHR 2005. art. 12, 15.

<sup>7</sup> IHR 2005. art. 20,21,23.

<sup>8</sup> IHR 2005. art. 30,31.

<sup>9</sup> IHR 2005. art. 36-39.

<sup>10</sup> IHR 2005. art. 40,41.

Under contemporary international law, the right to health is considered a fundamental part of human existence (WHO, 2008). The right to the enjoyment of the highest attainable standard of physical and mental health found its initial codification in the 1946 WHO constitution. Therein, the preamble reads: “[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition” (WHO, 1948). This right was subsequently recognized and codified in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). (The International Covenant on Economic, Social and Cultural Rights is widely considered as the central instrument of protection for the right to health) (WHO, 2008). Indeed, the right to health is a universal recognised right and has been codified in multiple other international human rights instruments<sup>11</sup> and regional human rights instruments (WHO, 2008).<sup>12</sup> Additionally, the right to health is codified and recognised in at least 115 state constitutions and some constitutions even set out duties in relation to health, such as the duty on the state to develop health services or to allocate a specific budget to them (WHO, 2008).

Using the right to health, as a structural pillar for a comprehensive treaty on pandemics, will ensure that states will have health-related obligations and duties which would entail those states do no harm in times of pandemics. This is because the right to health imposes three types of general – national – obligations on states. These obligations are the obligation to respect<sup>13</sup>, protect<sup>14</sup> and fulfill.<sup>15</sup> In some sense, these obligations entail that states owe their respective citizenry and not inter-state obligations. Nonetheless, a pandemics treaty could

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<sup>11</sup> See: The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv); The 1966 International Covenant on Economic, Social and Cultural Rights: art. 12; The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b); The 1989 Convention on the Rights of the Child: art. 24; The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c); and the 2006 Convention on the Rights of Persons with Disabilities: art. 25.

<sup>12</sup> “The right to health is also recognised in several regional instruments, such as the African Charter on Human and Peoples’ Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), and the European Social Charter (1961, revised in 1996). The American Convention on Human Rights (1969) and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) contain provisions related to health, such as the right to life, the prohibition on torture and other cruel, inhuman and degrading treatment, and the right to family and private life” (WHO, 2008, p.10)

<sup>13</sup> “In particular, States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons” (CESCR General Comment No. 14, para 34).

<sup>14</sup> “Obligations to *protect* include, *inter alia*, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct” (CESCR General Comment No. 14, para 35).

<sup>15</sup> “The obligation to *fulfil* requires States parties, *inter alia*, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realising the right to health. States must ensure provision of health care, including immunisation programmes against the major infectious diseases, and ensure equal access for all to the underlying determinants of health, such as nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions... Further obligations include the provision of a public, private or mixed health insurance system, which is affordable for all, the promotion of medical research and health education, as well as information campaigns” (CESCR General Comment No. 14, para 36).

make sure these obligations are inter-state obligations. By doing so, states will have a collective responsibility to ensure the right to health is realised. Thus, states will thus have an obligation to ensure all states have adequate infrastructure to cope with pandemics and help mitigate the spread of disease vectors. Poorer African states will thus have access to a global network of resources that will help create more robust health systems.

Moreover, a pandemics treaty can be tailored so as to provide for more meaningful cooperation between states. Presently, the right to health also imposes international obligations upon states. Accordingly, states “should recognise the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realisation of the right to health” (CESCR General Comment No. 14, para 38). Further, “pursuant to respect for international obligations and the right to health states would be prohibited from imposing embargoes or similar measures restricting the supply of another state with adequate medicines and medical equipment” (CESCR General Comment No. 14, para 41). A pandemics treaty could make cooperation mandatory – as circumstances provide – and provide robust enforcement mechanisms that alleviate the earlier raised concerns regarding the current global health regime.

A health centric pandemics treaty can be a boon for African states because a well-structured pandemics treaty can ensure: the availability and accessibility to functioning public health facilities; that all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned;” and health facilities, goods and services are scientifically and medically appropriate and of good quality<sup>16</sup> (CESCR General Comment No. 14, para 12).

It should be noted that a pandemics treaty that focuses on the right to health – by encouraging meaningful cooperation and imposing binding obligations – can help address a key issue that has long plagued the African continent: vaccine inequality. The COVID-19 pandemic highlighted the problems of vaccine inequity and vaccine nationalism – these phenomena disproportionately affected African nations. African states ought to be in the forefront demanding a global health regime that will put an end to vaccine nationalism and inequitable vaccine access. (See Appendix B for a discussion on vaccine inequality).

## B. State Responsibility & Reparation

Under contemporary international law, sovereignty is still a key principle and from sovereignty flows a cornerstone of public international law – the rules of state responsibility. The main goal of state responsibility is the pursuit of fair compensation for damages suffered by one state due to the acts of another state, the offending or responsible state. The aim of the rules on state responsibility is to ensure that a state is held responsible for unlawful acts, it undertakes, that run counter to the rules of international law. An unlawful act can be described as an act that is harmful to the rights and or dignity of another state. And an unlawful act triggers the right of the harmed state to seek reparation for the unjust losses and damages it suffers (Valerio De Oliveira Mazzouli, 2020). Against this backdrop, it can be said

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<sup>16</sup> This is because upholding a right to health entails that a state must ensure that hospitals and health facilities are staffed with skilled medical personnel and the facilities are well stocked with scientifically approved and unexpired drugs and hospital equipment (CESCR General Comment No. 14, para 36).



that the rules of international responsibility serve a dual purpose, that is they aim to: “(a) psychologically coerce states to make sure they comply with their international commitments (preventive purpose);” and (b) attribute to the state which had suffered a loss, as a result of an unlawful act perpetrated by another, a just and due reparation (repressive purpose)” (Valerio De Oliveira Mazzouli, 2020, p.7).

Applying rules of state responsibility and reparation to pandemics will be a tricky endeavour and exploring the contours of what the applicable rules is subject matter beyond this article.<sup>17</sup> What is key here is that under the rules of state responsibility a state that commits a wrongful act (in this case not preventing the spread of pandemic) has an obligation to compensate harmed states.<sup>18</sup> If reparation were available during the COVID-19 pandemic, they would be directed to solving economic devastation (see Appendix C for summary on economic devastation). Reparation would have been a boon to African states, whose already vulnerable health infrastructure was stressed and devastated by the COVID-19 pandemic. A pandemics treaty can thus embed the principles of reparation and state responsibility, and this can be of great aid to African states the next time Africa is devastated by a pandemic not of its own making.

The COVID-19 pandemic devastated Africa’s economic landscape. Thus, African nations need a global health regime that will aid them in recover from COVID-19 and any future pandemics that negatively impact Africa’s economy.

#### 4. Conclusion

The COVID-19 pandemic exposed the stark disparities in the capacity of nations to prevent, prepare for and respond to pandemics. Moreover, the COVID-19 pandemic demonstrated that the current global health system is not adequate to combat future pandemics. The need for a pandemic’s treaty has been made obvious – there is need for a unified global health regime that ensures a level legal and political playing field regarding future pandemics. In particular, the global health system would benefit from a pandemics treaty because a pandemics treaty “would close gaps in the current legal framework, endorse principles for effective pandemic preparedness and response, establish norms and obligations of countries, and clarify the responsibilities between states and international organisations.” (Singh et al., 2021, p.3).

In all, a well-structured pandemics treaty – one that is health centric and considers principles of state responsibility and reparation – can benefit African states in the following ways: coordination of research and development; build a stronger global framework that reinforces

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<sup>17</sup> What constitutes a wrongful act? How exactly does attribution apply? What is a breach. How do we determine reparations – under international law different forms of reparation exist.

<sup>18</sup> It should be noted that state responsibility and reparation is a double-edged sword – while African states were not responsibly for the outbreak of COVID-19 they could be responsible for a future pandemic and that will entail responsibility and cost (reparation). One pillar of a pandemic’s treaty, as this paper argues, is responsibility.

legal obligations and norms; provide for universal access to medicines, vaccines, and medical infrastructure.

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## APPENDIX A

### OVERVIEW OF THE INTERNATIONAL HEALTH REGULATIONS

(Excerpted from: World Health Organization. (N.D.). *International Health Regulations*. World Health Organization.

[https://www.who.int/health-topics/international-health-regulations#tab=tab\\_1](https://www.who.int/health-topics/international-health-regulations#tab=tab_1)  
[https://www.who.int/health-topics/international-health-regulations#tab=tab\\_2](https://www.who.int/health-topics/international-health-regulations#tab=tab_2))

While disease outbreaks and other acute public health risks are often unpredictable and require a range of responses, the International Health Regulations (2005) (IHR) provide an overarching legal framework that defines countries' rights and obligations in handling public health events and emergencies that have the potential to cross borders.

The IHR are an instrument of international law that is legally-binding on 196 countries, including the 194 WHO Member States. The IHR grew out of the response to deadly epidemics that once overran Europe. They create rights and obligations for countries, including the requirement to report public health events. The Regulations also outline the criteria to determine whether or not a particular event constitutes a “public health emergency of international concern”.

At the same time, the IHR require countries to designate a National IHR Focal Point for communications with WHO, to establish and maintain core capacities for surveillance and response, including at designated points of entry. Additional provisions address the areas of international travel and transport such as the health documents required for international traffic.

Finally, the IHR introduce important safeguards to protect the rights of travellers and other persons in relation to the treatment of personal data, informed consent, and non-discrimination in the application of health measures under the Regulations.

The responsibility for implementing the IHR rests upon all States Parties that are bound by the Regulations and on WHO. Governments are responsible, including all of their sectors, ministries, levels, officials, and personnel for implementing IHR at the national level.

WHO plays the coordinating role in IHR implementation and, together with its partners, helps countries to build capacities.

## APPENDIX B VACCINE INEQUALITY

Africa has long had problems with vaccine access. On one estimate, before the COVID-19 pandemic, Africa imported 99 per cent of its vaccines (Senthilingam, 2021) “despite the continent consuming over 25 per cent of vaccines globally” (Sidibe, 2022). Against this backdrop, the COVID-19 pandemic has “underscored the critical gap in vaccine manufacturing” and “exposed [Africa’s] vulnerabilities in ensuring access to vital drugs, vaccines, and health technologies” (Sidibe, 2022).

As of January 24, 2022, more than 9 billion vaccine doses produced Africa had only received approximately 540 million and Africa had only administered 309 million doses. Additionally, less than 10 percent of Africans were fully vaccinated and approximately 1.2 billion Africans had not received a single dose of vaccine. It is estimated that Africa may not be vaccinated until 2023 (Sidibe, 2022). (In economic terms, one study “estimated that, among other regions, sub-Saharan Africa will register the highest economic losses (3 percent of GDP from 2022-2025) due to slow vaccination rates” (Sidibe, 2022).

As the COVID-19 pandemic progressed, it became clear that supply of the vaccine took a backseat to unequal distribution of the vaccine. In January 2021, it was observed that “[d]espite the acute vaccine supply shortage in Africa, global vaccine production [had] been

increasing at a secure rate, around 1.5 billion doses per month.” (Sidibe, 2022). Distribution of the vaccine to poor countries was undermined by wealthier countries over-purchasing vaccine doses. As wealthier nations monopolised the global share of vaccines, Africa was disproportionately affected by this vaccine nationalism. Furthermore, many nations failed to live up to commitments to other vaccine-sharing schemes (The Lancet, 2022).

## APPENDIX C ECONOMIC DEVASTATION

As reported by Pierella Paci, Practice Manager and Equity Global Practice, World Bank, COVID-19 has taken a major toll on livelihoods, food security, and human capital in Sub-Saharan Africa. Further, the COVID-19 pandemic has caused widespread job losses (and female workers are among the population most affected). As countries restricted mobility, economic activity was disrupted and despite evidence of recovery employment remains below pre-pandemic levels. Beyond reduction in employment earning from other sources also fell dramatically (Paci, 2021). For instance:

In Kenya, Nigeria, and Ethiopia almost 1 in 3 household enterprises closed at the outset of the pandemic. In Gabon, South Sudan, Malawi, Uganda, Mali, Madagascar, and Zambia, revenue declined for more than 70 per cent of household businesses (Figure 2). Agricultural income also fell due to declines in farm prices, the closure of weekly markets, and restricted transportation. The global economic impact of the pandemic has meant that remittance flows have also fallen, with affected countries including Mali, Nigeria, Uganda, Burkina Faso, Malawi, Zambia, and Kenya. (Paci, 2021).

The COVID-19 pandemic has also substantially increased food insecurity. In January 2021, it was reported that compared to 2020 “food insecurity tripled in Nigeria, Ethiopia, Uganda, and Malawi. In Malawi, Nigeria, Kenya, South Africa, and Sierra Leone, more than half of households ran out of food in the thirty days prior to the survey, with urban households being disproportionately affected. School closures across all countries aggravated the problem by limiting children’s access to school feeding programmes.” (Paci, 2021).

Furthermore, the COVID-19 pandemic severely affected access to education. In most countries, children living in rural or poor households were more affected by school closures due to more limited access to internet, affecting the accumulation of human capital of the worst off and hindering their intergenerational economic mobility. For reference “only 3 in 10 in Mali and less than 2 in 10 in Malawi” engaged in learning activities during school closures. (Paci, 2021).

As been stated by Akinwunmi Adesina, president of the African Development Bank, “we should not minimise the impact of Covid-19 ON African economies.” In 2020, 30 million Africans were plunged into poverty because of COVID-19 (and this was despite decades of progress in Africa’s fight against poverty). In all, on one estimate, “African nations need \$424 billion this year to help them cope with the devastation caused by the coronavirus pandemic” (Hepker & Mackenzie).

As observed by UNESCO:

“The COVID-19 pandemic has triggered a severe economic contraction in many developing countries, especially those in Africa. It has exposed and exacerbated inequalities between countries just as it has within countries, leaving the most vulnerable groups further behind. To effectively counter the consequences of the pandemic, further international and national efforts are needed, including coordinated policy actions and reforms, creating an enabling policy environment” (UNESCO, 2021).

## Learning from Zambian Experiences in Economic Policy Making

Allan Whitworth

[alan.whitworth@fcdo.gov.uk](mailto:alan.whitworth@fcdo.gov.uk)

Senior Economic Adviser Foreign, Commonwealth & Development Office

### Abstract

The change of political regimes has been associated with reversals many economic policies pursued by preceding governments in Zambia. In each of the events, the effectiveness of the new policies has been different. This article attempts to document the impact of new policy measures as implemented during the United National Independence Party (UNIP), the Movement for Multiparty Democracy (MMD) and the Patriotic Front (PF) administrations. The comparative analysis across regimes indicates that the economy deteriorated under the PF mainly because of mismanagement, which represents a failure to learn from past experiences.

## 1. Introduction

Zambia is the first African country to experience a peaceful and democratic transfer of power from a ruling party to an opposition political party through elections several times. This has happened three times – in 1991, 2011 and 2021. On each occasion the change of administration from one party to the other led to the reversal of many of the economic policies pursued by the previous administration. This represents a rare opportunity to analyse the effectiveness of such policies. It provides both Zambian policy makers and economists globally with valuable evidence on which policies do and do not work.

This paper attempts to draw out the main lessons from this experience. Since it is too early to assess the impact of policy measures introduced by the United Party for National Development (UPND) administration following the August 2021 elections, the paper focuses on the economic policies of the United National Independence Party (UNIP), the Movement for Multiparty Democracy (MMD) and the Patriotic Front (PF) administrations. It shows how economic mismanagement under the PF represents a failure to learn from past experiences, making Zambia a perfect illustration of George Santayana's famous 1905 warning that '*those who cannot remember the past are condemned to repeat it*' (Santayana, 2011).

Drawing on and updating earlier work, the paper shows how economic policies under UNIP had disastrous results, turning Zambia from a middle-income into a low-income country with some of the worst poverty and socio-economic indicators in Africa (Whitworth, 2015). The MMD administration reversed many economic policies from the UNIP era. Following a difficult structural adjustment period, economic performance improved considerably from the late 1990s. This is demonstrated in table 1. However, any suggestion that this was evidence of Zambia learning from its past mistakes was soon dispelled by the PF administration, which reverted to many UNIP policies. These had predictably damaging results, encapsulated by the Eurobond default in 2020. This was only 15 years after the Highly indebted Poor Countries (HIPC) initiative had written off most of Zambia's foreign debt. Under the PF, Zambia clearly 'repeated its past'.

Given how colourful and varied these experiences have been, the literature on the history of Zambian economic policy making is surprisingly thin. Martin (1972) gives us a definitive account of policy making in the early years of Independence and of how the state came to dominate the economy. Gulhati (1989) provides an overview of economic policy making and its impact under UNIP. Hill and McPherson (2004) are the most complete account of the early MMD economic policy making, while Craig (2000) is the best source on privatisation. The first attempt to span Zambia's entire history and to compare UNIP economic policies and their results with those of MMD and PF was Whitworth (2015). Barton (2016) provides a second fifty-year history, focused more narrowly on Zambia's relationship with foreign capital and investment.

Recently, Zambia has reversed its policy direction again under the UPND administration. Following early reforms and the start of debt restructuring negotiations with its foreign



creditors, Zambia's first IMF programme for over a decade was approved in August 2022. This is aimed at tackling the acute debt and fiscal crises inherited from PF (IMF, 2022b). It is unclear how well the general public understands the causes and extent of these crises and why painful policy reforms are required. To try and ensure Zambia does not 'repeat its past' yet again, this paper highlights key economic lessons from the UNIP era and shows how, by repeating UNIP's mistakes, PF created huge challenges for the UPND government. It summarises more detailed analysis of the UNIP and MMD eras in Whitworth (2015) and extends the analysis to cover the complete PF era. The rest of the paper is organized as follows. We look at economic policy making under UNIP between 1964 and 1991 in section 2. We then look at economic policy making under the MMD between 1991 and 2011 and under the PF between 2011 and 2021 in section 3 and 4 respectively. We finally conclude the paper in section 5.

## 2. United National Independence Party , 1964 - 1991

Zambia's first decade as an independent country coincided with a global copper boom. Both world copper prices and domestic production was at record highs. The tax regime was highly effective. It transferred much of the mines' profits to the UNIP administration. The UNIP administration received a massive 15% to 19% of Gross Domestic Product (GDP) in mining tax between 1965 and 1970. This proved both a blessing and a curse.

The UNIP administration had huge resources at its disposal and little external debt. It was consequently able to undertake a major infrastructure investment programme. Much of today's health and education infrastructure, road network and government buildings (and the Kafue Gorge Upper hydroelectric scheme) were built in the 1960s and early 1970s. However, investment was not only confined to public infrastructure and activities normally associated with government. The UNIP administration also used its plentiful resources to finance an extraordinary expansion in the role of the state across the economy. This took three distinct forms. Firstly, following Southern Rhodesia's Unilateral Declaration of Independence in 1965 and the international sanctions that followed thereafter against the Rhodesian government, the administration invested in the TAZAMA pipeline, Indeni refinery and the Tanzania Zambia Railway (TAZARA). This was in order to reduce economic dependence on Southern Rhodesia.

Secondly, in a bid to industrialise the economy, the administration invested in numerous *new* ventures (Nitrogen Chemicals of Zambia, Kafue Textiles, among several others) through the Industrial Development Corporation (Indeco). Indeco became 'the main channel for applying government funds to develop industry by means of loans, share capital and the provision of factory buildings' (Martin, 1972). It was also a vehicle for 'Zambianisation' of the labour force, which had predominantly been expatriate. Thirdly, the administration acquired majority stakes in *existing* large-scale enterprises, starting with non-mining firms in 1968 and followed by the mines in 1969. By the late 1970s the role of the state in the economy was probably larger in Zambia than in any other non-communist country.

The expansion of the state into industrial and commercial activity was one of the most remarkable economic developments in postcolonial Africa. In just a decade, Zambia had gone from a predominantly private economy with very weak public institutions and fewer than 100 university graduates to a country where the state dominated not just the 'commanding heights' of the economy but virtually all medium-scale and large-scale businesses.

This process proved economically disastrous, with consequences that continue to be felt to this day, for two reasons – viability and mismanagement. Many of the investments in the first two categories were *economically unviable*. This was unavoidable with TAZAMA, Indeni and TAZARA, where the administration was forced to invest by international sanctions against Southern Rhodesia. However, once Zimbabwe became independent in 1980 and normal trade to the south resumed, they became ‘white elephants. Indeni’s small ageing plant could not compete with modern refineries. Furthermore, distributing fuel throughout a territory as large as Zambia from a single point (Indeni) was more costly than direct import of finished products because of high internal transport costs. There was reluctance to close TAZAMA and Indeni (with the loss of 600 jobs). Successive administrations protected its monopoly with import duty on finished products. As a result, Zambia has consistently had among the highest fuel costs in the world (Whitworth, 2014).

There were problems with TAZARA. It is questionable whether there was enough freight for one railway line to operate profitably once copper production started declining in 1977, let alone two lines. By the time copper production rebounded in 2003, the mines had little need for railways because the trunk road network had been repaired and the trucking industry was offering highly competitive freight rates between Zambia and South Africa. So TAZARA’s construction meant that neither it nor Zambia Railways was profitable, leading to higher unit costs and the deterioration of both systems (Raballand & Whitworth, 2014).

With Indeco, industries were set up for their own sake, almost regardless of cost (Martin, 1972). With Zambia’s tiny internal market and poor transport links, many Indeco investments were economically not viable. While financial profitability could be secured through tariff and other protection measures on imports, this was at considerable cost to consumers (higher prices) and to competitiveness. Consequently, once protection was removed many Indeco projects were doomed. Also, the industrial sector was highly dependent on imported intermediate goods. When copper revenues collapsed from 1974, leading to a balance of payments deficit, even viable projects had difficulty accessing foreign exchange. This seriously disrupted operations. As a result, Indeco was incurring sizeable losses by the late 1970s (Gulhati, 1989).

Viability was not an issue with nationalised enterprises. These were mostly profitable when acquired. Instead, the problem was political interference and mismanagement. President Kaunda expected parastatals to be run at a profit, but also to ‘*keep the national interest in mind at all times*. There was pressure to rapidly ‘Zambianise’ management, to create jobs and to avoid price increases. Along with problems in accessing foreign exchange, this contributed to a steep reduction in profitability across all parastatal companies from the 1970s.

The impact on the macro economy was greatest in the mining sector. The sector needs continuous maintenance and investment just to maintain, let alone increase, output because ore grades decline, and mineral deposits become less accessible (more costly) at greater depths. However, the nationalisation of the mines in 1969, and particularly the sudden cancellation of the management contracts of Anglo American (AA) and Roan Selection Trust (RST) (the two main mining groups) in 1973, discouraged further investment by the former owners (Sardanis, 2003). Henceforth, investment needed to come from government. The UNIP administration fiscal problems from 1975 made this increasingly difficult and new investment soon dried up.

In 1982 AA and RST were merged to form one giant conglomerate, Zambia Consolidated Copper Mines (ZCCM). Before long ZCCM became a '*state within a state*' and management '*yielded to the whims of the government and ...transformed ZCCM from a respectable mining group into a mindless conglomerate encompassing all sorts of irrelevant businesses*' such as maize milling, dry cleaning, commuter trains, farming, tractor assembly and tourist resorts (Sardanis, 2003).

The combination of falling copper prices, lack of investment and poor management meant that copper production and profitability fell continuously for 30 years. In the two years 1997 and 1998 alone, ZCCM's losses totalled some US\$650 million. This was almost US\$1 million per day. The sector went from being the main source of revenue after Independence to being a large drain on the budget.

While healthy mining tax revenue meant that the post independence infrastructure investments were affordable initially, they and other expenditure policies adopted during the 1960s and early 1970s built up severe fiscal problems for the future. The infrastructure programme gave rise to increased recurrent expenditure commitments. Expanded education and health facilities required more teachers and health workers. New roads needed to be maintained and so on. The size of the public service increased sixfold between 1964 and 1974, accompanied by a significant increase in wage rates. Finally, to try and insulate urban consumers from price rises, the UNIP administration introduced subsidies for such items as maize, fertiliser, and fuel. These cost an extraordinary 6.7% of GDP by 1980.

The combined result of the above was an enormous increase in *recurrent* expenditure from 18.8% of GDP during 1965–1970 to 26.5% during 1971–1975 and reaching 35% in 1975. This level of expenditure would have been unsustainable even with mining tax at 15-19% of GDP and no capital investment. However, with the end of the copper boom in 1974, compounded by changes in the mining tax regime, mining tax receipts collapsed. They decreased from 18% of GDP in 1974 to zero from 1977. The budget *surplus* of 3.4% of GDP in 1974 became a *deficit* of 21.5% in 1975 (McPherson, 2004).

Substantial expenditure cuts between 1975 and 1978 reduced the deficit but, with revenue continuing to decline, they were not sufficient. The administration gambled that copper prices would rebound before long and that in the meantime it could finance the deficits by borrowing. This proved a disastrous miscalculation. Instead of rebounding copper prices continued falling until 2002. The interest payments on the new loans added to expenditure. To make matters worse, from the late 1970s, the administration had to bail out parastatal company losses resulting from the expansion of the state into commercial operations.

Consequently, Zambia experienced a 30-year fiscal crisis, with some of the highest fiscal deficits ever seen anywhere over an extended period. The deficit averaged 14.5% of GDP between 1975 and 1979, 13.8% in the 1980s, 6.0% in the 1990s and was not brought under control until 2004.

The deficits were financed mainly through borrowing. This created a fiscal crisis that led in turn to a debt crisis. The external debt stock doubled from about US\$800 million in 1970 to US\$1.6 billion in 1975. It doubled again to US\$3.3 billion in 1980, by which time it exceeded 100% of GDP and was already unsustainable. By 1990 it had reached US\$7.2 billion, and Zambia was effectively bankrupt with the highest public debt *per capita* in the world. The share of interest payments in total expenditure rose from 5% in 1975 to 31% in 1985. For 30

years, government expenditure was largely restricted to interest payments, salaries, parastatal company bailouts and (until 1991) subsidies. Recurrent government funding for textbooks, drugs, road maintenance, etc and new investment were crowded out. As a result, much of the post-independence investment in social infrastructure had severely deteriorated by the 1990s. Basic social services virtually collapsed, particularly in rural areas.

Private sector investment was deterred by nationalisation and macro-economic mismanagement (Barton, 2016). GDP contracted by an average of 2.6% per capita per annum between 1975 and 1991 (see Table 1). This was one of the steepest economic declines ever seen anywhere in peace time. Poverty increased substantially as Zambia went from a middle income to least developed country status.

Table 1 **Zambian Economic Growth, 1965 - 2020**

	Average Real GDP Growth, %	Average Real GDP Growth <i>Per Capita</i> , %
<b>UNIP</b>		
1965-1974	3.9	0.6
1975-1991	0.6	-2.6
<b>MMD</b>		
1992-1998	1.3	-1.3
1999-2011	6.8	4.0
<b>PF</b>		
2012-2020	3.4	0.3

Source: World Development Indicators, World Bank 2022

There is much to be learnt from the UNIP administration's disastrous economic management. We can particularly highlight four important lessons that recent history shows are not yet widely understood. These are firstly, that government must 'live within its means' and ensure expenditure commitments are sustainable, thus maintaining fiscal discipline. Secondly that government should only invest in projects which are economically viable. Thirdly that government should stick to providing conventional public services and leave business to the private sector and fourthly that subsidies and price controls are an ineffective way of helping the poor.

### 3. Movement for Multiparty Democracy, 1991 – 2011

How have the subsequent administrations learnt these lessons? We examine this in the subsequent sections of the paper with respect to the MMD and PF administrations.

The 1991 elections brought the MMD administration to power with a strong mandate for economic reform. The new administration agreed to a comprehensive reform programme with the International Monetary Fund (IMF) and World Bank. This was aimed at stabilising and restructuring the economy and stimulating real growth. In order to 'live within its means' it introduced new revenue measures, established tighter expenditure control, and abolished most subsidies. This process was helped by a resumption of foreign aid. The fiscal deficit (after grants) started to come down from 1995, averaging 4.9% of GDP between 1995 and 2000 (McPherson, 2004).

The MMD election manifesto contained a strong commitment to privatisation. It recognised the need to both stem the fiscal haemorrhage from loss-making parastatal companies and to attract local and foreign investment to enable viable companies to survive. The Zambian Privatisation Agency (ZPA) was created to convert parastatal companies from state to private

ownership. By 2000, 113 state enterprises out of the original portfolio of 144 had been privatised. Although 38 parastatals were liquidated, most survived (Craig, 2000). Given that most parastatal companies were previously losing money and faced a highly uncertain future, the World Bank considered Zambia's privatisation programme up to 1996 (before privatisation of the mines) as the 'most successful' in Africa (Campbell White & Bhatia, 1998). Many of Zambia's leading firms today are 'ZPA graduates.

Despite this evidence, many Zambians remain ambivalent about privatisation. Craig (2000) noted as early as 2000 the striking contrast between the positive view of the international community and the view held by Zambian civil society that the privatisation process was 'deeply flawed'. The latter partly reflects the highly visible hardship of workers who lost their jobs. Job losses would have almost certainly been larger without privatisation. The elimination of parastatal company losses facilitated increased expenditure on public services benefiting all Zambians. These benefits were much less visible. In the case of ZCCM, there was a widely held view that, with ZCCM haemorrhaging money and copper prices near their lowest real level in a century, the MMD administration was in a weak negotiating position. This forced it to offer tax and other concessions to close privatization deals. This resulted in the mines being sold to foreigners for well below their true value.

Barton challenges this view. He suggests that both the MMD administration and the public had completely unrealistic valuations of ZCCM assets because they overlooked two issues. They overlooked the depletion of the country's mining assets since 1973. This resulted from the under-investment, mismanagement, and excessive extraction of rents in the sector. Secondly, they did not appreciate just how risky Zambian mining looked to potential investors following the chaotic nationalisation process and subsequent ZCCM mismanagement. *'On top of a considerable capital investment, ZCCM would require substantial institutional / management reform before returning to profitability. Investors realised this would take time and be expensive'* (Barton, 2016, p.145).

While poorly understood by the public, the privatisation programme was a turning point in the transformation of the Zambian economy. New investment following privatisation led to rapid growth in such diverse areas as sugar, cotton, cement, dairy, livestock, maize milling, breweries, electricity transmission, trucking, construction, and hotels. The greatest impact was in mining where, despite a difficult privatisation process, substantial foreign investment triggered a rapid increase in copper production - well before copper prices started to recover in 2003. Meanwhile, the MMD administration was finally relieved of responsibility for bailing out parastatal company losses.

The above and other reforms finally produced a return to growth from 1999. This was reinforced from 2003 by a rapid rebound in copper prices, which encouraged further investment. Subsequently, Zambia experienced an unprecedented period of sustained real GDP growth - averaging 4.0% *per capita* per annum between 1999 and 2011 and regained Lower Middle-Income status. Booming copper exports eliminated the balance of payments deficit and replenished foreign exchange reserves.

There was also a marked fiscal turnaround from 2004. The country benefitted substantially from joining the Heavily Indebted Poor Country (HIPC) debt relief scheme in 2000. 'Interim' debt relief cut interest payments on foreign debt from 5% of GDP in 1998 to 1.3% in 2002. Along with the above fiscal measures, the end of parastatal company bailouts, and GDP growth (which increased the denominator), halved the fiscal deficit (after grants) to 2.9% of GDP in 2004. This was the lowest level in 30 years. It was sustained at a similar level through

2012, assisted by the (modest) return of mining tax. The establishment of fiscal discipline helped Zambia reach the HIPC 'completion point'. Consequently, external debt was cut from US\$6.2 billion in 2005 (86% of GDP) to just US\$962 million (9%) in 2006. In per capita terms, Zambia received more debt relief than any other HIPC country, transforming the country's balance sheet overnight. Foreign interest payments fell to just 0.1% of GDP by 2007 (Whitworth, 2012).

The beneficial effects of fiscal discipline and debt relief were immense. The combined domestic and foreign interest payments fell from 4.1% of GDP in 2002 to 1.2% in 2011. Mineral tax revenues resumed in 2005. They reached 1.9% of GDP in 2010. With GDP growing by some 75% over the period, the MMD administration finally had 'fiscal space' to enable it to start tackling the huge backlog of expenditure on public services. By the 2011 elections, good progress had been made in restoring the paved road network and expenditure on health and education had increased substantially. Poverty had also been reduced, though mainly confined to urban areas.

The dramatic turnaround in economic performance demonstrated the importance of government living within its means and leaving business to others. The MMD administration had clearly learned those lessons. It was less clear how well it had absorbed the other lessons above. While most subsidies had been removed in the early 1990s, as the fiscal crisis eased, the administration reintroduced subsidies for fertiliser and Food Reserve Agency maize purchases. These, together, cost 2.8% of GDP in 2011. Meanwhile, its reluctance to allow the electricity utility, Zambia Electricity Supply Corporation (ZESCO), to increase electricity tariffs (often the lowest in Africa) meant that there was little investment in increasing electricity generation capacity for three decades from 1977. This has resulted in the load shedding the country has experienced continuously from 2007 until 2022, following the rebound in mining demand (Whitworth, 2014).

The MMD administration also showed little interest in economic viability. Most of the fiscal space allocated for investment in the late 2000s went to paving roads, despite their poor economics (see below). The Mingo – Kalabo road launched in 2010 was, at a cost of US\$287 million for just 34 kilometres. This is one of the most expensive rural roads per kilometre in the world (Raballand & Whitworth, 2014 and Brautigam, 2021) and the first of a number of white elephants built over the next decade.

Notwithstanding these caveats, the MMD administration was arguably one of Africa's most successful economic reformers. While the reforms caused considerable pain initially, boosted by the second copper boom from 2003 they laid the groundwork for the establishment of fiscal discipline and macroeconomic stability from the mid-2000s and the longest unbroken period of growth in Zambia's history.

#### **4. Patriotic Front, 2011 - 2021**

The PF administration inherited an exceptionally healthy macroeconomy, with rapid growth, a thriving mining sector, a low fiscal deficit, little debt, a single digit inflation rate, a balance of payments surplus, healthy reserves and a stable exchange rate. Mining taxes were back (albeit well below the level of the 1960s). The administration had real fiscal space. Moreover, public expenditure was no longer limited to tax revenue. Following debt relief, the administration had an unusually healthy balance sheet and, with a good outlook for copper,

was in a strong position to resume borrowing. China was keen to finance infrastructure investment. Following Zambia's first sovereign credit rating in 2011, a completely new opportunity presented itself - issuing sovereign bonds. In short, Zambia finally had a solid platform for investment and growth and a real opportunity to rebuild public infrastructure and services and to reduce poverty.

This opportunity was wasted by the PF administration through reckless economic mismanagement. This can be seen by examining the performance of the PF administration against the four lessons learnt from the experiences of the UNIP administration.

### *Fiscal Discipline*

Seemingly oblivious to its contribution to growth under the MMD administration, the PF administration showed little interest in fiscal discipline. Instead, it took advantage of the growing fiscal space and the unprecedented opportunities for borrowing to go on a decade-long 'spending spree'.

The PF administration launched the 'Link Zambia 8000' Programme in 2012. The aim was to upgrade 8,200 kilometres of roads to bitumen standard at an estimated cost of US\$5.3 billion over five years. This was equivalent to 3-4% of GDP annually (<https://www.africanreview.com/construction-a-mining/roads/zambia-launches-link-zambia-8000-project>). Thereafter, in 2013, the administration announced a huge 45% increase in the public service wage bill. As well as retaining subsidies on fertiliser and maize introduced by the MMD administration. The PF administration reintroduced subsidies on fuel. This cost US\$145 million (0.6% of GDP) in 2012 and US\$220 million (1.1% of GDP) in 2013.

On the other hand, there was little change in revenue. The inevitable result of such expenditure increases was that the fiscal deficit (after grants), which was in the range 0% - 3% of GDP between 2004 and 2012, jumped to 6.2% of GDP in 2013. Despite occasional attempts to rein it in, the deficit continued to grow and averaged 8.3% of GDP between 2013 and 2021 (IMF, 2022a). Financing such large deficits required substantially increased (mainly domestic) borrowing.

The financing for roads and other infrastructure investment came from two main external sources, China (Brautigam, 2021) and Eurobonds. Whereas much of the UNIP administration's borrowing had been on concessional terms, the PF administration borrowing was mainly commercial with higher interest rates. As more loans were signed, interest costs increased – further adding to the deficit. The first Eurobond in 2012 was marketed as finance for infrastructure investment. However, by the third Eurobond in 2015, the PF administration was mainly borrowing to finance fiscal deficits.

The pace at which debt was accumulated was extraordinary. The administration inherited just US\$3.6 billion of total public sector debt in 2011 (20.6% of GDP) (IMF, 2015). By June 2021 it had reached US\$26.4 billion (115% of GDP) including arrears - of which US\$16.3 billion was external and US\$10.1 billion local debt (Ministry of Finance, 2021). This excludes sovereign guarantees of parastatal company loans. These exceeded US\$1.5 billion. Both a 2017 IMF warning that Zambia was at high risk of debt distress and the downgrading of its sovereign credit ratings by rating agencies were ignored, as borrowing continued unabated.

Interest costs increased along with the debt stock. These increased from 1.2% of GDP in 2011 to 6.3% in 2021 (IMF, 2022b). As in the UNIP administration era, interest payments both added to the fiscal deficit and crowded out expenditure on basic public services. Inevitably, deficits and debt service eventually became unsustainable and in 2020, just 15 years after HIPC had wiped out most of its foreign debt, Zambia became the first African country (and first HIPC beneficiary) to default on a Eurobond.

### *Economic Viability*

The scale at which the PF administration borrowed would have led to a debt crisis even if all the money was well spent. To compound matters, much of it was wasted on non-viable projects. Apart from the Kafue Gorge Lower hydroelectric scheme (which the International Finance Corporation offered to finance) and the Kazungulu Bridge, no major PF infrastructure investments were independently appraised and demonstrated to be viable.

With Link Zambia 8000, which accounted for much of the borrowing, it was simply taken for granted that paving roads was a 'good thing'. In reality, few paving projects were viable. To contribute to growth, the value of the *benefits* of paving a road (e.g., savings in time, fuel, and maintenance) must exceed the *costs* over time – after discounting. It is globally accepted that traffic of at least 150 vehicles a day is required to make paving viable. Below this threshold rehabilitating and maintaining *gravel* roads is more economic. Being such a large and sparsely populated country, few non-urban roads in Zambia carried 150 vehicles a day - and most of these had already been repaired by the MMD administration. By ignoring viability, Link Zambia 8000, and other uneconomic projects such as airport terminals added enormously to debt - without producing the growth needed to pay for it.

### *Role of the State in the Economy*

Despite the evidence from earlier experiences that the involvement of the UNIP administration in economic production had impoverished the country and that privatisation under the MMD administration contributed significantly to the economic turnaround, the PF administration rejected privatisation. Clearly reflecting public opinion (Cheeseman et al, 2014) It sought a greater role for the state in the economy, reminiscent of the UNIP era.

Its first major policy reform was to cancel the 2010 privatisation of Zambia Telecommunications Company Ltd (Zamtel) to Libya's sovereign wealth fund on the grounds of alleged corruption. This had widespread public support, reflecting the negative view of privatisation noted above. Although the process had lacked transparency, the sale proceeds of the Zamtel privatisation exceeded those of all Zambia's other privatisations combined. The US\$257 million paid by Libya probably also exceeded market value - since Gaddafi had a policy of over-bidding for privatised assets to buy political goodwill around Africa. Despite the sale proceeds and the subsequent Libyan investment that contributed to a marked turnaround in Zamtel's operational performance, Zambia became the only country to renationalise a telecommunications utility company. The subsequent company performance has been disappointing. Having been consistently profitable prior to renationalisation, according to the Minister of Technology and Science, in June 2022 Zamtel was insolvent with



debt exceeding US\$500 million. ( Zambia: Government not ready to recapitalize Zamtel-Mutati, lusakatimes.com)

This was followed by the unilateral cancellation in 2012 of a 20-year concession (signed in 2003) to operate Zambia Railways (ZR). As a result, the PF administration was once again responsible for servicing the Zamtel and ZR debt and for financing their losses. In 2014 the administration reincarnated the Industrial Development Corporation with a mandate to *'spearhead the Zambian Government's commercial investments agenda aimed at strengthening Zambia's industrial base and job creation'*, as well as becoming the state's investment holding company for the remaining parastatals (including ZCCM-IH, Zamtel, ZESCO, ZR). Its Board Chair was the President.

Given public attitudes towards the privatisation of ZCCM noted above, it was no surprise when the PF administration moved to reverse privatisation in mining sector too. In 2019 it attempted to liquidate Konkola Copper Mines on the grounds that Vedanta had failed to honour commitments made when it assumed ownership. In 2020 the administration acquired a 100% ownership of Mopani Copper Mines from Glencore in return for assuming a US\$1.5 billion debt owed to Glencore's parent company. In 2021 the administration re-launched Zambia Airways. This was despite the collapse of all three previous (one public, two private) Zambian national flag carriers and growing competition from foreign airlines.

Looking at past experiences, the above developments represent a step backwards. History shows that political involvement in business in Zambia has invariably meant mismanagement, wasted resources, financial losses, and higher fiscal deficits. The extra debts assumed aggravated the debt crisis.

### *Subsidies and Price Controls*

Despite the fiscal situation, subsidies increased significantly under the PF administration. As noted, the administration retained subsidies on fertiliser and maize introduced by the MMD administration. These increased to 3.5% of GDP in 2020 in the run up to the 2021 elections. Energy subsidies were particularly costly. Like the MMD administration, the PF administration resisted electricity tariff increases. When a prolonged drought from 2015 cut the hydroelectric generation capacity, greatly increasing load shedding, ZESCO was forced to start importing power. This cost over US\$250 million in 2015 and 2016. Since the price of imported power was much higher than ZESCO's tariffs, these were finally allowed to increase. However, the increase was not sufficient to cover the extra costs. As a result, ZESCO has incurred substantial financial losses since 2015 and accrued payment arrears to independent power producers - exceeding US\$300 million to Maamba Coal alone. Fuel subsidies also grew substantially. According to the Secretary to the Treasury, prior to cuts by the new UPND administration in December 2021:

*'Zambia's subsidy on fuel [was] about US\$67 million per month or US\$800 million per year and on electricity [was] over US\$40 million per month or US\$500 million per year'* (Observer 5/12/2021).

Two observations should be made. Firstly, subsidies on this scale are simply not affordable. They have contributed directly to the fiscal and debt crises and have crowded out expenditure on public services. Secondly, unlike public services, they are of little benefit to the poor. As the Minister of Finance has noted, fuel subsidies mainly benefit car owners; and only 30-40%

of Zambians (the wealthiest) have access to electricity. A World Bank study estimated that the richest 10% of households captured almost 90% of fuel subsidies in 2015 while the poorest 50% got just 1% (de la Fuente et al, 2017). Attempting to support the poor through energy subsidies is horribly wasteful. Zambia can therefore reduce both expenditure and poverty by ending subsidies and using some of the savings to make targeted payments to the genuinely poor.

## 5. Conclusion

It should be no surprise that reverting to UNIP era economic policies has produced similar results. As well as the fiscal and debt metrics discussed above, the severe deterioration in economic performance under the PF administration can be seen in indicators such as: Firstly, *GDP per capita growth* fell from an average of 4.0% between 1999 and 2011 to 0.3% between 2012 and 2020. Secondly, the *exchange rate* depreciated from ZKW 5 to the US Dollar in 2011 to ZKW 21 in 2020. Thirdly the *Inflation rate* was 6.0% in 2011 but 19.2% in 2020. Fourthly, previously profitable utilities such as ZESCO and ZAMTEL became loss-making and heavily indebted.

Expenditure on basic services has once again been crowded out by debt service. It is no surprise that '*Overall poverty is estimated to have consistently increased since 2015*' (Paul et al, 2021).

Zambia received more debt relief *per person* from HIPC than any other country. This was in return for undertaking to use the savings to help the poor and to manage the economy responsibly. Instead, HIPC's sponsors were double-crossed. This damaged Zambia's international reputation. While factors beyond its control (e.g., drought) compounded matters, the PF administration's economic mismanagement was some of the most irresponsible the world has ever seen. The economic decline under the PF was all the more tragic because Zambia had 'been there before'. Instead of learning from UNIP's mistakes (and MMD's successes), PF repeated them. Yet despite producing the same results second time around, it is still unclear how well lessons have been learned.

Having inherited a macroeconomy in good shape from MMD, PF bequeathed huge problems to UPND. There are encouraging signs (e.g., improved fiscal discipline, removal of fuel subsidies and an IMF programme) that the new administration has learned from history. However, unless substantial debt relief can be secured (again) the need to service the PF debt will tie its hands fiscally for years to come. This casts doubt on the realism of its job creation promises. To remove the prospect of Zambia 'repeating its past' yet again, it will be important for the UPND administration not only to implement reforms that reflect the above lessons but also to communicate them (and their results) effectively to the public – some of whom still see the UNIP era as a 'golden age'.

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