

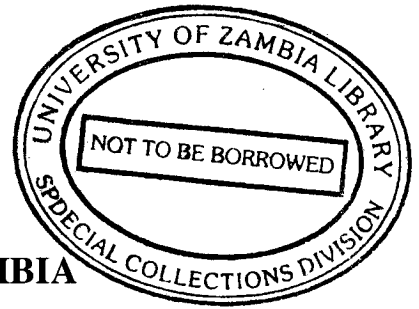
Abstract

Zambia is considered to be one of the of the best Foreign Direct Investment destinations in Africa, clearly evidenced in the mining sector which over the years has experienced formidable Direct Investment from diverse countries.

The aim of this paper is to discuss and ascertain why in spite of favourable investment, standards of labour conditions are seen to deteriorate, more especially under the foreign investors as employers.

The writer in trying to ascertain why the position regards the labour conditions is as it is, looked at the various sources of employment regulations in Zambia which include legislation and Government policy .From these the writer concluded, various factors contribute to the dismal situation regards conditions of labour under Foreign investors as employers, outstanding was the inadequacy of the Zambian Laws and the pertinent Government policies.

The writer on these findings makes recommendations aimed generally at providing greater protections for the employees' interests and also enhancing their welfare.



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**AN EVALUATION OF THE EFFICACY OF ZAMBIAN LABOUR
LAWS AND POLICIES IN RELATION TO FOREIGN INVESTORS
AS EMPLOYERS**

By

INUTU AKOLWA

(22034501)

A dissertation submitted to the School of Law of the University of Zambia in partial fulfilment of the requirement for the award of the Bachelor Degree of Laws (LLB)

School of Law
University of Zambia
Great East Road Campus
P.O.Box 32379
Lusaka


December , 2007

DECLARATION.

I, Inutu Akolwa of computer number 22034501, do hereby declare that the contents of this Directed Research Paper are entirely based upon my own findings and that I have not in any respect used any body else's work without acknowledging the same to be so.

I therefore bear the responsibility for the content, errors, defects and omissions therein.

5th Feb 2008
-----DATE---

Signature: -----

The University of Zambia


School of Law

I recommend that the obligatory essay prepared under my supervision by

Inutu Akolwa

Be accepted for examination .I have checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations governing obligatory essays.

7/02/08
Date


Mr F Mudenda (Supervisor)

Abstract

Zambia is considered to be one of the of the best Foreign Direct Investment destinations in Africa, clearly evidenced in the mining sector which over the years has experienced formidable Direct Investment from diverse countries.

The aim of this paper is to discuss and ascertain why in spite of favourable investment, standards of labour conditions are seen to deteriorate, more especially under the foreign investors as employers.

The writer in trying to ascertain why the position regards the labour conditions is as it is, looked at the various sources of employment regulations in Zambia which include legislation and Government policy .From these the writer concluded, various factors contribute to the dismal situation regards conditions of labour under Foreign investors as employers, outstanding was the inadequacy of the Zambian Laws and the pertinent Government policies.

The writer on these findings makes recommendations aimed generally at providing greater protections for the employees' interests and also enhancing their welfare.

DEDICATION

To mum and dad , Ilinanga Mubita - Akolwa and Libakengi Wamunyima Akolwa .

Thank you for being an inspiration to me and giving me your support.
Your insights were handy and your shared experiences invaluable.
I hope my work shall live up to your aspirations for me.

ACKNOWLEDGEMENTS

I would firstly like to give thanks to my heavenly father for the many blessings he has bestowed upon me ,his continued guidance and for allowing me to come this far by his Grace

My profound gratitude to my supervisor Mr Fredrick Mudenda , for giving direction to my work and for prodding us on.

A very special thank you to my sisters Akatwala and Sanana and my brother in law Greg. Thank you for the material help, rewards are in heaven!

To my brothers , thank you for your moral support. Muletambo that mountain of newspapers went a long way!

Uncle George your typing was greatly appreciated, Aunty Pauline thank you for enabling me to find all the information I needed, my God richly bless you.

Mr Simeon Mtambo National Assembly and Mr Vincent Lengwe MUZ ; thank you for taking time off your busy schedules to give me the information I needed.

My classmates Muyunza , Mutale , Mweshi , Walubita , Lungisani, Sandra and Luyando you guys have contributed in various ways .May God bless your future endeavours.

Last , but not the least thank you Mr Chisuta for your efficiency and cheerfulness , your input has had a significant effect on the final product.

ACTS USED

1. The Industrial and Labour Relations Act. Chapter 269 of the Laws of Zambia
2. Mines and Minerals Act, Chapter 213 of the Laws of Zambia
3. The Employment Act. Chapter 268 of the Laws of Zambia
4. Minimum Wages and Conditions of Employment Act. Chapter 276 of the Laws of Zambia
5. The Constitution. Chapter 1 of the Laws of Zambia

INTERNATIONAL INSTRUMENTS

- ILO Conventions 26 ,95 and 131

LIST OF ACRONYMS

1. MUZ Mineworkers Union of Zambia
2. NFCA Non Ferrous Company Africa
3. NUMAUW National Union of Mining and Allied Workers
4. ZCCM Zambia Consolidated Copper Mines
5. KCM Konkola Copper Mines
6. FDI Foreign Direct Investment

TABLE OF CONTENTS

Submission.....	(i)
Declaration.....	(ii)
Approval.....	(iii)
Abstract.....	(iv)
Dedication.....	(v)
Acknowledgements.....	(vi)
Table of Contents.....	(vii)
Brief Introduction.....	1

CHAPTER ONE

1.0	Introduction	6
1.1	General Discussion of Conditions of Service Pre Privatisation.....	8
1.2	General Discussion of Conditions of Service Post Privatisation.....	10
1.3	Conclusion.....	17

CHAPTER TWO

2.0	Introduction.....	19
-----	-------------------	----

2.1	International Labour Conventions.....	19
2.2	An Overview of Zambias' Labour and Employment Policy.....	21
2.3	The Industrial and Labour Relations Act.....	23
2.4	Mines and Minerals Act.....	27
2.5	The Employment Act.....	30
2.6	The Minimum Wages and Conditions of Employment Act.....	33
2.7	Conclusion.....	35

CHAPTER THREE

3.0	Introduction.....	37
3.1	Case studies of Konkola Copper Mines and Chambeshi NFC Africa Mining in regards of observation of labour regulations.....	37
3.2	Conclusion.....	48

CHAPTER FOUR

4.0	Introduction.....	49
4.1	Conclusion.....	50
4.2	Recommendations.....	52

Bibliography.....	57
Reports.....	58
Newspapers.....	58

BRIEF INTRODUCTION

PROBLEM STATEMENT

Over the last 10 years Zambia has experienced a considerable amount of Foreign Direct Investment more especially in the mining sector ;this in turn has created lot of job opportunities for the local Zambian people.Different expectations about who should get what benefits from the flourishing mining ventures are causing serious tensions in the country .In spite of positive economic developments it is noteworthy that in the economic relationships created between the foreign investors as employers and the locals as employees ,the Zambian employees stand at a loss and the condition are seen to worsen with the passage of time.

This dismal situation in which labour conditions are deteriorating has been attributed to various things ; fault in some instances is directed at the foreign investors in their capacity a employers where it has been established that many investors are not aware of the labour laws , therefore engaging in acts of casualization and generally not observing industrial laws ; blame furthermore has been laid on the foreign investors in instances where they have flagrantly flouted the labour law ;and finally blame has been laid on the Zambian Government itself for having inadequate policies pertaining to issues of labour in relation to Foreign Direct Investment.

Study Purpose

This research aims to investigate the root cause of the deteriorating labour conditions in the mining sector .This research shall evaluate various provisions of the law pertaining to labour in Zambia and other pertinent laws in order to determine the effects of non compliance , furthermore looking at the policies the Government has set in order to protect the employee and finally making recommendations.

Study Objectives

General Objective

To establish the cause of the deteriorating labour standards in the mining sector and recommend appropriate remedial measures.

Specific Objectives

1. To discuss and compare labour conditions in the mining sector pre privatization and entrance of Foreign Direct Investment with post privatization conditions to date.

2. To find out if the employers are conversant with the Zambian labour laws, other pertinent labour laws and Government policy pertaining to safeguarding the employees interests.
3. To evaluate the efficacy of the various provisions of the Zambian laws pertaining to labour conditions.
4. To evaluate the efficacy of Government policy pertaining to labour conditions in the mining sector with the entrance of Foreign Direct Investment.
5. To identify any proposed or on going remedial measures in place by Government and the relevant institutions.

Justification

The economic liberalization of Zambia has brought about a steady rise of employment despite an initial drop. Copper prices have stabilized at a relatively high levels; all these being positive economic indicators .One would reasonably expect conditions of labour to also improve, however the reality on the ground is that there has been a steady decline in the conditions of labour in the mining sector .Therefore, it is cardinal and in the interest of the nation at large to find out to what these deteriorating condition of labour are attributable and what remedial measures can be taken.

Specific Research Questions

1. What laws, policies and programmes (eg sensitizing employers of labour laws) are in place or have been proposed, intended to safeguard the interests of the Zambian employees.
2. What is casualization and what has its effect been on the Zambian employees?
3. What was the purpose of Development Agreements and how useful are they now?
4. What is the position of the labour unions in the mining sector; do they provide a mean of protecting the employees conditions employment?

Methodology

This research shall be qualitative thus involving desk research, in examining the mechanisms put in place to safeguard the rights and privileges of workers. Relevant statutes, parliamentary reports and secondary materials found in libraries shall be used.

This shall be supplemented with interviews with employees of the mining sector, labour officers and policy makers.

Chapter 1. This shall give an introduction of the topic furthermore giving a background of conditions of service pre privatization and post privatization.

Chapter 2.This shall look at the Laws, Government policy and programmes in place, in relation to labour conditions in the mining sector.

Chapter 3. An evaluation of the efficacy of the Laws, Government Policy and Programmes in relation to conditions of labour by means of case study with well established foreign controlled mining companies.

Chapter 4.Conclusion and Recommendations.

Chapter 1

1.0Background

The Nationalisation of the Zambian economy was commenced in 1969 .In this process the major means of production would be placed in the hands of the state to be run on behalf of the people and for their benefit.

ZCCM (Zambia Consolidated Copper Mines) was seen as a reflection of the states' development philosophy and supplied amenities much wider in scope than those offered during the colonial period¹ and one can confidently add even wider than those offered by the best employers amongst the foreign investors in the mining sector today.

The coming of the investors has seen the production and profit motive overriding the ZCCM model of labour conditions .This model promulgated stringent observation and application of the Zambian labour law² ,ZCCM having Zambians as Human Resource Managers for a start, endeavoured to follow and apply the labour laws to the letter. The managers worked in partnership with local labour to ensure that the labour laws were applied evenly and justly.³ However the coming of the investors meant that most of the

¹ Fraser and Lungu J.2007 For whom the windfalls.Winner and Losers in the privatisation of Zambia's Copper Mines.page8

² Interview with a miner Mr K Dimbwe Human Resources Management initially employed by ZCCM pre privatisation and employed by a foreign mining company post privatisation.

³ Ibid

top decision making management positions would be a preserve of their kith and kin whose core objective basically would be making profits as opposed to safeguarding the employees' interest⁴ .

The Zambian labour laws have in some instance been perceived as being to the detriment of the local employees, the rise in casualisation has been ,amongst other things been seen as a concerted effort by the foreign employers to avoid being bound by the Zambian labour laws which offer great benefits to those who are under permanent contracts of employment ,observing of such laws would come as a cost to the foreign employers⁵ As labour conditions deteriorate in the new companies feelings of nostalgia on the Copperbelt for the days of ZCCM rise. To what is the drop in the standards of labour in the mining sector attributable?

Over the last ten years Zambia has experienced a considerable amount of foreign direct investment more especially in the mining sector :this in turn has created a lot of job opportunities for the local Zambian people .Different expectations about who should get what benefits from the flourishing mining ventures are causing serious tensions in the country. In spite of positive economic growth it is noteworthy that in the economic relationships created between the foreign investors as employers and the locals as

⁴ Ibid

⁵ Research Economics;Standard Bank Zambia July 2006

employees: The Zambian employee stand at a loss and the conditions are seen to worsen more even with the passage of time.

This dismal situation in which labour conditions are deteriorating has been attributed to various things ;fault in some instances is directed at the foreign investors in their capacity as employers where it has been established that many investors are not aware of the labour laws, therefore engaging in acts of casualisation and generally not observing other industrial laws: blame furthermore has been laid on the foreign investors in instances where they have flagrantly flouted the labour laws: and finally blame has been laid on the Zambian Government itself for having inadequate policies pertaining to issues of labour in relation to foreign direct investment.

1.1 GENERAL DISCUSSION OF CONDITIONS OF SERVICE PRE PRIVATISATION

At the time of Zambia's attainment of independence from the British Government in 1964 all means of production in Northern Rhodesia including all mining activities were privately owned⁶

⁶ Chamber of Mines of Zambia. Survey of the Mining Industry 1995 to 2004, page 8

The trend that was sweeping through the newly independent African countries then, was the installation of Socialistic types of governments of which Zambia was no exception. The Nationalisation process commenced in 1969 and was finalized in 1975.⁷ The Zambian Mining industry was nationalized in 1972 forming new parastatal companies which were combined in 1982 to form Zambia Consolidated Copper Mines(ZCCM)⁸ .

The reason behind the nationalization of private companies was for the Government to have controlling shares in their corporate affairs as opposed to them remaining private companies as there could be no state interference. Kaunda's philosophy of 'Zambian Humanism' focused on developing the potential of the indigenous population.⁹

By nationalisation the government lay down the broad guidelines within which the parastatal would operate so as to ensure that government policy and national interests were safeguarded. Control could be exercised because government was a major shareholder of at least 51%.¹⁰

ZCCM was seen as a reflection of the states developmental philosophy and supplied amenities much wider in scope than those offered during the colonial period including free education for miners' children, alongside subsidized housing and food, electricity,

⁷ Ibid page 8

⁸ Fraser and lungu J.For whom the windfalls:winners and losers in the privatisation of Zambias copper mines.page 7

⁹ Ibid

¹⁰ Lilian Mushota.Business Association lecture notes.2007

water and transport. ZCCM literally operated a 'cradle to grave' welfare policy even subsidizing arrangements for the dead. This system was often referred to as 'paternalistic'.¹¹

1.2 GENERAL DISCUSSION OF CONDITIONS OF SERVICE POST

PRIVATISATION

The years following the nationalisation of the mining industry due to various reasons, metal production drastically dropped. Similarly the copper price trends were predominantly on the downward trend and the decline in production and price affected the economic performance of the country. In addition the mining assets deteriorated and required substantial capital investment which could not be managed within prevailing arrangements. As a result of this trend and the decline in general living standards of the Zambian people government made a decision to get back to a private sector driven economy and thus privatization was set in motion.¹²

Of the most cited impacts of privatization, deteriorating conditions of service fall under the top three¹³. Current workers of privatized companies and to an extent their families

¹¹ Fraser and Lungu. For Whom The Windfalls. page 8

¹² Survey of the Mining Industry 1995-2006. Chamber of mines of Zambia

¹³ www.zpa.org.zm/ppstudy. page 124 (last visited September 7, 2007)

often lamented the fact that despite the big profits the companies were now making their conditions of service have actually deteriorated in the following ways:¹⁴

- There are no longer social security schemes such as sponsoring the education of workers children or taking care of the health needs of the of the employees' families
- No more funeral grants
- Transport to and from the work place is no longer provided
- In about half the companies the salaries have not at all increased despite the bigger profits made. In the other half salaries have been marginally increased but enough to satisfy the basic needs of the employees families; and above all
- Job insecurities have been created as workers are now employed on short term and not on permanent and pensionable as was the case prior to privatization.

The Ministry of Labour and Social Security¹⁵ acknowledged the fall in the formal employment in the country, amongst the reasons being the economic reforms that had led to the laying off of excess labour in privatized firms. The advent of privatization saw the imposition of private sector discipline on ZCCM's operations ,such discipline entailed substantial labour reductions required to trim over staffed ZCCM Divisional offices to

¹⁴ ibid page 124

¹⁵ Committee on Economic Affairs and Labour,(2000)Parliamentary Report on the Review of the privatisation ZCCM LTD.page 16..

ensure financial viability in the future .The investors held that ZCCM was a high cost producer due to overstaffing and the spectre of massive redundancies was real.¹⁶

The greatest impact of privatization on the Copperbelt was seen to be the massive unemployment that it generated. In 1991 the employment level was at 56 582, from this moment the government declared the workforce bloated and as part of the process of preparing the mines for privatization, implemented a significant retrenchment programme.

At the sale of the first mine in 1997 employment levels had fallen to 31 000.After privatization the workforce was cut by another third almost immediately.¹⁷ Although jobs were reportedly lost with the advent of privatization, new jobs have been steadily created in the mining sector .Most of this labour is employed under contractual arrangements.¹⁸

The new investors have tended to either offer fixed term contracts with no job security and no pension or to subcontract much of the work out.¹⁹

Figures of those who were directly and permanently employed by the mines before the privatization of the mines stood at just over 30,000in 1998,in 2004 a few years after the privatization ,the total number of people employed in the privatized mines stood at the

¹⁶ ibid page 35

¹⁷ Fraser and Lungu.For whom the windfalls.page21

¹⁸ Chamber of mines of Zambia.survey of the mining industry 1995 to 2004.page 3

¹⁹ Fraser and Lungu.For whom the windfalls.page22

same figure, however the difference this time being most were now employed as contract labour.²⁰

In most companies, jobs such as 'development' (digging new seams) have been passed on to sub contracting firms. This has meant that many ex miners have been hired to work on the same sites as they previously worked but this time indirectly employed via sub contracting firms .As Mine Workers Union (MUZ) officials note,

"these workers are doing almost the same development job or the same mining jobs .But this time on fixed term contracts-three months. Without the Union. On a lower wage. No patient cover. No housing but they are given a housing allowance. Basically none of the fringe benefits that would have accrued.'²¹

The Parliamentary Report on the Review of the Privatisation of Zambia Consolidated Copper Mines limited 2000,regarding this situation recommended that the law on casual labourers (Employment Act Chapter 268 of the laws of Zambia)should be reviewed in view of the trend of many investors to engage casual employees rather than permanent ones. The Committee felt that the nature of the job should determine the permanence of employment, rather than the period for which one is employed, for instance seasonal jobs can be held by casual employees²² The Committee further recommended that the term of employment for casual workers should be three months and not six. Thereafter an

²⁰ Chamber of mines of Zambia,survey of the mining industry 1995 to 2004.page27

²¹ Fraser and Lungu.For whom the windfalls.page22

²² Parliamentary report,on the review of the Privatisation of ZCCM,2000.page 17

employer should not be allowed to re employ the same employee on casual basis, but if the employer wishes to re-engage such an employee this must be on permanent basis. However no follow up has been made regarding these recommendations²³ and from the happenings on the ground they have not been fulfilled.

Unions ideally should be able to play a key role in exposing abuses and pressuring for safer working places and better terms and conditions. However privatisation has also decimated the unions themselves affecting the total number of organized members and creating financial crisis for the institutions. The unions have faced significant difficulties in organizing workers employed by the subcontracting companies. Zambia's weak labour legislation makes organising workers particularly setting up union branches difficult. Unions can not simply go into a company and announce that they want to recruit. Rather before recognition can be considered the Union must identify a 'shadow committee of employees. However the experience of MUZ organizers is that once such a committee has been established, firms have simply sacked those staff that constitute the committee, sending a clear message to the workforce that unionism will not be tolerated. Even once a workplace is organized, taking collective action remains a significant challenge.²⁴

²³ Interview with Simeon Mutambo .Clerk of the Parliamentary Committee on Economic Affairs and labour.

²⁴ Fraser and Lungu. For whom the windfalls. pag24

The strength and relevance of trade unions has been greatly weakened and this has had an adverse effect on the conditions of service. As a union, Mineworkers Union of Zambia were conscious of the vital importance of Sales and Development Agreements entered into with the new owners of the mines in virtually all aspects of mining and processing activities, environmental control and pollution and of pertinence here employees welfare²⁵. The success of this programme of privatization would be measured on the strength and level of compliance by new owners with particular terms of the Sales and Development agreements. However since inception of the programme, the Union had tried to obtain or get insight into the provisions of either the Sales or Development agreements, but to no avail, reason being the listing rules governing ZCCM for shares traded at both the London and New York stock exchange prohibited the release of such information to outside institutions the Union included²⁶

This defeats the purpose of the existence of unions acting as 'watchdogs' on the ground to safeguard conditions of service of employees amongst other things. The Union greatly needs to have these documents for monitoring and evaluating whether the new investors would indeed be in compliance with both the Sales and Development agreements.

²⁵ *ibid*

²⁶ Parliamentary Report on the Review of the Privatisation of ZCCM.2000.page 38

Some investors have taken advantage of the fact that Zambian State Institutions are too weak to effectively regulate their behavior. The State itself seems to have developed political relationships with certain mining houses that means health and safety, labour, immigration, environmental regulations can be ignored with impunity causing significant resentment²⁷ Previously under the nationalized system management strived to achieve that which government had laid down in its policies.

The mines were to a greater extent owned by government and government is the one which set up the policies to run the mining companies. These policies were set up for the benefit of the country at large and the employees welfare. Setting up adverse policies would amount to government "shooting itself in the foot". The law in Zambia has set up minimum standards for the protection employees especially those not adequately covered by any mechanism of regulating wages and other terms and conditions of employment, this is provided for in The Minimum Wages and Conditions of Employment Act, Chapter 27 of the laws of Zambia, 2006. This Act generally applies to those areas which are outside the scope of collective bargaining or trade unions do not exist or technically where the bargaining unit has failed to agree on a particular issue, providing a guide in so far as what could constitute a minimum standard on any particular issue.

²⁷ Fraser and Lungu. For whom the windfalls. page 3

The Ministry of Labour and Social Security were to ensure that workers particularly those working in the newly privatized companies were not unduly exploited through payment of slave salaries. Routine inspections were therefore conducted by labour inspectors to ensure that the conditions of service were complied with per the collective agreements. However the Ministry could not afford to undertake such inspections due to erratic funding.²⁸ This has impacted adversely on the conditions of service post privatization, because the investors can flagrantly flout the labour law here with impunity.

1.3 CONCLUSION

From the discussions it can be inferred that generally there has been a drop in the conditions of service offered by employers post privatization in comparison to those offered pre privatization. This is clearly evidenced, with the coming to the end of the providing of amenities, such as of health services, medical services, education for employees children just to mention a few. Furthermore there has been a trend amongst the investors of engaging in rampant casualisation, which has led to the employees losing the many benefits that accrued to them when they were employed under permanent contracts. The weakening of the trade unions adds further to the deterioration of the conditions of service, as now the employees have no strong collective voice, to stand up

²⁸ Parliamentary Report on the Review of the Privatisation of ZCCM.2000.page16

against any infringements by the employers. Finally the weak Zambian State institutions have a negative impact on the conditions of service because unlike before where the state was its own regulator in the parastatals, the state now have to regulate the private investors, however they do not have the resources to do so effectively, and this has resulted in the investors breaking the labour laws and getting away with it.

CHAPTER TWO

2.0 Introduction

There are various sources of employment regulations in Zambia. Common law and judicial precedent remain an important source. The Constitution too has provisions promoting labour law in the Bill of Rights. Zambia furthermore, is a member of the ILO whose principle aim is the improvement and supervision of world labour conditions through the adoption of protective and promotional instruments. Additionally, the government has set up various policy frameworks having a bearing on labour conditions in the country. However, the most important dominant source arises in form of statutes enacted by the Zambian Legislature.

2.1 International Labour Conventions

The ILO engages the technique of quasi-legislation in its preparation and supervision of the implementation of international labour standards. ²⁹Zambia has ratified a good number of ILO conventions, in 1997 standing as the country with the highest number of ratifications in the Southern Africa Sub Region³⁰. However, ratification alone is only the

²⁹ Professor C Anyangwe – Applications of International Labour Organisation Standard in Zambia presentation 1997 Lusaka. p3

³⁰ Ibid page 8

³¹first step to implementation. Internalising or Domestication is necessary to bring about the actual application of these conventions. The purpose of internalizing an international norm is to make it binding in the municipal sphere on all individuals, bodies and organs of the state. The technique of transformation of an international norm into municipal legislation is a matter of domestic and not international law³².

Both the Minimum Wage fixing Machinery Convention No 26 which provides for the establishment of wage fixing machinery, and the Minimum Wage Fixing Convention, No 131, concerning minimum wage fixing with special reference to developing countries have been ratified by Zambia. While ILO minimum wage instruments do not cover the level of wages in themselves, they recognise and enshrine the principle of fair or equitable wages which of course are time and place specific.

In Zambia the Minimum Wages and conditions of service Act³³ set the minimum wages, comparing these to the JCTR Basic Needs Basket it is clearly evident the principle of fair or equitable wages is not practiced in line with the ILO convention³⁴.

³¹ ibid page 8

³² ibid

³³ Chapter 276 of the Laws of Zambia

³⁴ Professor Alfred Lungu (2006) For whom the Windfalls page 74 .Appendices

The protection of Wages Convention No. 95 which Zambia has also ratified³⁵ aims to secure full and prompt payment of wages in a manner which provides against abuse. Thus practices such as salary freezes or delays which seem quite common these days, would appear inconsistent with C95, especially if the freeze or delay period is unreasonable and is not covered by adequate safeguards to protect workers' living standards. The ILO standards play a limited role in Zambia as there has been no significant pressure by the Government to reform national standards that need to be in line with ILO norms. As Anyangwe aptly puts it "... it is time for Zambia to embark on a new labour law that does away with old rules as well as cumbersome, burdensome procedures, and consistently with ILO provide for a sound and fair labour practice regime ...",³⁶

2.2 An Overview of Zambia's Labour and Employment Policy

Some of the policy frameworks set by the government have a direct bearing on labour conditions in the country. Zambia's legal and policy framework on investment is multifaceted depending on different aspects of investment such as ³⁷

- The national investment objectives

³⁵ Professor C Anyangwe, 1997, Applications of ILO Standard in Zambia presentation.

³⁶ Professor C Anyangwe – Application of International Labour Organisation Standards in Zambia presentation, 1997 Lusaka, page 10

³⁷ Report of the Committee on Economic Affairs and Labour, Appointed 8th Nov, 2006

- Government responsibilities to foreign investors
- Government responsibilities to local investors
- Government responsibilities to workers and
- The responsibility of investors to the communities within their operations

Foreign and local investment is key contributors to a country's economic growth and development. This is so because investment usually brings with it capital, technology, and management know how that enhances access to new markets.

However, a prominent Lusaka businessman Andrew Sardanis in an interview after the launch of his book; "A Venture in Africa: The Challenges of African Business"³⁸ advises government to follow certain and reasonable criteria when giving such investors privileges. His fear is that in the near term, like colonial regimes of old, foreign investment will pursue its own goals on its own terms and remain a caste apart and like the colonial regimes, it will delay the progress of local enterprises. Sardanis warned that such problems would continue until nations formalized their ideas about how to move forward.

³⁸ Business Post Issue No. 3834-102. April 17, 2007. "Impose Profit Tax on Mines" Andrew Sardanis cited

Government's responsibility to workers is centred on ensuring that appropriate legal and policy framework is in place, to attract investment that is job intensive. This extends to putting in place laws that ensure job security of workers and protection of workers rights. The Government in collaboration with workers and employers representative organizations recently finalized consultations on revisions to be made to the current labour laws. The proposed amendments will address inadequacies identified in the current laws.³⁹

The approved National Employment and Labour Market Policy⁴⁰ is another instrument. Government is committed to use in fulfilling its obligations to the workers. The policy's main objective is the creation of adequate and quality jobs under conditions that ensure adequate income protection of workers and basic human rights. The government programmes on strengthening the legal and policy framework, including constitutional capacity building for effective policy management are all embodied in the 5th National Development Plan⁴¹

2.3 The Industrial and Labour Relations Act of Zambia.

³⁹ Ibid. page 13

⁴⁰ Ibid

⁴¹ Ibid

Legislation governing the rights and obligations of employers and employees is mainly contained in the Industrial and Labour Relations Act which contains the principles of employee involvement in certain aspects of the business. The Act, among other things

- Provides for the conduct of Industrial Relations
- Provides for the registration and administration of workers and employers organizations
- Registration and administration of Dispute settlement and consultative machinery

From their nature, Trade Unions constitute an important factor on any country's issues of industrial relations. Darlington Banda in his Guide to Employment Laws in Zambia makes a pertinent observation as to whether the weakness of the Zambian Union arises from inter-union rivalry coupled with an outdated union structure. As admitted earlier that Trade Unions are important and probably indispensable in a democratic country, the question immediately arises as to the capacity of the labour movement in an environment where the laws creating their frameworks are inadequate to sustain themselves and become relevant to the call of labour as well as the broader interest of the community⁴²

Previously, the policy of Government was of supporting one union for one industry.

However, the advent of political pluralism in 1990 was used as the major thrust to justify

⁴² The Trade Union Situation in Zambia. An Overview of the Law Practice and the way forward. A monogram By Darlington Amos Banda, 1997

the liberalization of the labour movement. The policy shift arose from a conception that Trade Unions had a duty to compete for membership and that therefore, the law should allow for the proliferation of Trade Unions within industries. This was seen to be consistent with the spirit of Liberalisation⁴³ Today the position of the Industrial and Labour Relations Act is that no union can be registered within an industry where another union exists unless it is shown that such a union is intended to represent a specific trade or profession. This has been broadly interpreted and led to a liberal registration of Trade Unions on the basis that they are distinctly professional and that existing Trade Unions can not sufficiently represent such members. This is illustrated in the decided case of

The Attorney General and the Labour Commissioner v Zulu,

Kamukwamba ,Mundia ,Munyangwa and others.⁴⁴ _ Where it was decided that the proposed Secondary School Teachers Union of Zambia comprised a specific category, different from other teachers , who are qualified to form a trade union within the meaning of the Industrial and Labour Relations Act , and that its members are not represented by any other Union in this matter the Zambia National Union of Teachers.

An inference can be drawn that such proliferation has brought about more harm than good. The pattern of one union in one industry was a key contributor to making the

⁴³ Ibid

⁴⁴ (1995) ZR 33 SC

Zambian Labour Movement one of the strongest in Africa at the time the pattern was being practiced⁴⁵ . Apart from strengthening Trade Unions, this pattern avoids the problem of multiple representation and its associated disadvantages of inter union conflict, multiplicity of negotiations within the industry as well as the problem of overlapping membership⁴⁶ Proliferation of unions further has the disadvantage of promoting industrial disharmony which has the ultimate effect of compromising trade unions in their collective bargaining engagements and other industrial relations obligations. The effect of the proliferation of unions on conditions of service in the mining sector today is that it adversely influences the effectiveness and organizational structure of the labour movement. Vincent Lengwe⁴⁷ laments that initially, there was only MUZ but with the advent of NUMAUW, MUZ has considerably been weakened financially and also its bargaining power. However, most of the employees of the major mining companies remain members of MUZ. On the other hand the employees of the major Chinese mining companies have the lowest possible wages satisfying the minimum standards as stipulated by the Minimum Wages and Conditions of Employment Act, which makes their existence redundant as these employees can in such a situation simply rely on the Minimum Wages and Conditions of Employment Act rather than join

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Interview with Vincent Lengwe. Research Officer – Mineworkers Union of Zambia

a union⁴⁸ The conditions for those under MUZ are considerably better⁴⁹ While it may be argued that each employer shall have their own criteria for bargaining with the union it is dealing with, therefore bringing about different packages as with the employees under the Chinese compared to other employers; it can be counter argued that if there was only one union representing all the employees, there would be one strong voice. This single union would have a standard which all employers would be obliged to strive to attain and as such, it would be considered a yard stick for setting the minimum standards.

2.4 Mines and Minerals Act of Zambia

In Zambia, the mining activities are regulated by the Mines and Minerals Act⁵⁰. The Act also provides for the particular incentives for investors in mining. Furthermore, the Mines and Minerals Act permits the Government to enter into agreements with specific companies⁵¹

Development Agreements are documents provided for by the Mines and Minerals Act⁵².

These agreements are negotiated by new investors and the Government. The process of

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Chapter 213 of the Laws of Zambia

⁵¹ Section 9

⁵² Section 9

preparing these Development Agreements was meticulous and involved world class lawyers and other technocrats. Their purpose was to protect the people of the Republic of Zambia and the incoming investor by ensuring, for a specific period that each of the parties met its commitments made to the other including stability in the legislation under which operations would be sustained⁵³

Looking at Development agreements in regard of responsibility to workers, communities and local economies, since privatization there has been widespread disappointment at the performance of new companies and municipal authorities in providing social infrastructure that was previously the responsibility of ZCCM, and lack of opportunities for local staff to step into management positions and to receive training.

The provision in the actual agreements is not in consonance with the occurrences on the ground. In cases where the ZCCM Division being taken on was associated with particular schools and hospitals, even women groups and sports clubs that were being sponsored, or stretches of roads for which the companies are responsible, the Agreements tend to transfer these responsibilities to the new companies⁵⁴.

The Agreements often include requirements that the companies guarantee free provision to retirees and workers dependents, although they usually allow the company to charge

⁵³ Survey of the Zambian Mining Industry 1995 – 2005. Chamber of Mines of Zambia. page 12

⁵⁴ Fraser and Lungu, 2007, For whom the windfalls, page 16

the wider population for what may previously have been free services. It may therefore be that some of the problems now seen relate to failure of implementation and regulation⁵⁵

Underpinning many of the problems is a culture of official secrecy surrounding the Development Agreements making it difficult for citizens to access data and documentations and thus put pressure on the companies or Government to deliver greater benefits. Most serious is the lack of access to the Development Agreements. Almost a decade after the first of them were struck trade unions, MPs, Local Government, even regulating authorities that are supposed to keep the companies to the promises they made in the agreements have not been allowed to see them.⁵⁶

An inability to access the contents of the agreements presents genuine problems for trade unions in performing their basic task of negotiating on behalf of workers. As early as 1999, MUZ wrote to the Minister of Labour, concerned about casualisation of the workforce at Chambeshi mines. They wrote; "We hereby want to bring to your attention some strange labour practices at some of our newly privatized entities which practices, if left unchecked will reduce this country's labour forces to a level of pauperization. As a union, our job to confront these issues and monitor the practices of the new investors with

⁵⁵ Ibid

⁵⁶ Ibid page 17

regards to the interest of our members has been impaired by our inability to access the sacred sale and development agreements ... As a result we are in no position to monitor what was pledged ... Our members at Chambeshi through the branch have brought these concerns to the attention of the new management whose response is that whatever they are doing was agreed in the Sale and Development Agreements ... As a union we are beginning to see the early seeds and genesis of intractable industrial disharmony if some of the investors are allowed to transplant in this country apartheid-like labour practices.”⁵⁷

2.5 The Employment Act

The Employment Act. Cap. 268 provides amongst other things, for the engagement of persons on contracts of services; Employment contracts and procedures; labour officers and their appointment; conditions of leave such as ordinary leave, sick leave, maternity, welfare and redundancy policies. However, the Act is silent on the issue of hours of work and overtime pay. Another contentious issue is the Casualization of labour where in line with the interpretation of a casual employee per the Act, employment is offered to any employee the terms for which provide for his payment at the end of each day and who is not engaged for a period not more than six months. Casual jobs are commonly understood as jobs that attract an hourly rate of pay but very few of the other rights and benefits such as the right to notice, the right to severance pay and most forms of paid

⁵⁷ Ibid page 18

leave(annual leave, public holidays, sick leave etc.) that are normally associated with permanent (or continuing jobs) for employees.⁵⁸

After completion of privatization, it was necessary to reorganize the mines into modern operating entities. This resulted, in some cases, real losses of jobs in the formal sector, the mining sector forming a greater part of such⁵⁹.

After completion of the privatization process, the 'direct' number of employees in the mining sector stood at over 44,000 in 1995. By 2004, this dropped to 20,000. Privatization has⁶⁰ brought about an increase in the number of employees working in the mines who are employed by the contractors⁶¹ and most of these are employed on the casual basis. The number of employees working under contractors increased from 2,628 in the year 2000 to 11,536 by end of December 2004⁶²

On average just over half of all those working in the major mines on the Copperbelt are on permanent contracts. Chambeshi Mines (Owned by the Chinese state enterprise NFCA

⁵⁸ Idah Chileshe .Economic Liberalisation and the rise in Casualisation of Labour(Obligatory Essay) UNZA 2006 page 2

⁵⁹ Survey of the Zambian Mining Industry 1995 – 2009 Chamber of Mines of Zambia page 26

⁶⁰ Survey of the Zambian Mining Industry 1995 – 2005 ,Chamber of Mines of Zambia page 27

⁶¹ Ibid page 27

⁶² Ibid

operates a highly unusual system in which of 2,200 workers only 52 have permanent contracts⁶³

After privatization, many ex-miners have been hired to work on the same site as they previously worked but this time indirectly employed via subcontracting firms.

MUZ officials note that some of these workers are doing almost the same jobs but this time on fixed term contracts usually of three months, without the Union, On a lower wage, no patient cover, No housing but they are given a housing allowance. Basically none of the fringe benefits that would have accrued⁶⁴

Casualization has also brought problems in organizing and representing workers. In a situation where the formal regulatory bodies such as Mines Safety Department, are severely under-funded, unions should be able to play a key role in exposing abuses and in pressuring for safer working places and better terms and conditions. However, privatization has also decimated the unions themselves, affecting the total number of organized members and creating financial crisis for the institutions⁶⁵.

⁶³ Ibid 22

⁶⁴ Ibid

⁶⁵ Ibid, page 24

2.6 The Minimum Wages And Conditions of Employment Act of Zambia.

The Minimum Wages and Condition of Employment Act ⁶⁶ is designed to lobby for and provide protection for categories of employees not effectively covered in other sections of the labour laws. The Minimum Wages and Conditions of Employment Act generally applies to those areas which are outside the scope of collective bargaining or where trade unions do not exist or technically where the bargaining unit failed to agree on a particular issue. Under this Act, the Minister of Labour is empowered to make regulations and orders with respect to minimum conditions. Though Minimum standards are set, there is nothing to stop employers from improving upon the minimum standards either unilaterally or through collective bargaining. The Act covers minimum wages as well as conditions of employment such as hours of work, overtime, annual leave, paid sick leave, maternity benefits, retirement benefits, funeral assistance and other things. It is important to note that the minimum standards set by the Act are also useful to trade unions engaged in collective bargaining with employers as they use them as a yardstick for comparing what the General Order offers and what their employers are willing to offer. Thus the General Order is available as a bargaining tool for trade unions.⁶⁷

⁶⁶ Chapter 276 of the Laws of

⁶⁷ Mwenda WS 2004 Employment law in Zambia'Case and Materials.page 6

Wages at the various mining houses differ, However at only one of the mining houses- Chambeshi Metals were wages of the lowest paid unionised workers in January 2006 above poverty levels established by the JCTR Basic Needs Basket⁶⁸.The Basic needs Basket is a figure generated by monthly research by the Jesuit Center for Theological Reflection into the cost for an average Zambian family of six of basic food items and non food items.

The food and non food items forming the basket represent basic, preferred goods that are commonly purchased by those urban families that can afford the costs and would ideally be purchased by all Zambian families⁶⁹⁷⁰.The Basket provides an important progress indicator against which the efficacy of the Minimum Wages and Conditions of Service Act can be measured .At the worst paying of the major mining companies owned by NFCA (Non Ferrous Company Africa),only the highest paid of the unionised work force will be able to cover these expenses from their wages and the poorest paid are earning just above the costs of the Basic Foods Basket, a figure covering food items alone. This suggests the levels of hardship that mineworkers are now suffering.⁷¹

Wages at two of the most significant contracting firms, Pro Sec and Mpelembe Drilling, are approximately half of those offered at the biggest mining company Mopani, for the same task. The terms and conditions of fulltime workers at sub contracted firms are also

⁶⁸ John Lungu 2006 For Whom the Windfalls.page 23

⁶⁹ Jesuit Center for theological Reflection.Basic Needs Basket 2007 report.page 7

⁷⁰ Ibid page 7

⁷¹ John lungu.2006.For Whom the Windfalls.page 23

significantly less favourable than those at the mining house⁷². Vincent Lengwe MUZ researcher insists that the deterioration in the conditions of service in the mining sector is an inadvertent result of Governments bad labour policies. He states that the Chinese employers for instance will not negotiate for reasonable wages for their employees with the union, all they will strive to do is hover around the limits as provided for by Minimum Wages and Conditions of Employment Act, which as earlier discussed according to the Basic needs Basket will not be sufficient to sustain a family. In such instances the Government is clearly at fault for setting such low standards. The investors are allowed to get away with what would amount to Human Right Violations because this is facilitated by the Minimum Wages and Conditions of Service Act itself by its unequitable provisions.

2.7 Conclusion

Many forms of legislation and government policies have been set to safeguard the employees interests. Though well intended as shown from the discussion, many loopholes exist making it possible for the employers to flagrantly abrogate the set standards as illustrated with the proliferation of unions, 'casualisation of labour', and non domestication of ILO conventions. Talks as reported in the Report of the Committee on Economic Affairs and Labour 2006 have been held with various stakeholders in

⁷² ibid

anticipation of new labour laws which shall be more friendly and usable by the local employees.

Chapter 3

3.0 Introduction

In recent years Chinese and Indian Investors have become increasing prominent investors in Zambia .Konkola Copper Mines Plc (KCM) is the largest Foreign Direct Investment(FDI) from India in the mining industry. China's Non Ferrous Company Africa (NFCA) is a company incorporated in Zambia⁷³.

These companies as products of FDI are committed to providing attractive returns to shareholders by low cost production. However this should be attained responsibly without neglecting the workforce's needs and the host countries expectations. The regulations relating to labour in Zambia are contained in various laws and policies by Government. By means of case study with two of the biggest employers in the Zambian Mining Industry; Konkola Copper Mines Plc and Chambeshi mines affiliated to NFCA. This chapter shall evaluate the efficacy of the law and Government policies in relation to conditions of labour.

3.1 Case Studies of Konkola Copper Mines plc and Chambeshi NFC

Africa Mining

⁷³ A Muneku and G Koyi , 2007.The Social and Economic Impact of Asian FDI in Zambia.Friedrich Ebert Stiftung (FES).Lusaka

Fraser and Lungu in their book ; For whom the Windfalls observe that in conversations about Mine privatisation all around the Copperbelt , residents, workers, commuters, Government officials, Trade Unionists even the other mining companies ,all raise the same complaint-“the Chinese”. NFCA are commonly claimed to be the ‘worst investors’ usually one step ahead of ‘the Indians’ meaning Binani who took over Luanshya and left ,and Vedanta, who took on KCM in 2004 on a ladder of shame of abusing the workforce, ignoring local businesses and labour and showing little interest in environmental protection⁷⁴ .

Before NFCA bought the mine, Chambeshi mine had ceased operations, laid off a majority of its workforce and maintained a skeleton staff of just over 100.NFCA heavily invested in the mine thereby resuscitating it and the mine today now employs 2100 people⁷⁵ .

For KCM the jobs that were available at the time of the divestiture in 2000 were 9,866,the current level is estimated at around 16,000 made up of 10,000 permanent and fixed term and about 6000 workers engaged on contract⁷⁶ .

From these figures it can be seen that Chinese and Indian FDI in Zambia has increased levels of employment. However the quality of this employment is in question. In most

⁷⁴ Fraser and Lungu .2007 .For whom the windfalls ; Winners and Losers in the Privatisation of Zambias Copper Mines ,Lusaka.page 48

⁷⁵ Ibid

⁷⁶ Muneku and Koyi ,2007 The Social and Economic Impact of Asian FDI in Zambia.page 24

cases it is not decent employment .Most of the jobs created are on casual and contract basis .Often these do not provide adequate income, lack social protection and are undertaken in conditions that often tend to violate core international labour standards⁷⁷ .

In a submission by the General manager NFC Africa Plc to the Committee on Economic and Labour⁷⁸ , the General Manager explains that the essential objective of the privatisation programme in Zambia was to reform the economic system, acquire advanced technology, improve management and ultimately develop the economy. In attaining this a joint effort was necessary from every sector of Zambian society .The local people and the new owners of the mines needed to carry out and complete a quantity of thorough and pain stacking work ,and all walks of life needed to reach a common understanding, co ordinate activities and work hard ,for instance since the economic base had been changed ,how should the superstructure be suited to the economic base and then protect the needs of the new economic base, how could the people adapt to the new system which was competitive, and efforts should be made to make social services and security available at internationally accepted standards. The General Manager stated that NFCA had not only paid the various taxes and mineral royalties, but had also contributed to the community through the stabilisation of society, enlarging consumption and contributing to economic development by the recruitment of employees.

⁷⁷ Ibid

⁷⁸ Committee on Economic Affairs and Labour ,(2000) Parliamentary Report on the Review of the Privatisation of Zambia Consolidated Copper Mines Limited

The General Manager pledged further that the social services provided by ZCCM were difficult to implement .In the transaction documents ,ZCCM acknowledged to supply the necessary medical services ,education and entertainment .But after privatisation ,the facilities were owned by different employers .ZCCM or the company that would inherit ZCCM's rights and obligations could not carry out the obligation .This had created difficulties for NFCA ,but at the time was partially resolved with the transfer of Nkana Mine Hospital which NFCA intended to upgrade.

On the fate of the employees after the privatisation of the mines, the General Manager explained this was in their own hands ;all transferred employees were expected to be self respecting and self processed ,they should restrain their activities within the law .If they could renew their attitudes ,improve quality ,adapt to the requirements and standards required by the new employers on skill management and thought ,they could maintain their jobs .But if they failed to adapt ,the new employers would have no choice but to relieve them of their duties .He observed that while Zambia was endowed with the rich natural and human resources ,there was no deliberate government policy which encouraged better remuneration for hard working employees .As such there was no motivation to work hard .As a result the work culture was such that little development could be achieved whether the enterprise was state owned or private and this needed urgent addressing .The General Manager informed the Committee that Human Resources were an important factor of production and the company valued them. The enterprise had

the responsibility to protect and arouse their activities .NFCA would trust all the transferred employees and give them opportunities to put their abilities to good use.

He further submitted that it was undoubtedly correct that law should protect the interests of both the employer and the employees .Here, he appealed to the legislature for the protection of the rights and interests of enterprises operating in the country, all types of unlawful industrial action and other action which disturbed the normal production activities should be seriously punishable by the law. Only in this way would the majority of employees benefit, and ensure full production to meet the demands of the Zambian Social strata.

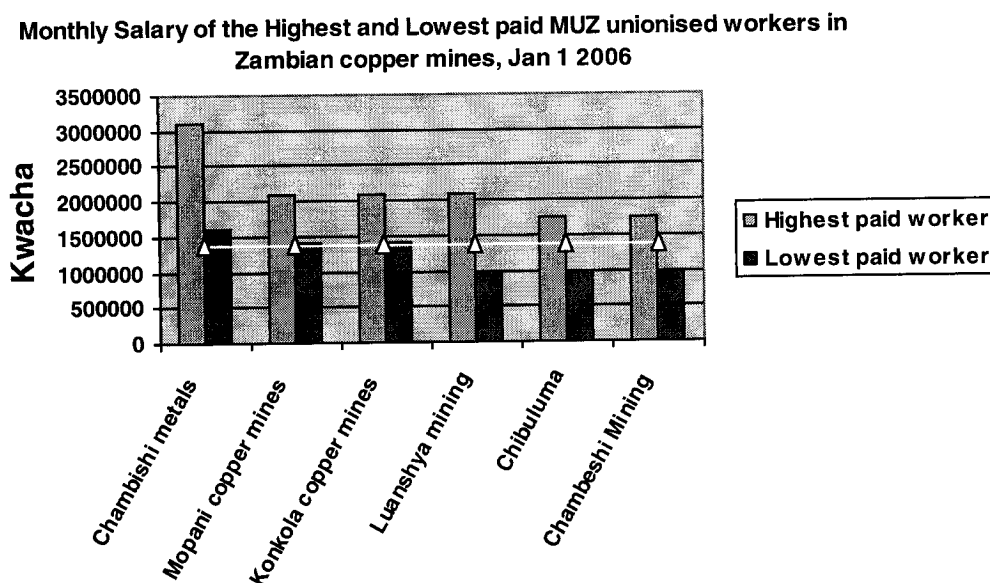
The quality of employment under Chambeshi Mines plc/NFCA has been for along time under fire as established from earlier discussion. Chambeshi Mines plc pays the lowest wages of all the mining companies, and employs only a tiny share of its workforce on permanent pensionable contracts⁷⁹.

In 2005 there were just 52 Zambian unionised employees on permanent contracts. These were former ZCCM employees who were taken on to work at Chambeshi Mining NFCA on the same terms as their old jobs, including union representation and eligibility for pensions⁸⁰ .While their terms and conditions are easily the best available outside of

⁷⁹ Fraser and Lungu ,2007. For whom the windfalls. Page49

⁸⁰ Ibid

management of NFCA, they are the lowest paid of all the major mining houses on the other hand Chambeshi Metals having the highest wage range..



Source: Collective Agreements accessed in the MUZ information and research centre

Of others employed directly by NFCA, 687 are on contracts which vary in duration from one to five years .The remaining 100 or so employees taken on directly by NFCA are classified as casual workers. They have no job security and generally poor conditions of employment in comparison with other employers⁸¹.

NFCA makes extensive use of Chinese sub contracting firms and some casual workers at the underground mine are reported to earn between K120, 000 to K150, 000 per month. A

⁸¹ Ibid

figure significantly below the legal minimum wage and representing only 10% of the Basic Needs Basket⁸².

Clearly such practices are at odds with what the company is obliged to pay per the Minimum Wages and Conditions of Employment Act. Furthermore Chambeshi Mines Plc/NFCA has no human resource policy on training and development of local human resources⁸³. The impact of this practice on the Zambian labour market would be obvious; it will increase the levels of unskilled labour in Chinese undertakings and therefore keep the wages low. Going contrary to the development aspirations of Zambia and clearly such practice is at odds with commitments made by the Company in its Development Agreements. In the instance where NFCA commits in the agreements to, "take all reasonable efforts in its recruitment and employment of employees in its professional, managerial, engineering and scientific grades to bring to the attention of such qualified Zambians, positions available within NFCA."⁸⁴

For the 52 unionised employees on old ZCCM terms of service, hospital provision is as it was previously and is for unionised workers in all of the other Mines free to all dependants. However workers on fixed term contracts are allowed to nominate just one family member for health care usually the wife was automatically registered⁸⁵. In other words NFCA will provide no free healthcare to the children of their employees.

⁸² Fraser and Lungu, 2007 ,For whom the windfalls,page 49

⁸³ Muneku and Koyi,2007 The Social and Economic Impact of Asian FDI IN Zambia.FES,Lusaka

⁸⁴ Fraser and Lungu ,2007, For Whom the Windfalls,page 49

⁸⁵ Ibid

Contrary to the development agreements stating that NFCA would provide social services to all employees of NFCA and the registered dependants of such employees entitled to benefit there from and furthermore NFCA would continue to employ the same registration practice for determining the eligibility of dependants to qualify as registered dependants as the practice for determining the same which was in place at the date of the Agreement',⁸⁶

ZCCM had a complex preventative health system focused on malaria, TB and AIDS. NFCA has made little effort to reproduce this system .The Company did not engage in anti malarial spraying as did ZCCM previously until 2006.However this was not even comprehensively done furthermore NFCA has failed to develop non HIV-AIDS policy for its employees.⁸⁷

NFCA Management is clear that part of the reason they bend the rules is that they are not enforced and the company believes that it can get away with challenging Government policies;

” Really there is no price to pay, it is true. Let me give you an example, Government has been talking about casualization for a long time –‘don’t do it, no casualisation’. We have had even visits here and Government official comes and says,’ no you are not supposed to engage casual workers. ’ We have had letters being written from the Ministry of Labour to say, ’you cant do this, you are not supposed to be doing such things.’But at the same time the law is there that

⁸⁶ Ibid

⁸⁷ Ibid page 50

you can do it .So this person says,'No after all ,we are not breaking the law because ,there it is. That is one way. Then the other way is perception and interpretation of the law so the laws must be clear so where we have labour laws we must be able to read them and understand them''⁸⁸

The goal of Vedanta Resources Plc is to generate strong financial returns and create a world class metals and mining group. In line with this goal Konkola Copper Mines (KCM) Plc aims to become a world class, globally cost competitive copper producer and role model for safety, environment and social responsibility. The Vedanta group seeks to improve the way they do business and are committed to ensuring that their success is of benefit to customers, shareholders, employees and local communities.⁸⁹

The case for wages and salaries at KCM Plc is not as dehumanising as at Chambeshi Mines Plc/NFCA. The Indian owned KCM Plc offers better wages and salaries compared to Chinese owned Chambeshi Mines. The lowest paid unionised employee at KCM Plc earns K1, 504,096 while the highest earns K2, 622,046. On the other hand at Chambeshi Mine /NFCA the lowest paid unionised employees earn about K1, 005,933.00 per month whilst the highest paid earns K1, 669,498.00⁹⁰

Like for Chambeshi Mines Plc/NFCA the Development Agreements for KCM Plc provide for development and implementation of a policy on training and human resources

⁸⁸ Fraser and Lungu ,2006 ,For whom the windfalls ,page 53

⁸⁹ Muneku and Koyi ,2007, The Social and Economic Impact of Asian FDI in Zambia,FES, PAGE 31

⁹⁰ Ibid page 25

management to which both companies must comply⁹¹. The aim of the policy is to secure the maximum training of and benefits to Zambian citizens from the companies .For KCM, while Vedanta Resources Plc brought in Indian management wholesale after they bought the Mine, there is evidence that they are now altering the balance and have identified 40-50 'young business leaders' who they are fast tracking on a management training scheme⁹². KCM has also re established something similar to the old ZCCM training scheme for the main workforce, recruiting 1,200 school leavers from all around the country to be trained to be trained to work at KCM. This practice will, if sustained potentially lead to a positive impact on the labour market, and thus, leverage the economy towards increased productivity and a high road to development.

At KCM Plc out of the 16,000 plus employees about 6,000 are employed on temporal casual contractual terms. The remaining 10,000 are on permanent or fixed term contracts. The fixed term contracts are for a period of two years except in one off cases of short nature jobs Casualisation is more pronounced at NFCA Mining Plc⁹³.

KCM Plc has in place a social policy, which is primarily focused on community support. KCM Plc owns and operates 2 schools providing basic education to over 1,000 children from both mine employees and non employees in Chingola and Chililabombwe. In addition KCM Plc owns and operates 2 hospitals and 7 clinics located in Chingola and

⁹¹ Ibid

⁹² Ibid page 25

⁹³ Ibid page 31

Chililabombwe .The health facilities provide free health care to employees and their dependants and are also accessible to non mine employees on a cost recovery basis⁹⁴ .

KCM Plc is also involved in the malaria roll back programmes in the areas surrounding its operations. KCM Plc has an HIV /Aids policy that protects confidentiality of employee HIV status, employees' rights to work and benefits notwithstanding their status and prohibits discrimination against HIV positive employees.⁹⁵

In terms of involvement in community programmes, KCM Plc has continued the ZCCM policy of providing health, education and training facilities, albeit at a much scaled down level. For instance, although the company has continued to run the two Mine trust schools, mainly for miners children, it has however ,given up the running of some big Mine hospitals as well as clinics, which have now been surrendered to the government KCM employees, however have access to free medical care. Former employees or retired or discharged on medical grounds are expected to pay 50% of the medical fees.⁹⁶

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid page 34

3.2 Conclusion

As discussed in earlier chapters the nationalised mining industry was privatised in order to resuscitate the industry. With Privatisation in which the means of production were shifted into private hands came Foreign Direct Investment (FDI). FDI aims at maximising profit at minimal cost. From the case studies it is clear there has been a drop in conditions of service in the mining sector. However the extent of this decline in standard varies from company to company, implying that the drop in standards is derived from different backgrounds. In some instances such as casualization, the law has no protective measures. In some instances where salary and wages are so low, incidents of disregard of existing national legislation is revealed. The Development Agreements also have not been observed. Overall Chinese and Indian FDI in Zambia has increased employment levels. However the quality of this employment is questionable since in the majority of cases it falls short of decent work standard.

Chapter 4

4.0 Introduction

From the previous chapters , it has been established that there are two key players in the process of protecting the employees ' interests pertaining to conditions of service in the mining sector in Zambia ;.The Government is a major player - the mining sector being a huge revenue earner , contributes significantly to the national economy and for this reason the Government has a say in order to protect its interests and for regulatory purposes .The Government participates through policy making and through its legislative functions .The other key player is the Employer who, sets the terms of employment as he enters into a contract of employment with the employee. The contract of employment is a private affair between the employer and the employee, the employer normally having the upper hand, but whatever is agreed upon must not be in conflict with Government policies and the law.

As has been established from earlier discussion ,over the last years Zambia has experienced a significant amount of Foreign Direct Investment in the mining sector ,this

is attributable to the massive increase in copper prices on the world market⁹⁷. In turn the foreign investors have increased levels of employment in their respective project concerns and also acted to prevent further job losses in entities that had almost ceased operation prior to privatisation⁹⁸.

With such positive economic indicators, it might be expected that the investments in the mining sector have had positive effects on development and the labour market in Zambia. The objective of this research has been to investigate the root cause of the deteriorating labour conditions in the mining sector, the research asks whether the foreign investors have had a negative impact on the labour market or whether it is Zambia's labour laws and policies which are inadequate.

4.1 Conclusion

The deterioration in the conditions of service in the mining sector has been even more pronounced with the increase in Foreign Direct Investment in the country. The drop is perhaps more pronounced because of the sharp contrast in labour policies embraced by a nationalist state in comparison to labour practices by a capitalist investor.

⁹⁷ Fraser and Lungu, 2007, For Whom the Windfalls, page 61

⁹⁸ Ibid page 22

Before the privatisation of the mining sector , the mining companies were controlled by the Government on behalf of the people through the policy of Nationalisation which was embraced at the time .The government's developmental philosophies were reflected in the countries major mining company , Zambia Consolidated Copper Mines providing a wide range of amenities such as free education for miners children, alongside subsidised housing and food ,electricity , water and transport to mention just a few .This system was often referred to as 'paternalistic'.

Privatisation on the other hand has a very different approach compared to the paternalistic style embraced at the time the mining industry was nationalised.

In this research two major foreign owned mining companies were identified as the subject matter of case studies to evaluate the efficacy of the law and government policies in relation to conditions of service in foreign owned mines.

Unlike before where the aim of the owners of the nationalised mines(here being the government on behalf of the people)was to provide as many amenities as possible to the employees to enable them benefit from their natural resources , the aim of the foreign employers as foreign direct investment is intended; is to maximise profits .The interests of the employee are not cardinal , what is important is to satisfy the share holders

expectations . A position affirmed by the Chamber of Mines⁹⁹ who are of the view that offering fewer and fewer workers, living wages, job security and a pension is 'international best practice'. They submit that the world has been reduced to a global village where multinational companies' practices are being replicated in all countries of investment and Zambia is no exception. It is recognised that for the mining companies to remain competitive at the international level, they have to adopt internationally accepted best practices.

Therefore the provision of certain amenities by some foreign investors is perceived as an unnecessary cost and this has contributed to the drop in conditions of service.

However the drop in conditions of service can not only be attributed to the investors minimising all costs whatsoever, at what ever expense in a bid to make profit, even to the detriment of the welfare of the employee. Certain weaknesses have been identified in Zambia's labour laws as was discussed in previous chapters which enable the foreign employers to lawfully subject their employees to unfavourable conditions of service

4.2 RECOMMENDATIONS

Arising from the research and findings, the following are recommended;

4.2.1 Restricting Casualization of labour

⁹⁹ Survey of the Zambian Mining Industry 1995 – 2004, page 26-28

Amendments must be made to the Employment Act to curb this scourge. Employers must not be allowed to employ employees on short term contracts for jobs whose nature is ongoing, people should only be employed on short term contracts according to the nature of the job which should be of a non permanent nature, for example a fishing company can employ fishermen on short term contracts because the nature of the job is that it is seasonal. Unlike hiring an underground miner on a 3 month contract when a company has right to mine copper for 20 years, the reasoning behind that if not to avoid responsibility is impossible to fathom.

4.2.2 Payment of a Living Wage

A mechanism must be formulated by which practical measures of minimum wages and conditions of employment are determined. Figures from the Central statistical office can be averaged against those of a 'watchdog institution' such as the Jesuit Centre, for Theological Reflection, Basic Needs Basket to get a realistic amount.

Furthermore the Minimum Wages and Conditions of Employment Act must be updated regularly so that inflation does not defeat the entire purpose of its existence.

4.2.3 Greater emphasis on observance of Corporate Social Responsibility

All corporations have a duty to give back to the community they have benefited from. They are not legally obliged too, but taking into consideration the background of the privatisation of the mining sector, the privatisation took place at a time when production had hit an all time low , and the sector needed serious re capitalisation which the government could not afford, hence to woo the investors the mines were 'sold to them at a song' with a bonus of tax incentives at rates much lower than those generally accepted in other mining countries¹⁰⁰. However circumstance have changed ,their have been massive rises in copper prices, and thus the profitability of the new companies and to top it up, the foreign investors are still enjoying the low tax rates .Therefore it is only equitable that they should work with the local authorities and develop relations ensuring the supply of education ,health facilities ,housing and other amenities. Improving not only the welfare of their employees and the local people but also enhancing their corporate image

4.2.4 Renegotiating Development Agreements

Since the world market for copper is experiencing an upward trend .Renegotiating the Development Agreements would be most unlikely to adversely affect production. I t has

¹⁰⁰ Fraser and Lungu,2006. For whom the Windfalls . page 62

been established from Chapter two that the development agreements have a stronger inclination towards the interests of the investors which has a direct negative impact on the employees in some circumstances.

However, the Development Agreements establish a contractual commitment on the part of the government, a commitment underpinned by the right for either party to take the other to international arbitration in any dispute over the implementation of the Development Agreement¹⁰¹

On the other hand the concept of Permanent Sovereignty over Natural Resources is a basic constituent of the right to self determination¹⁰². The right to self determination includes the simple and elementary principle that a nation or people should be master of its own natural wealth or resources¹⁰³. The UN has been the birthplace of this principle and the main forum for its development and implementation. The exploration, development and disposition of such resource, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the sovereign freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activity. Sovereignty in this context refers not to the

¹⁰¹ Ibid page 63

¹⁰² Lecture by Professor Dr Erica-Irene A. Daes at the National Native Title Conference, Adelaide, Human rights and equal opportunity Commission, 2004

¹⁰³ Ibid

abstract and absolute sense of the term ,but rather to governmental control and authority over the resources in the exercise of self determination¹⁰⁴

The principle of Permanent Sovereignty over natural resources is necessary to level the economic and political playing field and to provide protection.

4.2.5 Mechanism to Monitor the observance of Government Policies and the Laws relating to Labour

Government should establish a body whose duty shall primarily be to ensure that all investors are aware of the countries labour rules and that they observe them. Inspections in the various industries should be routinely and regularly carried out, and not as the current trend is, where labour officers only visit a company when a complaint is raised.

¹⁰⁴ Ibid

BIBLIOGRAPHY

1. Banda D, 1997 The Trade Union Situation in Zambia; An Overview of the Law Practice and the Way Forward, Friedrich Ebert Stiftung ,Lusaka.
2. Grant B ,2002 Employment Law; A Guide for Human Resource Management, Oxford Alden Press.
3. Fraser A and Lungu J ,2007 For Whom the Windfalls; Winners and Losers in the Privatisation of Zambia's' Copper Mines , Lusaka
4. Kaunda F 2002, Selling the Family Silver; The Zambian Copper Mines Story, Interpak Books ,Kwazulu – Natal
5. Muneku A and Koyi G ,2007 The Social and Economic Impact of Asian FDI in Zambia; A Case of Chinese and Indian Investment in Zambia(1997 – 2007), Friedrich Ebert Stiftung Lusaka
6. Mwenda WS ,2004 ,Employment Law in Zambia; Cases and Materials ,UNZA Press ,Lusaka

REPORTS

1. Professor C Anyangwe , Application of International Labour Standards in Zambia
Presentation ,1997 Lusaka
2. Chamber of Mines of Zambia; Survey of the Mining Industry (1995 – 2004) ,
2005 Ndola.
3. Report of the Committee on Economic Affairs and Labour on the Review and
Privatisation of Zambia Consolidated Copper Mines Limited ,Appointed on 10th
Feb,2000
4. Report of the Committee on Economic Affairs and Labour Appointed on 8th Nov,
2006
5. Jesuit Centre for Theological Reflection; Basic Needs Basket.2007

NEWSPAPERS

Business Post Issue no 3834 – 102 , April , 2007