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THE ROLE OF MULTINATIONAL CORPORATIONS IN DEVELOPING COUNTRIES; ARE THEY REALLY FOR ECONOMIC GROWTH AND DEVELOPMENT? A CASE STUDY OF ZAMBIA.

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DEDICATION

This work is dedicated to my parents and the rest of my family and friends. May God bless you all!

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INTRODUCTION

For many third world countries, their deteriorating economies make it in practice that they pursue development rigorously ~~ingeronely~~. In this regard, they have sought to take control of the economic resources and manage them in much a way as to raise standards of living and employment opportunities for their people. However the deteriorating economies also mean that their is little money to finance this development. Foreign governments can only provide little of this funding, therefore a concerted effort has been made to channel available sources of funds to the developing countries. This has generally taken the form of encouraging private foreign investment particularly as mult-national enterprises to invest in these countries by providing the right enabling evironment.

The right enabling environment is ~~to~~ generally difficult to achieve because of the differences in the objectives of the multi-nationals and the developing host countries. While the former seek to maximise profits and competitiveness, the latter seek overall development. The two objectives do not coincide to a significant extent relating in a tug of war over who should retain control over the national and economic resources and therefore determine the type of investment which takes place.

This paper discusses this dilemma in the light of multinational operations in the third world in general, and Zambia in particular through a selective analysis of a few multi-national Companies operating in Zambia.

Chapter one will focus on defining what a multinational company (MNC) is and generally analyze its operations. Since this paper will have a special focus on the Zambian situation Chapter two will attempt to discuss the investment climate in Zambia and then chapter three will discuss the operations of a selected number of MNCs operating in Zambia especially in the mining sector. In the conclusion, the author will try to give recommendations as to how the dilemma Third world countries have found themselves in, can be solved.

CHAPTER ONE

DEFINITION OF A MNC

A multi-national company (MNC) is a business in co-porated in one country (the home or source country) but which owns income generating assets in mines, component and manufacturing plants, offices and sales subsidiaries in some other country or countries (called host countries). A MNC is most simply defined as a corporation or enterprise that owns and controls productive activities in more than one country. Two central characteristics of MNC's are their large size and the fact that their world wide operations and activities tend to be centrally controlled by parent company's. Many MNCs have annual sales volumes in excess of the entire GNP of developing countries in which they operate. For example in 1985 the two largest multi-nationals (General Motors and Exxon) each had a gross sales value greater than the GNP's of all but five developing nations (i.e. China, Brazil, India, Iran and Mexico).[1] Such economic size confers great economic (and sometimes political power on MNC's viz - a - viz the countries in which they operate.

The largest MNC'S have many foreign branches and oversease affiliates. Nearly 200 have subsidies in 20 or more countries of the 10 largest MNC's, 8 are based in the United States, and U.S. firms exercise control over about 30 % of all foreign affiliates. British German, French and U.S firms together control over 75 % of all MNC affiliates. Latest estimates put the book
value of total MNC foreign investment in excess of $500 billion with over 80 % of that total owned by firms in these four countries and Japan. Of this total, approximately one third is located in developing countries but given their small size, the less developing countries feel the presence of MNCs more actually than do the developed states.[2]

It is therefore the aim of this paper to analyze the role of MNCs in the developing countries as far as the latters development is concerned.

The Legal Structure of MNCs

In giving an analysis of the operations of MNCs, the discussion cannot make any sense at all without commenting on their juridical personality. We will first see how the MNCs are legally incorporated as Parent Companies in their Countries of origin and then we will look at how they are incorporated as subsidiaries in developing countries, in this case Zambia. By a Juridical person is meant a "Person at Law" and as such, one that may sue and be sued and is invested with rights and liabilities different from those of all or any of the natural persons who by combination form the entity.

After a MNC has been legally incorporated in its country of origin, there is still the question as to how its affiliates or subsidiaries are to be legally incorporated in the host country and indeed I am hereby referring to Zambia. Here in Zambia , an interview conducted with the Registrar of Companies revealed that MNCs have two options for incorporation. They can choose either to be incorporated as primarily a foreign company operating as a subsidiary of the parent company or they can be incorporated as a local independent company which is essentially a local independent company in Zambia but built on foreign capital. For example Standard Chartered Bank Zambia Limited has its parent firm in South Africa but the subsidiary in Zambia is an independent company which was incorporated in Zambia from foreign capital. Section 245 of the Companies Act, 1994. states that a body comparate formed outside Zambia may register as a foreign company by lodging with the Registrar Application for Registration and documents to accompany it under the same section. The application should be in prescribed form and included therein shuold be the name of the Company, the nature of its intended business or other main objects, the address of the Company's registered or principal office in the country of its incorporation. Section 246 of the Act states that if a body corporate formed outside Zambia sets up or acquires an established place of business in Zambia, it shall within 28 days after so doing, apply for registration as a foreign company under section 245. To register as a foreign company in Zambia it needs certified copies of the constitution in their country of origin which should be translated in English and there is a further condition that the foreign firm should appoint some local directors, to participate in running the affairs of the company. these are essentially the legal requirements a MNC is to comply with to be able to operate its business in Zambia.

Once a foreign enterprise is established, there comes into question the issue of sovereignty of the host country as opposed to domination over the host country's resources and market by the foreign enterprise. This paper would therefore not be complete without some discussion or sovereignty.

Sovereignty

It is generally believed that due to the manifold operations of foreign based MNCs and their pervasive influence on the host country, the latter's national sovereignty to greatly challenged. The challenge has economic, social political and cultural dimensions which are frequently inseparable from one another. State sovereignty refers to the unique , full and indivisible supremacy of state power within the limits of the terminal frontiers and the independence of this power in relation to any power which is expressed in the states exclusive and inalienable right to lay down and carry out its home and foreign policy independently, to discharge its functions, to implement the practical measures for organising its social life at home and its foreign relations on the basis of respect for sovereignty of other states for the principles and norms of international law accepted of its own free will"[3] In other words, sovereignty is supremacy of power and the independence of the state over its raw materials, terms of trade and other affairs relating to it.This issue should be clearly marked out because MNCs differ from other international links in one critical respect; their involvement in the internal economy of the host country in which they are operating. Unlike trade a licensing or government- to- government trade agreements, the operations of these enterprises are a part of the local economy itself. In Zambia the main source of foreign exchange has been the sale of copper whose production is to a large extent controlled by the MNCs from the United States to be discussed later. It is no doubt that multinational enterprises are linked intimately with the government of the country in which they are headquatered and hence the policies of the subsidiary company and the government of the parent company are inextricably related. One can therefore rightly conclude that the parent company's government needs the economic power of the enterprise to help extend its political reach, and indeed the enterprise needs the government to protect it from other hegemonic governments as well as to help maintain orderly conditions when stability is threatened.[4] For example in 1984 the U.S government entered into negotiations with the Japanese government in which the later regime was to limit for a time the amount of motor vehicles it would ship to the United States.[5] This trade conflict has since been solved by the World Trade Organisations, Dispute Settlement Body. An interesting point here is that the affected multinationals in the U.S were fact Ford Motors whose motor vehicles and autospares were shunned by Japanese buyers not on economic grounds but on social and cultural grounds. The Japanese say the affected vehicles are "too big" for Japans congested roads and car parks, and also that they are left-hand drive. It is therefore clear that the Americans are trying to impose their designs on the Japanese people whether they like them or not and so the Sovereignty of Japan as a nation is being challenged. At this point, it is imperative that the global operations of MNCc be analyzed on a global scale if we have to understand how Zambia is a part of this network of developing nations.

The Trading and Manufacturing Operations of MNCs in Developing Nations.

The existence of MNCs in developing nations has had diverse effects on the opportunities of local businessmen. In some cases, multinational enterprises have been quick to set up their subsidiaries inside the protected markets, thereby abusing the local enterprises. But the presence of foreign-owned firms has also generated some added benefits for local businessmen: opportunities to act as contractors, suppliers and distributors; opportunities to extract a junior partnership, sometimes on bargain terms; opportunities to eventually take over a foreign owned enterprise, sometimes by enlisting the help of the national government and sometimes on the bars of the local business' own growing capabilities.[6] Given their small size, the developing nations feel the presence of MNCs more acutely than do the developed countries. Professor Muna Ndulo stated in the seventies, that it would be foolish to condemn foreign capital on the basis of its disadvantages. What was needed was a greater awareness among the developing countries of the dangers of dealing with MNCs so that they can reflect the deals and extract much better terms in the future. He further said many developing countries in recent years had taken measures directed at trying to mitigate the disadvantages of foreign capital particularly in the area of the exploitation of mineral resources.[7]

Historically, MNCs especially those operating in developing countries focused on extractive and primary industries, mainly petroleum, non fuel minerals like copper in Zambia and primary industries which includes Zambia Consolidated Copper Mines (ZCCM), and plantation activities where a few "agri-business Multinational become involved in export oriented agriculture and local food processing - for example Masstock Africa Limited is a foreign company which grows and exports flows to Belgium in a commercial bans (but indeed, this could be the only example. Recently however, manufacturing interests have occupied an increasing share of MNC production activities. At present manufacturing accounts for almost 28% of the estimated stock foreign investment in countries in developing nations where as petroleum and mining represent 40 % and 9 % respectively and the overall importance of MNCs in the economies of the host nation especially in manufacturing and service sectors is rapidly growing.[8] There is therefore no doubt that the raw materials used by most parent companies situated in developed countries are extracted by the subsidiaries in the host developing nations.

The multinational enterprise has proved an especially provocative factor in the ideological debate. It goes without saying that foreign investors have demonstrated an unsurprising preference for a stable friendly economic environment. In a number of developing countries, that preference has meant that MNCs have expanded their activities sharply immediately after a rightist government has taken power, or have reduced their activities immediately a leftist regime has taken control hence it is true to say that inside the developing countries the advocates of foreign-owned enterprise have come mainly from the anti-socialist end of the national political spectrum. At present there is speculation that there has been a sudden surge of multinational activities in Zambia as soon as the Movement for Multiparty Democracy (MMD) government took hold of the reeigns although it is more apparent that the Zambian market has virtually become a dumping ground for foreign goods and services. According to the MMD government however, the coming back to politics of the staunch socialist, Dr Kenneth Kaunda, after he had earlier announced his resignation from active politics many foreign investors are now displaying reluctance to invest in Zambia because of the uncertain political and economic climate of the country in the near future. It may however, be more realistic to say that increased foreign interest in Zambia has targeted at certain key industries but their has been little actual growth. According to ZNBC news, the government currently in power has assured foreign investors that they are protected by law from any harm arising within the county and so it is true that the MMD sect are stanch advocates of foreign investment.

The hostility of many leaders in the LDCs towards MNCs however, has often been based on factors that have familiar counterparts in more industrialised countries. Industrialisation in the host nation has been accompanied by a sharp increase in the visible, rich, all the more sticking because of the concurrent existence of urban and rural poverty, corruption, pollution and shoddy production are much in existence in states which are industrializing.* This is not to say that MNCs are the sole cause of the above negative effects of industrialization but these effects are inevitably concurrent with industrialization. For example, in Zambia, it has been observed that the current MMD policies of an open market system which highly favour MNCs, have ended up enriching some ministers to the extend of some who never had a personal to holder vehicle having up to three personal Mercedes Benz cars within the short period the MMD government has been in power. Obviously this is not normal as far as acquisition of such property in a poor country like Zambia is concerned so that one can rightly conclude that such property is being acquired by nefarious means.

Indeed there are also differences among MNCs in their operations in the host countries they operate in. These range from those which operate in a very hard nosed business like manner which have nothing to do with diplomacy and indeed those which assiduously cultivate their local contracts and seek actively to make their interests synonymous with those of the ruling group in particular governments. The most clear cut example of this latter type must be MNCs like Lonrho, Africa's best known 'conglomerate'. These are suggestions that lorho played a background role in the 1971 coup in the Sudan, and that their chairman, Duncan Sandys, a former British Cabinet Minister obtained for the 'new' government a # 10 million loan, thus paving way for Lornho's advance in the Sudanese economy.[10]

It is also important to note that the interests of the MNCs do often largely overlap with at least the short-term interests of those in control of the state. It is they who are able to provide the hardware required by governments to give the appearance of promoting developments and more directly to consolidate their own political power as MNCs.

A number of studies indicate that MNCs generally engage in transfer pricing in developing countries. By way of transfer pricing, Global firms usually overprice the goods imported by developing countries and underprice the export items produced by the sub solders in rich nations. One leading study undertaken by the Columbia government indicated an over pricing of a wide range of pharmaceutical imports by global firms, 155 % above world market prices in 1968 and 87 % in 1967-1970 as compared with a 19 % overpricing on the products imported by locally owned firms.[11] Intrafirm transactions between a parent and its subsidiaries enable a MNC to maximise its global profits. These intrafirm exchanges replace market transactions and enable MNCs to evade many of the checks on corporate behaviour provided by national laws. Intrafirm transactions may take a number of forms including:

(i) Locating profits in a subsidiary in a county with lower tax rates (Conversely restricting profits where taxes are higher) thereby reducing a corporation total tax burden on its world wide operations;

(ii) withdrawing funds from a given subsidiary (for example in the face of limits on the repartition of profits or the or the expectation of foreign exchange losses if a country devalues its currency) by increasing prices on the goods sold to that subsidiary by other subsidiaries or by the parent entity in a multinational corporate network;

(iii) financing a subsidiary by reducing prices on goods to it by other subsidiaries or the parent in a multinational enterprise. Other transfer pricing techniques include juggling the allocation of overhead and joint costs (such as exploration research and development and advertising) and overpricing the plant and equipment used to set up or expand a foreign facility.[12]

From the view point of a developing country, transfer pricing means that a subsidiary located in such a nation must pay higher prices for imports, especially for so-called intermediate goods, than prevail in the so called free market. These intrafirm transactional techniques, characteristic of all MNCs particularly the reduction of prices of exported items, may produce a loss of taxes and foreign exchange earnings for a developing country. Transfer pricing therefore helps explain why a number of foreign subsidiaries may show "loses" each year yet mysteriously continue in business. One expert noted: "It is practically beyond question that multinational companies manipulate internal price relations so as to locate their profits either in the country of the mother company or in countries where taxes are lowest.[13] A few MNCs are reported to even share admitted juggling prices. According to the Wall Street Journal: " An executive of one big international oil company says prices between subsidiaries are controlled by the company's headquarters, which 'tilts'the prices on way or another, depending on the situation. the treasurer of another company says he sometimes resorts to manipulation, especially when a foreign government blocks a subsidiary's profit remittances to the parent".[14] However, LDCs are attempting to constrain the use of transfer pricing and to force the attainment of arms-length intracorporate pricing standards. Corporate officials point out that in most cases transfer pricing poses no problem because transactions are under the scouting of many authorities who would react to evidence of a zig zag policy.

Foreign- owned manufacturing subsidiaries also pose a number of problems for developing nations by using various restrictive business practices. The imposition of restrictive business practices, including export constraints by MNCs on their foreign subsidiaries appears pervasive. Studies by the United Nations conference on Trade and Development, have indicated that 40 % of the technical collaboration agreements between foreign corporations and public and private firms in India contained export restrictions. Sixty-five percent of the contracts in a Philipines study emboded provisions restricting exports.[15] The restrictive business practices, particularly the territorial arrangements accompanying the licensing of patents and know-how, are customary and form the standpoint of a multinational enterprise, probably rational. The parent entity desires to control the knowledge it disseminates and the management of its affiliates. The global headquarters uses export market allocation to preserve its distribution channels and network. it has been argued that firms producing highly specialized industrial products cannot completely avoid export restrictions, and the economic conditions in various nations may require such measures. Defenders of MNC's point out that export restrictions may stem from cost-raising import substitution policies and maintenance of an over valued currency by Third World nations.[16] The existence and pervasiveness of the restrictive practices, however, perpetrate the dependence position of developing nations.

It has also been observed that MNC's transfer sophisticated technology that is irrelevant to the needs of developing countries, thereby further a situation were the LDC's always have to look to the parent firm for knowledge of the new technology and hence stimulating a nations capacity for self - sustaining growth. It is also true that the technology employed by most MNCs may reduce job opportunities and even redundancies. In some cases multinational subsidiaries have caused the replacement of artisan workers by mass production industries. Although MNC's give both general training to familiarize new workers with industrial production and specific job oriented training and also attempt to improve the general educational qualifications of their employees so as to meet the future training requirements, problems exist with the types of jobs global firms provide. The manufacturing subsidiaries utilizing capital-intensive techniques often create unskilled jobs with minimal training opportunities, relatively low renumeration and limited spin-off benefits for the remainder of the economy.[17] A concern also exists regarding the creation of a labour "elicit" and an accentuation of the wage disapancies between different skill groups and also those between an urban wage-earning minority and rural majority, which characterise many LDC's.

These are some of the main trading and manufacturing operations of most MNCs which will be analyzed in the light of MnCs' effects on developing countries with particular

reference to the Zambian situation in chapter 3 of this paper. it is necessary at this point however to examine the Zambian investment climate using a historical perspective.

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CHAPTER TWO

THE INVESTMENT CLIMATE IN ZAMBIA

Background:

This part of the paper will focus on analysing the investment climate in Zambia both historically and at present. In other words we will first of all look at the period prior to 1992 when the economic climate drastically changed from a centrally planned command economy to a liberalised free market one. In this section, we will also focus our attention on the investment laws as that were enacted and repealed. In conclusion we will outline the effects of the present investment climate on both the local and foreign investors.

Historically, in the first few years of zambian independence, the economy made striking progress. With a GDP per capital that was among the healthiest in Africa and just below half that of South Africa and a copper mining industry so large even by world standards, the forecast was far rapid growth and development. It is commonly accepted that the weakness of the economy, which levelled off in 1972 and then began to decline, cannot be solely ascribed to falling copper prices, though this has indeed been a major factor. This is shown by the fact that even by 1974, before the collapse of copper prices, foreign exchange was becoming a serious constraint on development. The problem seemed to lie deep within the system itself and had its basis in the ambiguities and lack of direction in national development goals and the structural contradictions this had caused. Despite its inheritance of a highly concentrated and dominant foreign owned mining enclave, the Zambian government soon showed a determination to use the state for development. As a result there was a preponderant state sector at least at the formal institutional level though it operated in the context of a mixed economy system.[1]

The Mulungushi and Matero Declarations

At various stages in the Zambian governments' Mulungushi Declaration, President Kaunda announced his administrations attitude towards free enterprise and foreign investment in the non-mining sectors. the government declared its intention to increase indigenous participation in industrial activities and to implement the same, it made several directives which included financial lending institutions such as banks, building societies, and insurance companies having to advance credit facilities to individual companies which were only

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owned by Zambian citizens. in the case of non Zambians, their applications must be referred to The Exchange Control authorities who "will approve or reject it.[2] This directive was in line with the government policy that the amount of money a foreign company could borrow from the Zambian money markets must depend on the amount of capital it brought into Zambia. in other words, a foreign companys' direct foreign investment flows into Zambia was employed as the main criteria of access by such company to the local market. Further more, in a bid to promote Zambian enterprise, certain geographical and business areas were to be reserved strictly for Zambians.

The most spectacular of the Mulungushi Declaration changes was the 'asking' of the owners of certain named firms to 'invite' the government to join their enterprise by offering the state 51 % share holding. The MNCs that were immediately affected totalled 26 and their areas of economic activity included window and door from manufacturing quarrying; transport, retail or whole sale distribution, and newspapers. This number increased over the years. Beyond the Mulungushi Declaration, President Kaunda made further measures in the industrial and commercial fields. There included:

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- the delegation of most importation activities to a newly-created importing agency, the National imports and Export corporation (NIEC).

- the relaxation of the Exchange Control Regulations in so far as they affected the resident as apposed to non-resident expatriate investors as long as they (foreign investors) allowed 51% of their businesses to be in Zambian hands;

- the decision that in the insurance sectors, as from January 1971, no person other then the Zambia state Insurance Corporation (ZSIC), 100% owned by the state, shall enter into any contract of insurance or renew any contract of life insurance; and

- the directive to the foreign banks to form a merger with the National Commercial Bank and then offer the state 51% equity participation.[3]

The major reforms in the mining sector were announced on 11 August 1969 in what came to be know as the matero Declaration "The government reverted" all right of ownership or partial ownership of

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[3]

mineral .... to the state"[4] The Declaration was preceded by a national referendum. This was required because since clause 18 in the then Zambian constitution protected the mining companies interests.

. At this point it is imperative that the global operations of MNCs be analyzed on a global scale if we have to understood how Zambia is a part of this network of developing nations.

THE TRADING AND MANUFACTURING OPERATIONS OF MNCs IN DEVELOPING NATIONS.

The existence of MNCs in developing nations has had diverse effects on the opportunities of local businessmen. In some cases, multinational enterprises have been quick to set up their subsidiaries inside the protected markets, thereby crushing the local enterpreneous. But the presence of foreign-owned firms has also generated some added benefits for local business opportunities to act as contractors, supplies and distributors; opportunities to extract a junior partnership, sometimes on bargain terms; opportunities to

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eventually take over a foreign owned enterprise sometimes by enlisting the help of the national government and sometimes on the base of the local businesses own growing capabilities. Given their small size, the developing nations feel the presence of MNCs more acutely than do the developed countries. Professor Muna Ndulo. It would be foolish to condemn foreign capital on the basis of to disadvantages. What is so needed a greater awareness among the developing countries of the danger of dealing with MNCs so that they can reject the worst deals and extract much better terms in the future. He further said many developing countries in recent years had taken measures directed at buying to mitigate the disadvantages of foreign capital particularly in the area of the exploitation of mineral resources.

Historically, MNCs especially those operating in developing countries focused on extractive and primary industries, mainly petroleum, non-fuel minerals, like Copper in Zambia and primary industrial which includes Zambia consolidated Copper Mines (ZCCM), and plantation activities where a few "agri-business multinationals become involved in export oriented agriculture and local food processing in for example Masstock Africa Limited is foreign company which grows and exports flowers to

Belgium in a commercial basis (but indeed, this could be the only example). Recently however manufacturing firms have occupied an increasing share of MNC production activities. At present manufacturing accounts for almost 28% of the estimated stock of foreign investment in developing nations whereas petroleum and ming represent 40% and 90% respectively and the over all importance of MNCs in the economies of the host nations especially in manufacturing and source sectors to rapidly growing. There is therefore no way nationalization could be done wether sometimes by a presidential under or on Act of Parliament but only after 51% government victory in a national referendum was attained to repeal the clause. A national referendum was thus, conducted in mid-June 1969 and two months later the matero Reforms were announced.

THE LOCAL INVESTMENT LAW

It has been estimated that, by the time of in dependence, the total cost of profits, freight and insurance paid annually to the MNCs (for example Anglo-American and Roan Selection Trust) was on the order of two thirds of its total foreign exchange earnings. These funds might have been invested to train Zambian labour, build Zambia's roads, and equip Zambian industry and agriculture, instead they were shipped out of the country to the share holders of the foreign South African, British and American firms that dominated Zambias economy. Here in, in the in Inherited institution structure, lies the primary explanation of the causes of underdevelopment that characterized the empty rural expanse away from the line of rail when independence was advised.[5] It is in this light that the first investment statute was created in 1965 called the <u>Pioneer industries (Relief from Tax) Act</u> whose aim as the title of the statute suggests was to provide tax relief to private enterprise especially those which were still in the Pioneering stage of their activities.

The government however decided to repeal the <u>Pioneer Industries (Relief from Tax)</u> of 1965 and enacted the <u>Industrial Development) Act</u> in 1977 which provided for the licensing and control of manufacturing enterprises and to provide various investment incentives, remittance of profits guaranteed and guidelines to investors and to regulate the making of contracts relating to transfer of foreign technology and expertise to enterprises operating in Zambia. Under section. 3 of the Act, any manufacturer of any product had to be licensed which licence was to be applied for from the relevant minister; The application had to

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[5]

contain a feasibility study showing the economic vitality of the proposed enterprise and describing the technology intended to be applied.

INCENTIVES UNDER THE ACT.

The Industrial Development Act offered quite a number of incentives to investors in Zambia. If you were a priority enterprise you were offered tax rebates and also preferential treatment with respect to government purchasing. There was
also preferential treatment with regarding to duty on capital equipment and also with regard to obtaining import licences. For an industry to obtain priority enterprise status, certain conditions had to be met. These included (a) the enterprise had to utilise domestic raw materials (b) the enterprise had to be a producer of intermediate goods to be used by other industries (c) it had to create permanent employment for indigenous Zambian's and (d) the enterprise had to promote development in the rural areas and also diversify the industrial structure.

In addition, if you were an expertise, you were given additional incentives as you were earning hard currency to be used by importers within the country.

THE 1977 ACT ON NATIONALISATION

On the question of nationalisation or expropriation, Section 24 of the Act allowed Foreign investors to remit the capital they had brought in and the profits they had made but this was subject to the Exchange control regulations in place at that time which were very strict in terms of channelling foreign exchange out of the country. This indeed was a major hindrance to foreign investment in Zambia. Under the same section,im munity from nationalisation was guaranteed unless the highest considerations of public interest allowed that it takes place. In fact meant that there was no guarantee because it was not defined as to what constituted pabitic interest. In conclusion, this statute is repeating how strong government control over foreign investors was.

The industrial Development Act was repealed and replaced by more attractive <u>Investment Act</u> that was enacted by the parliament of Zambia and assented on 17th April 1986. In addition to its provision for the formation of an investment council, chaired by the Prime Minister, and an investment coordinating Committee, headed by the Directior of investments, the Act offered several incentives to investors. These included:

(a) retention of a percentage of their foreign exchange earning;

(b) preferential tax rates

(c) access to any foreign exchange evolving fund which may be provided for the promotion of exports;

(d) access to any existing free trade zones

(e) investors in agricultural and forestry activities shall benefit from exemption from the payment of reflective employment tax; and access to preferential borrowing facilities;

(f) for a five year period, a deduction from taxable income for each tax year of 50% of the total salaries paid to Zambia manpower employed in the enterprise;

(g) full exemption from tax on dividends for period of five years

(1) for a period of ten years, a deduction from taxable income of 50% of the expenses incurred during each tax year on any training programme extended to Zambian employees; and any research and development programme conducted either by the enterprise or through a recognize research institution, for the purpose of technological adaption or import substitution.

The 1986 Act further provided for additional incentives for export activities. These included draw back on duties and sales tax paid on imported inputs used in producing goods for export; and a deduction from taxable income of 50% of the cost of the approved programme of export promotion and foreign market prospective. Equally attractive incentives were given for investments in certain enterprises in rural areas and for small-scale and village enterprises.

THE MINING SECTOR

In the mining sector, following the Matero Declaration in 1969 was a 194-page comprehensive Mines and minerals Act of 1969 which became law in January 1970. The statute made regulatory restrictions in such areas as the acquisition of mining rights; conditions in, and duration of prospecting; "on conditions requiring the applicant to agree to the Republic having the option to acquire an interest in any venture which might be carried on by the applicant in the proposed area" (Part iv, section 20 (a)); exploitation regulations; and the laws governing the acquisitions of mining licenses. The mining license was no longer to be held in perpetuity but for a period not exceeding 25 years although it could be renewed.

On 1st April 1970 the Mineral Tax Act. of 1970 was enacted and became law, the mineral Tax rate for Copper has been 51%; lead and 3 inc, 20%; amethyst and being 1 15%; and gold, benuth, cobalt, silver and cadminar, 10%. In addition to the mineral tax (Note that the mineral tax was payable on a monthly pay-as-you-can basis while income tax was paid annually), the mining companies (i.e the MNCs - Roan selection Trust and Anglo-American corporation) paid a company income tax at a rate of 45% on the profit which remained after the mineral tax had been levied. This meant that after 1970, the upper mining companies paid a total of 73% of their profits as taxes to the government of Zambia Nevertheless, several allowances brought the effective rates significantly lower than 73%. The significance of these tax reforms was that since the new tax - formula levied tax on profits rather than on production, it encouraged mining development as it did not penalize low grade ore, high cost mining ventures. This, theoretically, encouraged the foreign companies to re-invest higher proportions of their dividends in order to expand their long-run profits and, perhaps more important for both the state and the MNCs it encouraged investment in, development of marginal mines Another incentive in the Mineral Tax Act was provided for under section 7 stating that "a company shall be entitled to a refund on mineral tax in respect of any prescribed period if its average income in the prescribed period [i.e. three years] is less than 12% of its average equity in the prescribed period .... the amount of the refund shall be

12% of the average in the prescribed period: provided that the amount refunded shall not in any case exceed the total of mineral tax paid...". What this meant was that If a new mining company was incorporated in Zambia and could show that over a three year period, the after - tax average from its equity was less than 12% a non-taxable remission of all (or part) of the mineral tax it would normally pay to the government would be authorized by the Commissioner of Taxes. Hence, for a new mine operated by such a locally incorporated company, the tax payable to the government, depending on its financial status during the prescribed three year period, would range from a minimum of only 22% to a maximum of about 73% in the case where both mineral and income taxes were paid without refund.[6] The response to the Zambia governments announcements from the two foreign MNCs in the mining industry were surprisingly quite favourable, although with qualifications. Immediately the tax reforms were announced, the Roan selection Trust (RST) chairman stated that the mining companies" welcomed the

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establishment of the new principle that" a mineral tax at 51% when taken in conjunction with income tax is high by world standards and has the effect of actually increasing the amount compared with the present level if and when prices should fall." The Anglo-American corporations response was equally encouraging to the Zambian government. As the company Spokesman stated", although the overall tax remains high, the change over to a profitability formula is welcome"[7] It seems to me here that MNCs are not at all fearful of the local tax rate bearing in mind that the profits they make are exhorbitant as compared to the tax levied on them and hence their indifference to the tax reforms put in place by the UNIP government.

Still in the mining sector the best known and, perhaps, most inter nationally significant, feature of the Matero Declaration was President Kaunda's" request" to the mining companies "to invite the government to join their mining enterprises [and] give 51% of their shares to the state. following the Declaration, the <u>Mines Acquisition (Special Provisons Act</u> was enacited and facilitated, <u>inter alia</u>, the state acquisition of a 51% interest in AACs and RSTs whilst at the same time relaxing the exchange control restriction on "payment of

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dividends on the shares and other securities of an operating company (to non-Zambians) for as long as there is outstanding any bond issued in respect of the purchase of shares in that operating company" (Section 6 of the Act). As a result of the above policy changes, a new corporate structure emerged in the Zambia mining industry that lasted for twelve years until April, 1982.

These, then were the investment laws prevalent during the second republic or the period before the Third Republic when the MMD government came into power. Indeed on 31st October 1991, a new government seized the reigns via the ballot box, which regime has totally different policies from those of the precious regime. The concluding remark concerning the precious

regimes policies toward foreign investors is the then government was a hinduance to foreign investment because it was literally in control of the local market but how, we have moved into a more liberalised market economy.

THE CURRENT INVESTMENT CLIMATE AND LEGISLATION

Investment Centre Director General Kelvin Moore is reported to have said that the investment climate is very good in Zambia at present.[8] An investigation to the various instruments and structures the current region has put into place clearly reveals that there is a radical shift from the mixed economy system investment climate to a proper enabling environment. The new government has published an eleven page investment Guide out lining the opportunities and procedures involved in investing in the Zambian economy. The guide for example identifies agriculture, tourism, manufacturing, transport and mining and processing of precious and semi-precious stones as being among the areas in which there are opportunities to in vest in or existing businesses; a good and in expensive land, beautiful natural scenery and good etinate with adequate rainfall, cheap electrical power and extensive

network of road and raid connection are cited as competitive advantages in particular the peace which Zambia has enjoyed for the past 20 years and the constitutional checks and balances are cited as providing a form base for future stability. In fact this information clearly shows that in

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Zambia, doors are wide open for any MNCs to operate in which ever sector of the economy they may choose. Zambia is also in the process privatisation of large and high profile company's. The government has been so eager to allow the private sector to flourish that it has relinquished its role as owners of these parastatal companies and is (at least ideally) encouraging MNCs and domestic firms to purchase shares in these companies. To affirm its commitment to privatisation, the Zambian parliament created the privatisation Act in 1992 which provides for the procedure for privatising parastatals within a specific period of time. Commenting on privatisation in Zambia the then chief Executive chairman of the Zambia privatisation Agency Mr. S. Mwamba said that the big parastatals have been mostly purchased by foreign MNCs which he said have the financial ability to handle such firms as compared to an indegenous Zambian firm.[7] The programme to privatise over 100 major compares in most sectors of the economy offers new business opportunities to international investors. In 1993, the Lusaka stock Exchange (LUSE) became operational. LUSE is a reputable private company in the early stages of development. Trading activity by as many MNCs as possible is encouraged so that they participate the valuation exercise of companies and the

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structuring of the Zambia capital market.[10]

The economy is going through a new era of economic liberalisation. Tight regulations and unnecersay red tapes on the flow of capital in and out of Zambia are a thing of the past. International investors have many business incentives open to them when coming to Zambia. Corporate taxes are being constantly reviewed and ways to bring them down are seen as a viable option as more investors come to Zambia. The government, in short is playing a very progressive role in trying to make Zambia a conducive place for investment opportunities. The government and the domestic business community would like to encourage a healthy international financial business environment.

THE INVESTMENT ACT OF 1991

The main statute regulating investment in Zambia was the investment Act of 1991 which provided both local firms and foreign MNCs with general incentives aimed at earning, access to adequate foreign exchange. The general incentives included exemptions from the following:

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- custody duty and sales tax on machinery, equipment and spares required to establish the enterprise.
- tax on dividends and royalties for seven years
- corporate income tax - all of it for three years and 75 % for the following two years.
- selective employment tax on expatriate labour for seven years

Perhaps the most fascinating incentive to MNCs is that remittances abroad were allowed for:
- 50% of net income
- principal and interest on foreign loans
- fees and loyalties for technology transfer
- net proceeds from any arbitraration award.

Further, Zambia being a member of the muti-lateral investment Guarantee Agency (MIGA), the Act guarateers that;
- if in investor met the conditions for an investment licence it would automatically be granted
- no investment property could be appropriated without an Act of Parliament relating to that specific property and full market value compensation being paid (and convertible) in any such case;

- any changes in the investment Act would not a adversely affect existing enterprises for a period of seven years from the date of the licence (hence stability is guaranteed). In cases of dispute with the government, the investors had legal recourse to a special arbitration body ort o the High court of Zambia and beyond that to the International centre for settlement of investment Disputes (ICSID), the United Nations Commission on International Trade Law and any other International machinery agreed by the parties involved.

As regards the application for an investment licence, under the investment Act 1991, anyone working to invest in agriculture, industry, transport or tourism had for apply to the Investment Centre for an Investment licence, submitting the following:

- name address, legal form of the enterprise and full share holdings

- nature and location of proposed activity;
- incentives one expects to qualify for. An Investment licence authorised all necessary arrangements for establishing the enterprise for an estimated period. The holder had to report the date of commencement of business, had to

maintain proper records and permit access to the records by the Investment Centre or its representatives. The above are the incentives made available by the Act to MNCs coming into Zambia but what has been said here is just the legal framework regulating Investment in Zambia, so that there is need to briefly see how the relevant institution which deals with investors really operates, is this facility or institution is the Investment Centre:

THE INVESTMENT CENTRE

The Investment Centre is a facility which was particularly set up under the Act for the investor to seek guidance and assistance and lodge his various applications for permits, certificates and licences. It would assist in managing appointments where necessary for the completion of formalities particularly more complex and cumbersome areas such as the lease of hand. The centre would closely monitor the progress of applications and would ensure that except in most complex cases, formalities and regulations are completed within one month of the sub mission of the application, Investors who choose to make a personal visit to a government authority many request that a representative from the centre accompanies them. It is also of interest to note that the centre was staffed by experts in various enterprise and sectors who are closely in touch with government ministries and departments and with local authorities. A board was established to help in the smooth running of the centre. The majority of the members of the board were drawn from the business community.

However the 1991 Act was repealed by the Investment Act of 1993, Act Number 31 whose preamble indicates that the aim of the statute is to merely create a comprehensive legal framework for investment in Zambia. The Act is basically the same as the 1991 Act except the it has more favourable incentives as compared to the 1991 Act. The Act also extends the Investment Centre intended to remove the red tape surrounding the processing of investment in Zambia by providing a one-stop facility, sector 35 of the Act states that no private property shall be compulsorily acquired by the state except for public purposes and this has to be done under an Act of parliament. This therefore entails, that there is proper legal protection and guarantee for investors waiting to invest in Zambia. Sector 36 of the Act allows for the externalization of profits by foreign investors in MNCs after payment of the relevant taxes. In the agricultural sector the Act provides that an investors tax on profits is as low as 15% together with other incentives including dividents received for the first five years being tax free.

It is therefore clear that in the present Investment climate all state control has been completely removed. (although there is a major improvement of the present Act over the precious one especially on taxation in the agricultural sector). A critique by Mark O Donnell can be applied to both the 1991 Investment Act and the 1992 Act. He states that the present Act is a piece of legislation that gives an unfair advantage to new investment or MNCs over existing investment and measures must be taken now before it is too late to rectify this anomaly. According to him, the best investment policy is not to have a specific Act to attract investment but for the government to create the right enabling environment where firms, be they indigenous or foreign compete on the same terms. He says that the investment Act of 1991 is a desperate attempt by the government of the day to attract any type of investment as long as it is investment and yet no regard has been given to existing enterprises. In order to redress the problem, the government must now make urgent efforts to create the right enabling environment and ultimately phase out the Investment Act. It goes without saying that we cannot do without investment but we need to be very careful with what kind of investment we me bringing in.

State participation in the commercial sector is not completely wrong as you have to be careful what kind of investment you allow into the country. It is ture that the redtape should be removed but the institutional structure should include regulations to control the coming in of investment. Further, despite the purpoted incentives which appear to draw in any type of investment, most of them are merely on paper and are never there in practice.
One area the new statute has failed to address is that dealing with the transfer of technology by the MNCs to the local experts. It is essential that technology be transferred or else Zambia will continue to depend on the MNCs' parent firm for spares in case of breakdowns.

The foregoing discussion focused on the investment climate in Zambia. This was indeed necessary in order for us to determine to what extent multinational enterprises can freely operate in this country. Under the current investment climate, various MNCs have expressed willingness to invest in this country seeing that there is little or no governmental interference in the private sector. At this point the author is of the view that a few MNCs' operations in Zambia be considered.

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CHAPTER THREE

This part of the paper will focus on discussing particular Multinational enterprises operating in Zambia in the light of the question whether they are in this country essentially to promote economic development or not.

Mining MNCs in Zambia

Around 1880, The British South Africa Company (B.S.A. Co.) which had by then entered unto mining concession with the local chiefs in Northern Rhodesia , was granted a royal charter by Her majesty the Queen of England. The charter gave the company administrative control over the British colony of Northern Rhodesia. In the 1920s two giant mining MNCs, Anglo American and Roan section Trust (RST)_ purchased 50 000 square miles of mining concessions from the B.S.A. Co. Anglo American Corporation was a subsidiary of Anglo American Corporation of South Africa which was incorporated in South Africa in 1917.

RST eventually became affiliated with American Metal Chimax, a large American firm with growing business established in mines, smelters and refineries in the United States, and a growing African empire spreading from South Africa into Namibia and, more recently, Botswana.[1]

Anglo American Corporation of South Africa's (A.A.C.(SA) original incursion in Northern Rhodesia mining was the result of the relationship between Edmund Davies and Ernesst Oppenheimer. Oppenheimer was chairman of A.A.C (S.A) which was concerned with diamond activities and Davies was associated with concession mines including Rhodesian Congo Border Concession Limited (RCBC) and Nkana Concession Limited. Davies invited Oppenheimer to assist financially in opening the first mining company in Northern Rhodesia at Bwana Mkubwa. Pursuant to the invitation A.A.C (S.A) purchased 100,000 Bwana Mkubwa shares in 1924.[2]

The corporate structure of the mining companies in Northern Rhodesia before and after 1954 reveals a pyramid of international companies. The apex represented two parent companies - Anglo American Corporation of South Africa and American Metal Climax which have always been incorporated in South Africa and the United States respectively. In the middle were two Rhodesian holding companies in Rhodesia Anglo American Limited (Rhoanglo) a subsidiary of A.A.C of South Africa which was

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incorporated in London in 1929 to serve as the holding company for all producing companies within the A.A.C group of companies which included Nchanga, Rhokana and Bancroft by 1960. The other company in the middle was Rhodesian Selection Trust. These two companies became incorporated in Zambia after 1964 and changed the name to Zambia Anglo American Ltd (Zamanglo) and Roan Selection Trust (RST) but they have always remained subsidiaries of A.A.C.(SA) and American Metal climax. Forming the base of the pyramid were the producing companies in Northern Rhodesia. The incorporation of producing mines in Northern Rhodesia was transferred from London to Lusaka in 1954. In the case of companies belonging to A.A.C (SA) a Rhoanglo Group Act, 1953 was passed by the imperial parliament in the United Kingdom. This Act was the culmination of the decisions taken by the companies concerned- Nchanga Consolidated Copper Mines Limited and Rhodesia Broken Hill Development Company Limited -at their extra ordinary general meeting in December 1950 to transfer their incorporation to Northern Rhodesia. Rhoanglo and its associates were then incorporated in Northern Rhodesia on 11th May 1954.[3]

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In legal theory, it would have been contented that although the parent companies (that is to say, A.A.C. (SA) and American Metal Climax)were the majority shareholders in the holdings . Companies including Rhoanglo and RST, which in turn were majority shareholders in producing companies, all companies in the pyramid were separate entities by virtue of incorporation. In other words, companies incorporated in Northern Rhodesia were legal entities distinct from holding companies of parent companies in the United Kingdom, South Africa and the United states of America. But in practice producing companies incorporated in Northern Rhodesia were part and parcel of the international ring of mining companies. All major policy decisions affecting them came from abroad.[4] For example, according to Sir Ronald Prain in this article <u>Copper, the anatomy of an industry,</u> [5] Copper mining companies in the RST group were instructed to announce in advance prices at which their copper was to be sold. These prices were lower than those of the London Metal Exchange. This explains the point that subsidiaries of MNC's operating in a foreign or host country are seen as an extension of the parent firm's global profit maximization strategies whereby the firm employs

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such techniques as transfer pricing. It should be admitted here that information on transfer pricing is not easy to obtain because many MNCs work under a clock of secrecy.[6] Transfer pricing as was discussed in chapter one aims at adhering congruence between subsidiary objectives and overall corporate objectives and also to provide subsidiary managers with data which enables them to make decisions which are consistent with the parent company' goals. With multinational transfer pricing the reduction of taxes can be beneficial to the enterprise provided that the firms objectives of augmenting benefits is not hindered by it. Both domestic and multinational enterprises employ transfer pricing for the reduction of taxes. Research indicates that multinationals regard reducing taxes a s an important reason to use transfer pricing.[7]

A clear look at the set up which was there between the apparent multinationals and the holding companies whereby the subsidiaries of the parent companies were incorporated as separate legal entities, reveals another advantage to the parent companies. This advantage is limited liability or no liability at all on debts incurred by producing companies. Under company Law once a member has paid

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the company for his shares his liability is discharged completely and he cannot be made responsible for making up the deficiencies of the company or of another shareholder. Now, given this situation where America Metal Climax Corporation a parent firm has historically owned about 42 % of the Roan Selection Trust Limited, 18 % of O' okiep Copper Company Limited and 17 % of Copper Range Company,[8] it is clear here that the liability of the parent firm was limited to the number of shares it held in each company. The legal position was that for any obligations that would have been incurred by the holding or parent companies on behalf of the producing companies, the producing companies which were infact incorporated in Zambia would have been liable and not the holding or parent companies.

When the two afore mentioned mining multinationals started their operations in Zambia, they built smelters and refineries to process their ore to a considerable higher level than that achieved even in politically independent Latin America copper exporter, Chile. They sold their output directly to European and English fabricators, their fairly advanced level of processing permitted considerable flexibility in marketing. This point alone shows the general realisation of the need for

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foreign capital in the development of the country's mineral resources. Throughout its history the mining industry has been developed by foreign capital. In the early part, it was largely British, American and South African capital which put mining on a sound footing and the foreign multinational companies from these countries have had significant interest in the existing mines. And even if foreign investment were not to take the form of financial investment, it is obvious that the beginning technology was to be contracted from abroad and financing arranged by borrowing from abroad if new mining projets were to be generated and successfully realised. These therefore are clear benefits which the Zambian government derived from the foreign multinationals which majored in the mining industry. It is no doubt that the presence of MNCs was so advantageous to Zambia. An inflow of private capital contributes to the recipient country's development process by helping to reduce the shortage of domestic savings and by increasing the supply of foreign exchange. In this respect, Zambian mines are a very good example. A further advantage, was that the mines were the largest employers especially the period before Zambia got her independence.

Another problem linked with MNCs is that of outflow of profits. Allied to the problem of profits going out is the general question of the effect of absent ownership upon the national economy, the balance of payments and the sentiments of nationalism. Nationals of the host country frequently complain, with some justification that their national wealth is being consumed abroad for others comfort and in the case of mining, complain that they are finally left with "holes" in the ground. A complementary version of that cry is the question 'why do we export copper bars and import electric motors?' It has been estimated that, by the time of independence, the total cost of profits, interest, freight and insurance paid annually to the multinational corporations that dominated Zambians export enclave was on the order of two thirds of its foreign exchange earnings. These funds might have been invested to train Zambian Labour, build Zambian roads, and equip Zambian industry and agriculture with modern machinery. Instead they were shipped out of the country to the shareholders of the foreign South African, British and American firms that dominated Zambia's economy. Herein, in the institutional structure lies, the primary explanation of the causes of underdevelopment in Zambia.[9] It is also reported that the ten years of

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federation 1953-1963 saw a tax drain of almost $ 100 million from Zambia to finance the infrastructure which provided the foundation of Southern Rhodesia's industrial growth. Tens of millions of dollars more were drained from Zambia and Malawi through the mechanism of higher than world prices charged for Southern Rhodesian manufactured goods. Manufacturing was so neglected in Zambia that, at independence, even including industries serving the mines, it constituted only about six percent of the national product.[10] The first ever cable factory was only established several years after independence. It was built by the U.S Copper firm, Phillips, and processed a tiny fraction, less than two percent of the mines' output. In fact Phillips also imported copper products which it sold in Zambia and to its neighbours along with the products processed from Zambia's copper which was initially cheaply extracted from the bowels of the Zambian land.[11] In other words, Zambia was serving as a cheap source of raw materials which are exported outside to be processed into manufactured goods which came back as finished goods which Zambians had to re-purchase at exhobitant prices.

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The other problem of MNCs is that they seek out those economic activities that will yield the highest profit and as sanctioned by the business ethic, they neglect activities merely of social importance. Investors usually aim at maximizing profits while the local society aims at maximising some broader measure of social welfare. Just after independence, Zambia's new industries were financed to a considerable extent by foreign private capital attracted by expansion of infrastructure, favourable tax policies, and protective tariffs, Seeking to maximise their global profits, rather than to restructure Zambia's economy. However, production of luxuries and semi-luxuries for higher income groups associated with the mines and rail line development. They imported capital equipment and machinery, employing technologies utilized in their more developed homelands, but hardly appropriate in Zambia where mounting urban unemployment and was already causing serious problems. They imported parts and materials from their South African overseas affiliates to be processed in their Zambian plants rather than seeking to build Zambian intermediate industries using local materials. Some U.S. based multinationals, already established in South Africa, established last stage assembly plants in Zambia, too. They did mot produce much however; rather they last stage assembled and/or processed materials and parts imported from their plants in South Africa or in the United States .[12] So MNCs will maximise profits by bringing in highly processed finished goods which ares too advanced for the Zambian's to even think of making. Also, the technology used to manufacture this product is so sophisticated that even for spares, Zambia has to continue looking to the foreign company and hence further costs. To make matters worse, the foreign based company is not at all prepared to share the 'secret' of how to manufacture the product, yet most of the raw materials come from the developing countries themselves.

Since MNCs are essentially profit making bodies, the threat of nationalism has hurt all these corporations, not only through the loss of revenues from the mines that had taken over in Zambia in 1969 but also through the threat to their places as major oligopoly members in the semi- integrated world industry. To maintain scale economies, managerial expertise and international marketing position, they have been investing to replace output and keep their global structures even in periods when the short term outlook for demand has been weak and prices have been falling. For example, when the Roan Selection Trust group was nationalised in Zambia it

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began to work new ore-bodies in Botswana, and it bid for concession in Indonesia and Australia. Also when the Anglo-American Corporation of south Africa, was nationalised in Zambia, it started to expand its ore-base in Canada and Australia.[13] In other words these MNCs when threatened with nationalisation have shifted their investment plans and their exploration efforts to secure areas in order to try to pressure their network of ties to customers and maintain the selling patterns that they have built up, with such effort, expense and patience in the past.[14]

But it should be borne in mind that MNCs are private business enterprises who cannot at all invest in any venture which will not yield anything for them to carry back and it should also be noted that the foregoing discussion on Mining MNCs in Zambia has so far been based on the kind of socialist policies which obtained during the second Republic. By 1982 the Anglo-American Corporation was the minority shareholder in Nchanga Consolidated Copper Mines (NCCM) and Roan Selection Trust was minority shareholder in Roan Consolidated Mines (RCM). The Zambian government had a total of 51 % shares in both mines. On 23 March 1982 the two mining companies merged to form the now Zambia

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Consolidated Copper Mines (ZCCM). Currently, the government is still the majority share holder with up to 62 % shares while the Anglo-American (Central Africa) Limited holds through ZCI, a 27.3 % shares. What then is the position of Anglo-American Corporation as a multinational enterprise operating in Zambia's new liberalized environment?

An interview with the current company secretary revealed that since the government decided to nationalise the mines belonging to AAC, production has always gone down and has never picked up due to the governments inability to bring in modern and cheaper technology which the multinational can easily do. He says that the mining industry is up to now still suffering the first and second Republic mentality whereby the workforce on the mines do not put production first, instead they concentrate more on their welfare and recreation facilities, unlike Chile or South Africa where the workforce concentrates on output. This then is apparently a clear indication that multinational firms are so keen on output which in turn would increase the GDP of the nation and so in that sense one can say they are for the economic development of the nation as a whole seeing that the mining industry earns 90 percent of the country's foreign exchange but it also indicates the desire to maximise profits.[15] The fact that production is going down and down due to the States' interference just shows how the government is unable to bring in improved technology and new equipment to be used on the mines instead of the same machinery which has been there for decades. The AAC could hence by now installed new machinery but alas! government has taken over management from them. According to the Operations Director the Laws that be, inhibit investment and progress in the mining sector. For example, the company (i.e AAC) has a strong dislike for the royalties currently at 3 % which have to be paid to the government; this royalty is a heavy tax on their sales and the company is of the view that the royalty should be only 1 % or zero. the operations director was however happy to note that the new <u>Mines and Minerals Act 1995.</u> has addressed most of the issues affecting the company. For example a multinational firm can now ship out of the country as much profits as it can. The director further stated that the cost of production of Copper in Chile and Brazil is half that of ZCCM but the copper grade in Zambia is high. All this information goes to show how much AAC wants to invest in the mining sector but for the existing policies. In an address to ZACCI and the Economic Association of Zambia, the Chairman of AAC (Central

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Africa) Limited stated that the "Anglo Group would not, under any circumstances, wish to acquire a controlling interest in ZCCM (i,e+50 %) on our own", he later said that "I'd like to close by saying that we have made no decision as to whether increasing our investment in ZCCM in the context of privatisation would be attractive or not. We will not be able to take such a decision until the government decides how and on what terms it wishes to privatise its interests and we are in a position to evaluate the opportunity and advise minority shareholders in ZCI and undertake together with government a technical and financial audit of the company and to pursue discussions with government in regard to the process and terms for privatisation. If this audit and parallel discussion prove encouraging we will try to form a consortium of major companies to acquire a majority interest in the company."[16] In other words, the company is of the view that there should be complete privatisation of ZCCM and government must put in place guarantees that it will not again nationalise the industry should AAC acquire a controlling interest in it. This situation is also a demonstration to the developing nation that MNCs can go and invest somewhere else. If a host nation seems to have a poor investment climate.

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Apart from being a shareholder in ZCCM, AAC is a holder of 3 prospecting licences in Mwinilunga and Solwezi Districts and operations cover a total area of 3256 sq. km. It has expended a total of US $ 503, 726 from 1993 to 1994 on the projects.[17] The chairman of AAC on further investments, had this to say "aside from establishing a much closer and more productive relationship with the current management of ZCCM, we have acquired the Lusaka plant of Zambia Breweries and have commenced the revolution and expansion of the Ridgeway Hotel at a projected cost of U.S $ 7 million. We are also negotiating with the Zambia Privatisation Agency with regard to our interests in Chilanga Cement and ZAMEFA and we are conducting an active exploration programme for base metals. We believe all this clearly demonstrates our continuing commitment to economic development in Zambia.[18]"And so here is a MNC corporation putting in black and white that they are committed to the economic development of Zambia as a nation by way of investing both in the mining and non-mining sector, or in other words showing the pressure todemonstrate support for economic development in order to operate there.

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Other MNCs in the mining industry include companies like Phelps Doge which is a holder of sixprospecting licences in Solwezi and Kapompo area and it is mainly prospecting for the minerals of copper, cobalt, zinc, silver and gold, with a total amount of U.S $ 3,075, 000, injected in its five project areas. In 1993 the company expended US $ 2,517,760 increasing by US $ 331, 600 during the first quarter of 1994. Phelps Dodges' (Z) Ltd prospecting operations cover a total area of 8855 sq.km.[19] This obviously is a large investment in the mining industry of the nation which is the source of foreign exchange for Zambia. Again the argument must be repeated here that no one can invest such huge sums of money in a project which they know that it will not yield anything. So while profits continue to flow out of the country, the company contributes in terms of G.D.P, tax and job creation for indigenous Zambians. Another multinational corporation in the mining sector is Johannesburg consolidated Investments which holds five prospecting licences over a total area of 803.10 sq. km. It has invested U.S $ 2,957,142, in these projects, copper and gold being the main minerals prospected for. It has so far expended U.S $ 1,699 024.98 for all five projects.[20]

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Lonrho Group of Companies:

Another multinational firm condoning in Zambia is the Lonrho Group of Companies.[21] It's headquarters is in the United Kingdom and they have investments in literally every commonwealth country including Zambia. Lonrho is involved in mining, motor trading, farming, Hotels and supplying equipment to the mines. In Zambia Lonrho has, well over 50 companies or subsidiaries. Lonrho has been operating in Zambia for over 27 years and so it felt the difference between the second and the new third republics. According to the exports manager, in the second Republic, one if they were a MNC, had to be in good terms with the government officials if they were to remove the nationalisation that were taking place. Two of Lonhos companies were however nationalized including National Breweries in which the government acquired 5 % shares and Times of Zambia where the government acquired 100 % shares. This was a great discouragement to Lonrho as they wanted a return on their investments. This then led to Lonrho seeking to actively make its interests be synonymous with those of the socialist government and so the then managing director of Lonrho, Mr. Tiny Rowlands went into a plan where he discussed with president Kaunda the future of Lonrho in Zambia, hence they became good friends which led to Lonrho enjoying the best

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conditions among all the MNCs operating in Zambia. The government stopped nationalising Lonrhos companies and instead the government and Lonrho started going into joint ventures, for example Cariba Minerals is a joint venture between Lonrho and the government. In another article, it is reported that the relations with the then government were so close that when a board of directors revolt threatened Rowlands position as managing director, the Zambian government intervened and offered £ 8 million to the company as Rowland remained in the position of managing director .[22] Another interview with a senior government official in the Ministry of Lands confirmed the fact that Lonrho chief executive Rowland has had immense political influence with the president sometimes making cabinet reshuffles convenient to the MNC. As was stated there are suggestions that Lonrho played a back ground role in the 1971 comp in the Sudan, and that their chairman, Dacan Sanys, a former British Cabinet Minster, obtained for the 'new' government a £ 10 million loan, thus paving way for Lonrhos advance in the Sudanese economy.[23] One therefore wonders whether Lonrho as a Multinational enterprise operating in Zambia is really here for economic development or not. It has been said that MNCs are

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usually a mere extension of their country of origin's political influence to Less Developed Countries (LDCs) of which Lonrho can be said to be such a one. The exports Manager, however denied this allegation strongly stating that, " we try as much as possible to operate within the legal frame work of the company and as we a foreign company we do'nt normally get involved in politics." He further gave a n example saying, Lonrho is not going to buy back Times of Zambia considering that owning a newspaper in Zambia's current political climate would mean getting involved in politics and so Lonrho seems to be operating on purely commercial lines.The fact that Lonrho has more than 50 companies operating in Zambia means that this MNC has employed a lot of people and thereby directly reducing the levels of unemployment in the country. An interesting point which came out the interview, is that Lonrho as a company does not retrench its employees even when the company is making losses. It was discovered, that in such a situation, the company will continue to run on profits of another subsidiary which is doing fine in another country and so there is this complicated network starting from the parent firm to its subsidiaries. at this point, one is entitled to assume, that a subsidiary may deliberately lower the prices of its commodities even if this means making a loss for the sake of capturing the market in that country. The other point one can deduce from the above assertion is that a loss in one of the subsidiaries is not a loss at all, as profits are calculated on a global basis. Lonrho in order to prove that its motive is not only making huge profits, provides a lot of welfare activities to its employees. If an employee dies, the terminal benefits are given to the family and if they wish, they can obtain that after a long time at an interest which is paid to them. Lonrho is therefore one of the few MNCs which has assiduosly cultivated its local contracts and has actively made its interests synonymous with those of the ruling group, hence Lonrho is sometimes referred to as Africa's best known conglomerate. Another MNC of particualr importance to Zambia is the Commonwealth Development Corporation.

The Commonwealth Development Corporation

The Commonwealth Development Corporation (CDC) is a British Statutory Corporation operating independently along commercial lines and hence the author wishes to treat it as a MNC especially seeing its way of investment is by way of portfolio investment. By portfolio investment is meant a transfer of capital through the purchase of shares or stock or senmties in local companies. Normally, such purchases will be made by a number of different individuals or corporatives, and thus in the case of business investments, control would be dispensed. CDC's specific purpose is to promote development in less developed countries (LDCs) like Zambia, who are put of the Commonwealth and more recently even non-Commonwealth countries. It does this by providing equity and loan finances, and often management as well. CDCs investment policy is completely flexible, its principle criteria being that any scheme in which it invests must be financially viable and of development value to the country concerned. Already the conditions for investment are surfacing as is usually the case with most MNCs, as they cannot simply invest were they are very sure they are not going to earn anything in terms of profits. It is obvious that it is both unreasonable and undesirable for MNCs to invest their huge sums of money on a project which will yield nothing for them to take back home and hence the condition by CDC that any project in which it should invest must be financially viable and of development value to continue giving them profits.

The nature and scope of the projects in which CDC has invested would vary widely. They include basic development such as power and water supply, transportation and housing development, primary production, incorporating renewable natural resources such as agriculture, ranching and forestry with associated processing plants, industrial projects including factories, industrial and housing development companies and hotels. CDC does not undertake projects of a social or infrastructure nature for example schools, hospitals or roads. It gives particularly high priority both to development of renewable natural resources (primary agriculture and forestry) for which it has a special line of cheaper finance and to assisting development in the poor developing countries.[24] This takes us back to the earlier stated point that MNCs seek out those economic activities that yield the highest profit and as mentioned by the business ethics, they neglect activities which are merely of social importance.[25]

CDC operates a number of wholly owned projects which it manages itself more commonly it, invests as majority or minority shareholders alongside either government or without equity participation in number of instances it has lent funds directly to government which funds are used to finance identifiable and viable schemes. Since its establishment by an Act of the U.K government in 1948, it has built up a world-wide investment

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portfolio totalling £ 370 million including outstanding commitments in some 250 projects in 50 different countries. Its headquarters is in London and provides a range of specific services and coordinates investigations of new business opportunities and supervision of existing investments. Overall policy and investment decisions are made by a supervising Board of Directors whose non-executive members are appointed by the British government and who meet once each month.[26]

What is actually going on here is that that British Government is simply extending its influence both politically and economically; politically by way of putting conditions which the host government must adhere to before any investment can take place; economically by literally holding a number of shares in the key industries of the country and further that major decisions are made at the headquarters in London.

Responsibility for the day-to-day running of the corporations activities overseas is delegated to six regional controllers each of whom is an overseas member of the Executive Management Board. The regional controllers are supported by suitably qualified and well experienced staff, and in

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specific cases when the volume of business justifies it by country representatives. CDC's Central African Region covers Zambia, Malawi, Tanzania, and Zaire although no investment has been made in Zaire obviously because Zaire is both economically and politically unstable and so no profit can be in generated from such a country. The regional headquarters is located in Lusaka. This then shows how vast the management is and how the corporation ensures that all overseas activities are in line with, the headquater's policies.

CDC has a number of major industrial investment in Zambia. CDC established Chilanga Cement as its subsidiary in 1949 and remained the majority shareholder until the Zambian government through ZIMCO took a 60 % share holding in 1972. CDC retained 24 % ZAMIC 6 % and the general public and institutional investors 10 %. Now the company has been privatised with CDC once more gaining a 50 % share holding.[27] Currently CDC has £ 54 million invested and committed in the country. A further £ 20 million has been approved for investment in the agriculture sector. CDC has also made available loans to the Zambia Sugar Company at rates ranging from 7 to 11.5 % and payable in foreign exchange. These include expansion and factory development

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loans amounting to over K 170 million (in 1992) due this year and a further K 530 million due by 2001. Recently Mphongwe Development Corporation has been sold to CDC which no has 70 % shares in it. This is further proof as to how this foreign based corporation has permeated the Zambian industrial base, CDC has 12.5 % share in Kafue Textiles of Zambia Limited, and also holds preference shares and a loan investment in the company. CDC has also made sizable loans to Ndola Lime Company Limited and Kafironda Limited. In short, CDC is actively investigating a number of new development opportunities in Zambia with a view to provide finance and were necessary, management if after a detailed investigation it is satisfied that the proposals are viable and worthwhile, it is especially concentrating its activities in the rural sectors in line with the governments policy of promoting agricultural development. CDC, has no doubt, invested a lot in Zambia's industrial base and we can aptly conclude that its role as a multinational corporation operating in Zambia is that of bringing in development. This is so because it is not really interested in buying and selling of commodities but it is investing its resource in the manufacturing sector which is the basis for any countries economic development. However, it is submitted that such a conclusion would only be validly made if one was knowledgeable of how much the foreign corporation was taking out of this country as profits to the headquartered in the U.K. The author wishes to discuss yet another Multinational enterprise which is purely in the agricultural sector, and this is Masstock Africa Limited.

Masstock Africa Limited [28]

Masstock Africa Limited (MAL) was incorporated in Zambia in 1989 as subsidiary of the parent firm headquartered in Ireland. The firm which grows and exports flowers, began with a cotton project which never materialised. The crop is called Marrigod flower which after harvesting is processed into food pellets which are used for the production of food colouring and stockfeed. Currently in Zambia, the government policy is centred on increasing the agricultural sector seeing that the copper deposits are diminishing. To affirm its commitment to the agricultural sector, the government via the new Investment Act has put in place attractive incentives to investors in the agricultural sector. For example an investor in the farming business will be taxed at only 15 % regardless of the profits. The investor will also be

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entitled to a farm works allowance of 100 % with respect to the improvements he/she makes on the farm. These and many other incentives are offered to the investors in the farming business. MAL is therefore no doubt enjoying these incentives. The flowers it grows are currently exported to Belgium in a processed form. The earnings are directly sent to the headquarters in Ireland. In fact it is the parent firm itself which does the selling and after the sale, it apportions what is equal to the cost structure of the subsidiary which comes in Zambia in terms of foreign exchange. The disadvantage to Zambia here, is that, while we are offering this foreign firm such incentives, the tax regime in its country of origin taxes the parent firm normally without such incentives and so we are loosing revenue to a foreign country in the name of investment and generosity. And to ensure adherence to this kind of network, the parent firm has made sure that the two top chief executives are of irish decent. Part of the profits are ploughed back for further investment and the rest are withheld at the headquarters. The Zambian government benefits from this company by way of Tax revenues and also that this particular farm is the largest employer in Chiawa area, (off Chirundu road) employing up to 2000 workers and therefore the largest employee in this part of Zambia. The farm also maintains a foreign exchange account which money is received either through the Bank of Zambia or Commercial banks. This farm is then a direct contributor of foreign exchange to the Zambian economy which currency is very much needed. It is therefore clear here once more, that while a MNC exproriates profits out of this country, the country also benefits in many ways which have already been mentioned.

The forgoing chapter has then attempted to analyze the operations of some MNCs operating in Zambia and how much their impact is on the Zambian economy. The author, in the next chapter, now finally wishes to answer the question as to whether MNCs are for economic development or not and therefore stipulate a few recommendations.

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CHAPTER 4

RECOMMENDATION AND CONCLUSIONS

In the precious chapters, the aims and operations of MNCs' have been described and discussed with particular reference to Zambia. The investment climate as a determining factor of the influx of MNCs in Zambia has also been analyzed. This particular chapter aims at finally putting across the real role of a MNC operating in a developing nation which in this case is Zambia.

Zambia, at present has an open market system meaning that MNCs of any type origin are free to operate in this country. Its seems the government has literally opened the doors at the boarders wide and looked the other way, without paying much attention as to who is coming in or going out. The reason for all this according to the government is to create an enabling environment which is going to allow for capital importation into the country which will in the long run be a base for industrial development. However, there has been a considerable out cry from manufactures about the effects of the foreign subsidised imports on the manufacturing sector in Zambia. Textile manufactures have been particularly hard hit by the flood of cheap imported clothing and they have long suspected that the governments of exporting MNCs have nearly subsidized their companies. Evidence that these suspicious are well founded comes in the form of an article in the Financial Times of London and the observations on it by the Geneva based director of Maura Textiles, the original parent company of Kafue Textiles before nationalization still a large share holder in that company. It clearly shows that Chinese exports are highly subsidised and depending on the difference between the "official rate" and the swap market rate" the subsidy may be as high as 100% (as it was in June 1993) though in most cases it is around 50%. In these conditions, there is no chance of survival for the local textile industries in the countries that china exports to, Chinese industrial output is growing "unsustainbly fast" says the Financial Times. At the same time, as Kafue Textiles General Manager Xenophone honrantes puts it, "Zambias industrdial out- put is falling unsustainably fast".[1] Now that extent of China export subsidy is clear, the solution may be as the manufacturing sector has been calling for since market liberalisation began; to impose countervailing duties on all imports from that country and other subsidising countries. This is because, a country without an indigenous solid industrial base cannot at all develop, instead it will continue underdeveloping and in the long run all Zambia manufactures will be squeezed out of business, leaving the market faces to be determined by foreign MNCs.

In Zambia, today, one of the biggest hindrances to further investment from local enterprises to the ridiculously high rate of import duty on the importation of plant and Equipment and the rebate of this duty is probably the single largest incentive offered to MNCs by the <u>Investment Act</u> of 1993. Yet, this is an incentives that should be available to all industry especially to those who use their own foreign exchange to purchase equipment. The government most be reminded that it is these existing local industries that have been the greatest contributors to government revenue for all

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the past years and indeed they continue to be a major source of revenue. It is only right that they be given an equal opportunity to re-
invest in their businesses. A change in the law to remove duty and equipment would certainity be a step towards creating the right enabling environment for all the business community.[22]

In 1971, the government nationalized the Insurance Company (ZSIC) Ltd. It is submitted that the decision was correct as the government needs to assist and enhance the development of the local industry especially in their infancy before it opens its doors to foreign investors to come in and compete with them. In 1992 the market was opened up again and there are now five insurance companies 4 of these are local and one is foreign and this confirms that nationalisation did work in favour of Zambia, as prior to 1971 there were something like 25 foreign companies controlled from abroad and only one local company. So government participation in business is not that bad, after all the object is to fill a gap and later government can make way for its citizens.

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This then brings us to the discussion on ZCCM. Zambia's back bone of foreign exchange reasons is ZCCM which is a company controlled by the government and a few other multinational firms. AAC which has 27% shares in ZCCM has currently called on the government to completely privatise the firm if they have to invest in it. The other fact about ZCCM is that ever since government took over, production has been going down and down due to lack of new efficient technology which only the MNCs can provide. But government has the interests of the people of Zambia at heart while the MNCs are mostly interested in making large profits to ship out of Zambia. This the leaves the government in a dilemana but it is however submitted that government should relinquish its position as majority share holder to the MNCs who are going to be able to boost production and efficiency so that the government should merely be a minority share holder to check the operations of the company internally. At the same time, if this is done the government should not allow excessive repartriation of dividends outside the country but Exchange control regulations should come in and act as a check.

Import taxes are another problem, low or zero taxes on raw materials favoured local manufactures but this was seen as protectionism and not in time with free market economy policies. Membership of COMESA has disadvantaged Zambian manufactures. Most COMESA members exempt theeir manufacturers from duty on raw materials, But Zambian manufactures have to pay high duties on raw materials. At the same time, imports of finished products from PTA or COMESA member states attract only low rates of duty. Our manufactures therefore find that they cannot compete with these finished produces, price wise. Many have had to lay off staff or close down. Government comment says it "needs the revenue" but fails to see that it could called for greater revenue from sales tax on goods manufactured in Zambia than from retaining and creating employment and export opportunities.[4]

Drawing this discussion to a close, I would like to state that MNC's are difficult to control because their subsidies in host countries are controlled externally as can be illustrated by the example of Lonrho which has subsidies in all commonwealth countries and is head quartered in the United Kingdom. This means that the major policy

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formulation is done abroad. On this issue there is little which the host countries can do. The owners of the capital are free to decide where their headquarters is to be based. The important point to remember is that, Zambia does not have the capital and infrastructure to set in motion a development strategy but the foreign MNC hasm ore than enough of this, so that it would be foolish to condemn foreign capital on the basis of its disadvantages. As professor Muna Ndulo, puts it, what is needed is a greater awareness among developing countries of the dangers involved when dealing with MNCs so that they can reject the worst deals and extract much better terms in the future. MNCs, If properly checked can bring about economic development but if left to do what they wish to, There can be terrible agents of underdevelopment. The government therefore needs experts of international trade and investment to help in stricking proper agreements with these firms. But more than this the government need a very clear development policy framework within which to solicit foreign investment without necessarily destroying local initiative.

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