ECONOMIC INDEPENDENCE IN ZAMBIA AND
THE ROLE OF LAW IN ECONOMIC DEVELOPMENT

By

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A dissertation
submitted to the University of Zambia
Higher Degrees Committee
in partial fulfilment of the
requirements for the degree of Master of Laws

Faculty of Law,
University of Zambia.
September, 1976.
The Zambian economy, much to the dislike of the country's leadership, has been and still is dependent on hired skills and borrowed capital. This state of affairs is a legacy of the colonial past when colonies were made to believe and ran as if they would not exist on their own, and consequently looked upon their colonial masters as their benefactors. With the attainment of political independence, newly independent States have attempted to sever ties with previous colonial masters in the hope that they would prove their sovereignty to the outside world. In this quest, most newly independent States if not all, have recognised economic independence as a prerequisite to meaningful sovereignty.

The steps Zambia has taken to transform its economy from the colonial legacy forms the subject matter of this dissertation. Since each newly independent country's approach to, and concept of, economic independence vary from that of the other, it is not surprising that Zambia's efforts towards economic independence have no precedence.

This dissertation looks at the state of the economy in Zambia prior to the attainment of political independence with a view to determining the nature of economic dependence that was inherited. The main body of the study concerns itself with the reasons why Zambia inherited an economy which was dependent, and with the attempts that have been made to bring about economic independence. Deliberate emphasis is given to the legal framework under which the
transformation takes place. The reason for this is to determine whether the law has a crucial role to play in the transformation of an economy.

The arguments on which the whole work revolves are two:

(a) that attainment of political independence is not enough to warrant the achievement of economic independence; and

(b) that an appropriate legal framework can, though not necessarily, help to shape a country's economic destiny.

In Zambia political independence is just one of the conditions that may lead to the achievement of economic independence. Other conditions of equal importance are the availability of skilled local manpower and local sources of capital. An appropriate legal framework is not a condition as such but rather offers a conducive atmosphere under which orderly economic transformation may take place.
P R E F A C E

The issue of economic independence in developing countries has gained prominence in the world at large. It is this issue that leads to nationalisation of foreign owned enterprises.

The author looks at this problem from a host country's point of view and has found it irresistible not to conclude that economic independence is just another aspect of nationalism trying to find expression in economics.

The author finally wishes to record his gratitude to all those who took trouble to read this dissertation and helped in correcting some mistakes.
ABBREVIATIONS

1. A.A.C. - Anglo American Corporation.
2. AMAX - American Metal Corporation.
3. B.S.A. Co. - British South Africa Company Ltd.
5. INDECO - Industrial Development Corporation.
6. LEGCO - Legislative Council.
7. MINDECO - Mining Development Corporation.
8. N.R. - Northern Rhodesia.
9. R.C.B.C. - Rhodesian Congo Border Concession Ltd.
10. RUCOM - Rural Commercial.
11. RHOANGLO - Rhodesian Anglo American Corporation.
15. S.R. - Southern Rhodesia.
17. Z.A.A. - Zambian Anglo American Ltd.
18. ZAMANGLO - Zambian Anglo American Ltd.
19. Z.C.I. - Zambia Copper Investment Ltd.
20. ZIMCO - Zambia Industrial and Mining Corporation.
LIST OF TABLES


C  -  Corporate Structure of the mines in Northern Rhodesia.


E  -  Comparative table on maize purchased, 1956-1961.


G  -  Professor S.H. Frankel: Capital Investment in Africa.
TERMINOLOGY

Northern Rhodesia and Zambia are used interchangeably and so are Rhodesia and Southern Rhodesia.
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CHAPTER ONE

THE PROBLEM

The general analysis.

This study focusses on the problem of economic dependence in Zambia. It attempts to analyse the problems Zambia has encountered in its search for economic independence, and in this regard particular emphasis is given to the role of law as an instrument for economic development. The study examines a number of factors which led to the dependent nature of Zambia's economy at independence. It also examines a number of measures which have been taken since, in the hope that the economy of Zambia would be independent and self-reliant.

Economic independence in this sense does not mean absolute autonomy. The varying rates of technological advancement between different countries which has led one country to hire skills from another, and the different geographical locations which have caused some countries to be land locked and others endowed with economically viable natural resources, are some of the factors which have militated against economic independence in toto. Various authors have offered a range of definitions of the "economic independence" but none has come up with one which if of

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1. The independence referred to here is political independence as distinguished from economic independence.
universal application.² So far economic independence has no relative standard measure. If anything, the term as it applies to developing countries is based on subjective tests rather than a set degree in economic achievements.

Notwithstanding the fact that the term economic independence has remained vague and imprecise, the argument of post-independence African leaders is that economic independence constitutes an integral part of any country's sovereignty;³ and until a country has attained economic independence, it is not independent at all.⁴ To these countries, the search for economic independence is dictated by both economic and political considerations.

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From the outset, one has to remember that the economics of many African countries, by the incident of colonialism, have been tied to the metropolitan West and have been neatly embroidered in the intertwining web of multinational corporations. Because of capital and manpower limitations these countries have decided not to disentangle their economies from the web of multinational consortia, but they have certainly decided to superimpose their political power over foreign institutions. It is in this sense that economic independence in Zambia was initially conceived.

Economic independence viewed from a broader spectrum would first and foremost entail a substantial degree of national ownership of productive resources. The State, its institutions or its people must own the major means of production such as the building and mining industries, or at least acquire controlling shares in such enterprises. This is achieved by total or partial nationalisation. The aim is to acquire majority shares in foreign owned companies. The theory behind is that if the State or its nationals gained majority shares in foreign owned

corporations, the State or its nationals would have more vote in the General Meeting which is the policy making organ of any company and would also control the Board of Directors which is the executive body responsible for management. However, experience with the nationalisation of the mining companies in Zambia has shown that where other arrangements are made, control is not exerted through the General Meeting or the Board of Directors and therefore control is not necessarily measured by the extent of shares gained.

National ownership of productive resources involves two main approaches. First is State ownership. Second approach is where nationals and national institutions own the means of production. The aim in both approaches is to indigenize the economy. In the latter approach there is an imminent danger of localising individual capitalism even where the ideology of capitalism is anathematized. To ward off this danger, governments opposed to capitalism set limits to individual ownership of productive resources. Only small means of production are tolerated. In Zambia, for instance, any individual who owns productive resources with a turnover of K500,000 annual profit is liable to offer 51 per cent interest to the State. The argument in

8. See the Master Agreements, for example, in Chapter Seven, p.129.
9. President Kaunda, Humanism in Zambia and a Guide to its implementation, Part II (Division of National Guidance, Lusaka) at p.81.
favour of individual or national institutions' ownership of the means of production is based on the negative attitudes of absentee or non-citizen shareholders who have shown an inclination to profit making as the more important factor regulating the company's relationship with the public. It is argued that this negative attitude might be overtaken by other considerations, such as the general upgrading of the standard of living of the nationals, if the owners of the means of production and services were citizens and residents of Zambia. ¹⁰

Related to national ownership of productive resources is the ability to formulate and execute economic policies without undue external influence. ¹¹ We shall again learn from the nationalisation of mining companies in Zambia that one might claim majority ownership of interests in an enterprise and yet one is incapable of formulating and executing economic policies affecting that enterprise. Ability to formulate and execute economic policies is therefore, a different and an independent aspect of economic independence. This ability connotes self-determination within the limits made possible in this world of interdependence. Both developed and developing nations depend on each other for raw


materials or for finished products, and so do not make their economic decisions in vacuum; other external considerations have to be taken into account provided these do not blot out national economic aspirations completely.

The third pointer to economic independence is a diversified trade structure. Embedded in the notion of diversified trade structure is the principle of economic non-alignment which renders a country free to trade with any country it chooses; and use any trade routes it desires without physical or mental constraints. In other words, a diversified trade structure means that a country has production base at home and has control over marketing channels. It is an exact antithesis of reliance on one trade route or one crop economy.

The fourth pointer to economic independence relates to minimisation of hired skills, external aid and foreign private capital. A problem common to all developing countries is that they lack both local capital and local skills needed for accelerated development. In the absence of local capital and local skills

12. R.H. Green, Economic Independence and Economic Co-operation, in Dharam Ghal (ed.); Economic Independence in Africa, Supra.
it is difficult to see how a country can be independent. This appears to be the dilemma confronting developing countries. Several issues of importance arise from this dilemma. For example, if a developing country wanted to declare economic independence, it has, first of all, to assume national ownership of all the major means of production.15 Companies deprived of ownership have to be compensated, and often on terms not entirely beneficial to the host country.16 The problem at this stage become circular in so far as a developing country has no local capital or manpower. The host country will inevitably have to enter into management and consultancy agreements with the previous owners of the means of production. Such contracts in effect perpetuate foreign control. When this is the course followed, compensation is usually paid out of future profits generated by the enterprise. But where a government refuses to enter into management and consultancy agreements, foreign companies have frequently demanded for prompt compensation. This means that the host country has to borrow from other "friendly" but foreign sources in order to discharge

15. D.P. Ghai (ed.), Economic Independence in Africa, Supra, makes it clear that national ownership of the means of production is prerequisite of economic independence.
compensation obligations. The act of borrowing itself is a form of economic dependence.\textsuperscript{17}

The choice left, and often a tempting one under charged political atmosphere in which foreign enterprises are invariably taken over is expropriation. Experiences of Chile, Cuba and Uganda, to name only three countries, are instructive in relation to expropriation of foreign-owned enterprises. The problem they raise is one of computation of compensation. To take Chile, for instance, that country's foreign trade was dominated by copper, accounting for about 80 per cent of foreign earnings. But the mining industry was dominated by American corporations - Kennecott, Anaconda and Cerro.\textsuperscript{18} Chileans resented foreign domination of their vital copper production and during the government of President Eduardo Frei (1964-1970) attempts were made to reduce resentment by 'Chilenizing' the mines.\textsuperscript{19} Like in Zambia,\textsuperscript{20} the Government of Chile purchased 51 per cent shares while allowing American corporations to continue operating the mines and to take out substantial profits each year.


\textsuperscript{18} Hermogenes Perez de Arce, Copper in Chilean Economy, (Corporacion Del Corbre, Santiago, Chile 1974) pp. 29 and 52.

\textsuperscript{19} Norman Girvan, Copper in Chile: A study in Conflict Between Corporate and National Economy (Institute of Social and Economic Research, University of West Indies, Jamaica 1972) at p. 29.

\textsuperscript{20} 51 per cent nationalisation in Zambia is discussed later.
Chilenisation gave a deceptive picture of control and utilisation of copper income for national development. This led Allende to nationalise the copper mines in 1971. He agreed to the principle that just compensation should be paid but argued that excess profits that companies had taken out of the country should be deducted from the compensation due. In the end the Chilean 'unilateral' calculation showed that American copper companies owed them millions of dollars. Anaconda and Kennecott protested and the United States of America supported their protests on no other reason than that they did not agree with Chile's formula for calculating compensation. The copper companies then took legal action in the U.S.A. to attach the property of Chilean State enterprises and blocking the export to Chile of spare parts and machinery essential to keep the mines operating. They also sued in the European States which were the major consumers of Chile's copper to embargo the proceeds from its


22. It has been argued that conflicts of this nature between multinational corporations and countries in the Third World are not due to irrational and narrowly nationalistic feelings on the part of the Governments on the one hand, nor to wicked imperialistic policies by firms on the other hand. They are rather due to inherent antagonisms between the interests of the firms and the countries over the role of the industry. See Norman Girvan, Multinational Corporations and Dependent Underdevelopment in Mineral-Export Economics, Social and Economic Studies, Vol. 19, No. 4, 1970 (Institute of Social and Economic Research, University of West Indies, Jamaica 1970).
sale. In Europe most of the suits were against the companies but in the U.S.A. pressure mounted to the extent that even the World Bank and the Inter-American Development Bank ceased making loans to Chile.23

**Economic Independence in Zambia.**

Economic independence in Zambia can be viewed against the government’s economic objectives and strategies adopted. The government’s objectives, in brief, have been to transform the copper based economy by making backward linkages with the rest of the economy and, to narrow the gap between the rich and the poor.24 These involve rural development and diversification of the economy.

It has been the conviction of the government that economic independence can only come if the State or its nationals participated in the economy alongside with foreigners or to the exclusion of foreigners.25 To this end, Zambian and State owned businesses (parastatals) have been encouraged.

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24. The Government’s economic objectives are outlined in the post independence development plans, namely,
   (a) Transition Development Plan 1965-1966
   (b) First National Development Plan 1966-1970
   (c) Second National Development Plan 1972-1976
The case for economic independence in Zambia has been a strong one if only one has to look at the country's economic predicament at independence. Firstly, there were about 100 indigenous university graduates and about 1,000 with Cambridge School Certificate. Most of these were absorbed in the civil service to fill the vacancies created by political independence. Thus the nation's economy was still left in the hands of resident and non-resident expatriates.

Secondly, Copper was the mainstay of the economy. It accounted for 47.5 per cent Gross Domestic Product (GDP), 90 per cent of the total exports, and was the main earner of foreign exchange. It also provided employment for 50,600 of the working population which at that time was estimated at 269,700. The prominence of copper in the nation's economy consequently accounted for much of the country's economic dependence. The copper industry was owned and controlled by foreign-owned mining houses, the Anglo American Group and the Roan Selection Trust Group.

27. Charles Harvey "Economic Independence", in Mark Bostock and Charles Harvey (ed.) Economic Independence and Zambian Copper, Supra.
29. See Chapter two for details on Anglo-American Group and Roan Selection Trust Group.
evident lack of local capacity to organise and then market the produce on international markets. Further the copper economy was (and still is) based on the unpredictable London Metal Exchange (LME) pricing systems, and also on the use of one route to the outside markets - the rail line that runs through Rhodesia to South Africa and Mozambique.

30. Before 1969 it was generally believed that the mines were too big and sophisticated to be nationalised by the State. President Kaunda, Zambia Towards Economic Independence, Supra.

31. See Chapter Two, p.49.

32. The rail road was closed to Zambia in January 1973. The alternative route, the Benguela line through Angola, was also closed to Zambia's use as a result of a civil war in Angola. At the moment the only international outlet for Zambia is through TAZARA line to Dar-es-Salaam.
### TABLE A


<table>
<thead>
<tr>
<th>Sector</th>
<th>1964</th>
<th>% of GDP</th>
<th>1968</th>
<th>% of GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining</td>
<td>221</td>
<td>47.5</td>
<td>253</td>
<td>31.7</td>
</tr>
<tr>
<td>Agriculture</td>
<td>53</td>
<td>11.5</td>
<td>66</td>
<td>8.3</td>
</tr>
<tr>
<td>Commerce &amp; Finance</td>
<td>46</td>
<td>9.9</td>
<td>134</td>
<td>16.8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>28</td>
<td>6.0</td>
<td>76</td>
<td>9.5</td>
</tr>
<tr>
<td>Construction</td>
<td>20</td>
<td>4.3</td>
<td>63</td>
<td>7.9</td>
</tr>
<tr>
<td>Electricity &amp; Water</td>
<td>5</td>
<td>1.1</td>
<td>12</td>
<td>1.6</td>
</tr>
<tr>
<td>Real Estate</td>
<td>11</td>
<td>2.4</td>
<td>20</td>
<td>2.7</td>
</tr>
<tr>
<td>Transport &amp; Communications</td>
<td>21</td>
<td>4.5</td>
<td>48</td>
<td>6.1</td>
</tr>
<tr>
<td>Business &amp; Personal Services</td>
<td>20</td>
<td>4.3</td>
<td>37</td>
<td>4.5</td>
</tr>
<tr>
<td>Community Services</td>
<td>18</td>
<td>3.9</td>
<td>41</td>
<td>5.1</td>
</tr>
<tr>
<td>Government Administration</td>
<td>21</td>
<td>4.5</td>
<td>46</td>
<td>5.8</td>
</tr>
<tr>
<td>G.D.P.</td>
<td>465</td>
<td>100</td>
<td>796</td>
<td>100</td>
</tr>
</tbody>
</table>


Zambia's gateway towards full economic independence was heralded on April 19, 1968, when President Kaunda proclaimed the
First Economic Reforms. Ever since, three more important Reforms\textsuperscript{33} have been announced including the "Watershed Speech" of 30th June 1975.

The government's blue-print for economic reforms aimed at achieving self-reliance has involved in part, the processes of land reclamation, accelerated indigenisation and nationalisation while at the same time welcoming foreign capital and skills.\textsuperscript{34} The framework laid down allows for acquisition of "controlling" shares in the major means of production and services and, for the effacing of foreign businesses in the tertiary sector\textsuperscript{35} of the economy so that only Zambians and Zambian institutions retained monopoly.\textsuperscript{36}

\begin{itemize}
  \item \textsuperscript{33} (a) President Kaunda, Towards Complete Independence, 1969
  \item \textsuperscript{34} (b) President Kaunda, Take up the Challenge, 1970, and
  \item \textsuperscript{35} (c) President Kaunda, Watershed Speech, 1975.
  \item All published by Zambia Information Services (ZIS), Lusaka.
  \item \textsuperscript{36} Ministry of Trade and Industry, Blue-Print for Economic Reforms (Government Printer, Lusaka 1971).
  \item \textsuperscript{35} Tertiary sector has been defined to include trade, hotels and restaurants, transport and communication, Financial Institutions, real estate and business services community, social and personal services: See the Bank of Zambia Report and Statement of accounts for the year ended December 31st, 1974 at p.10.
  \item \textsuperscript{36} President Kaunda, Zambia Towards Economic Independence, Supra, at p.24.
\end{itemize}
Criteria for economic independence in Zambia.

At the moment, economic independence in Zambia, if measured by the extent the government has been able to diversify the economy so as to integrate the rural economy with the urban economy and, on whether it has been able to achieve economic transformation from a foreign dominated economy to a Zambian economy, is still at a distance. Rural areas are comparatively backwards and emphasis on copper economy has not been reduced. 37 This is not to suggest that efforts have not been made to transform the economy both from its copper base and from foreign domination.

The Government, through Rucom Industries, 38 has made efforts to locate industries in the rural areas. To these, have been added the Rural Reconstruction centres in an attempt to diversify the nation's economic base. 39 The Government has also acquired 51 per cent interest in the major means of production and services. However, this is only partial nationalisation and in most cases the previous owners of the enterprises have entered into

38. Rucom Industries (or Rural Commercial Industries) are subsidies of INDECO.
39. Rural Reconstruction Centres were introduced in 1975 but other attempts at economic diversification date as far back as 1964: See Enterprise, The Indeco Journal, 4th Quarter 1972, Eight Years of Industrial Development (Falcon Press, Ndola).
management and consultancy agreements. Controlled private Zambian entrepreneurship has also been allowed to thrive without foreign competition. Cooperatively, therefore, measures taken after independence have enabled Zambia to achieve national economic identity though more need to be done if economic independence is to be achieved as well.

What Zambia needs, if economic independence has to become a reality, is to eventually assume full ownership of the important productive resources and to exert total control over those resources. It is perhaps premature and unrealistic to make such a proposal when there are manpower and capital constraints to contend with. Equally, it is premature and unrealistic for Zambia to claim to be economically independent with only partial ownership of her major means of production and loose control over the national economy.  

It is true that a greater part of Zambia's economic activities falls within the ambit of the State or its nationals but management and control of the State sector is largely in foreign hands.  

It is also true that Zambia's share of ownership in the national economy often eulogised by 51 per cent is deceptive. This is so because Zambia has not fully discharged her compensation

41. This information was obtained from ZIMCO Office, Lusaka.
obligations to the previous owners of the nationalised enterprises. Until that is done, the size of the State Sector shall remain exaggerated.

One consequence of the inability to discharge compensation obligations is to perpetuate foreigners' interests in Zambia's State sector. Given such a situation, economic independence becomes an illusion. The prerequisites to economic independence are therefore full ownership of the major productive resources and overall control over those resources. Control in this context must be limited to external and often political controls such as the recruitment of manpower through the governmental issue of work permits, but must extend to internal controls such as to economic planning and expansion.

Economic independence, conceived as a means to an end, is going to introduce another era of struggle in the never-ending quest for economic development. In Zambia, at the moment of writing, the discernable end has been stated in the Philosophy of Humanism as fair distribution of wealth amongst all citizens.

42. M. Awad, Dilemmas in economic independence, Supra.
43. President Kaunda, Humanism in Zambia and a guide to its Implementation (Zambia Information Services, Lusaka).
PART I

THE HISTORICAL AND LEGAL

EXPLANATIONS OF ECONOMIC DEPENDENCE
CHAPTER TWO

COPPER AS ZAMBIA'S DEPENDENCE NEXUS

Introductory remarks.

Zambia's inherited economy has been classified into rural and urban sectors. The urban sector represents cash economy and offers moderately decent standards of living. The rural sector which is in most cases backwards consists of peasant farming. It offers no more than subsistence living, usually below the poverty datum line. Majority of the people in Zambia live in rural areas, and therefore under abject poverty.

Much of this economic imbalance is due to 'one way traffic' trend which labour migration has assumed. Labour has migrated from the rural areas to the urban areas and not otherwise. Some of the migrants who were compelled to seek wage employment by the colonial

2. See the Times of Zambia, 16th June 1976 on the matter of poverty line.
order now constitute one part of permanent residents in urban areas. The other part is made up of school leaving young men and women who, having been disillusioned by lack of opportunities in the rural sector, voluntarily migrated to urban areas in search of employment and better social amenities.

Urbanisation of the Copperbelt.

The overriding consideration for migration, as it were, at the beginning of colonial rule was to earn enough money to pay native taxes that were imposed on the native people of Northern Rhodesia by the colonial masters. There were two different native taxes in force. In the North-Western Rhodesia there was an annual Poll Tax of 10/- on all adult males, with an additional 10/- for each wife or concubine after the first; and in North Eastern Rhodesia there was a Hut Tax of 3/- per annum in respect of every hut occupied by an adult male native and also on each hut occupied by his family or dependants. Where money was scarce "tax labour" was substituted, but the Colonial Foreign Office refused to sanction the substitution of labour for tax.

The native tax law was consolidated in 1914 on the lines of North Western Rhodesia law and the Hut Tax was hence abolished, but the rates were 5/- for former North Eastern Rhodesia and 10/- for North Western Rhodesia until 1920 when all were paying 10/-. The imposition of taxes was deemed necessary mainly because His Majesty's Government was unwilling to incur any expenses in the occupation and administration of North Eastern and North Western Rhodesias. This meant that the whole cost of administration fell upon the British South Africa Company after 1911 when North Eastern Rhodesia and North Western Rhodesia were amalgamated into one territory known as Northern Rhodesia. The British South Africa Company was basically a commercial enterprise and would not have been expected to expend its money for administrative purposes without any hope for pecuniary rewards. It was

9. This view is also echoed in the observations of the Missionaries of the Church of Schotland who said:

"A chartered company is not a government and never can be. To be ruled by such is to be ruled for commercial ends by absentee directors and shareholders, whose real interests are only served by tangible dividends". Quoted from R. Hall, Zambia, Supra, at p.89.
within this light that the Company imposed native tax on natives who were allegedly benefiting from its administration.

Sanctions imposed on native tax defaulters included burning down of the huts and punishment with a cane. Native male adults were thus compelled to migrate in search of paid employment to the Copperbelt where rich copper deposits had attracted huge capital investments from giant mining companies. The natives who failed to find work on the Copperbelt or on the line of rail went as far as Southern Rhodesia, South Africa or Zaire. 10

In 1929 the Native Tax Ordinance was passed and under this ordinance a native satisfying the District Officer that he was prevented from working by reason of age, chronic disease, accident or other sufficient cause was to be exempted from the payment of the whole or part of his tax. But even this enactment was not aimed at arresting migration rather than to protect the incapacitated from the harshness of native tax laws.

Ironically, the declared policy of the Colonial Foreign Office was not to detribalise the natives of Northern Rhodesia or

Indeed of any other colony. As a result, migrants who went to work on the Copperbelt mines were only allowed to stay there for a period of three years, after that they were repatriated to their respective villages. It was hoped that gradual urbanisation of the Copperbelt would be arrested by discouraging migrant labourers from staying on the Copperbelt for too long. Because of this policy, engagement of Africans in the mines was of a temporary nature and no attempts were made to train them in any skills.

The policy mentioned above was eventually overtaken by events. Some Africans acquired semi-skills, such as learning how to drive, and the mine managements decided to retain them after the expiry of their three year labour contracts. The retention of some migrant labourers resulted in the building of a stable labour force on the mines.

One has to point out that the absence of infrastructure and other capital investment in rural areas, which could have generated employment opportunities, and the continued demand for


Native taxes doomed the colonial policy on temporary migrant labour but at the same time gave impetus to urbanisation of the Copperbelt.

**Copper in the economy of Northern Rhodesia.**

Copper mining emerged as the most important economic activity in the country, leading to the development of a limited 'export enclave type of economy' which was inherited at independence. After independence Zambia was exporting copper amounting to between 90 to 95 per cent of the country's total exports, but was importing all consumer goods. Hitherto the position has not substantially changed apart from a few import substitution measures.

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Below is a comparative table of sectorial contribution to Gross Domestic Product (GDP) in 1964 and 1968.

**TABLE B**

Growth in Gross Domestic Product at Current Prices, 1964-68 (at factor cost; millions in Kwacha).

<table>
<thead>
<tr>
<th></th>
<th>1964</th>
<th>1968</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining</td>
<td>230</td>
<td>389</td>
<td>+ 69</td>
</tr>
<tr>
<td>Agriculture</td>
<td>53</td>
<td>66</td>
<td>+ 25</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>28</td>
<td>76</td>
<td>+ 171</td>
</tr>
<tr>
<td>Construction</td>
<td>20</td>
<td>63</td>
<td>+ 215</td>
</tr>
<tr>
<td>Government administration</td>
<td>21</td>
<td>46</td>
<td>+ 119</td>
</tr>
<tr>
<td>Trade</td>
<td>46</td>
<td>115</td>
<td>+ 150</td>
</tr>
<tr>
<td>Other</td>
<td>76</td>
<td>177</td>
<td>+ 133</td>
</tr>
<tr>
<td>GDP at factor cost</td>
<td>474</td>
<td>932</td>
<td>+ 97</td>
</tr>
</tbody>
</table>


Percentage of contribution of mining* to Gross Domestic Product from 1964 to 1968 had grown only by 69 per cent while that of construction, had grown by 215 per cent. But in all, mining's

* Mining was mainly copper mining.
contribution was by far the highest all the times.

Development and expansion of the Copper Mining Industry.

Copper mining on a commercial scale is identified with the arrival of the B.S.A. Co. in the late 19th century, although actual commercial mining started in 1911 at Broken Hill and early 1920s at Bwana M'kubwa. The B.S.A. Co. was incorporated by charter in London in 1889. It came into this part of Africa combining the roles of a commercial enterprise and that of a government until 1924 when the administration of Northern Rhodesia fell directly under the Colonial Foreign Office in London. The Company, however, continued to trade in mineral rights, and to dominate the country's economy until 1964 when the Zambian government successfully reclaimed the mineral rights which were then vested in the Company.

20. Ibid., at p.386.
21. Agreement signed in September 1923 between the British Crown and the B.S.A.Co. authorising the Governor to administer Northern Rhodesia as from 1st April 1924. This agreement is also known as Devonshire Agreement 1923.
The Company derived its "title" to mineral rights from a series of agreements known as concessions\textsuperscript{23} which were purported to have been entered into between its representatives and individual African Chiefs.\textsuperscript{24} This title was given legal stamp in 1893 by H.H. Johnson, the British Commissioner and Consul-General for the territories under British influence to the north of the Zambezi, when he issued "certificates of claim" recognising B.S.A. Co.'s claims to mineral rights in Zambia.\textsuperscript{25} Since then and prior to 1912 the Company granted rights to land and minerals by means of exchange of letters. After the exchange of letters pegging of mining locations started.\textsuperscript{26}

The first formal legislation to regulate mining was passed in 1912.\textsuperscript{27} Its preamble reaffirmed the Company's claims to mineral rights. It read:

"The right of searching and mining for and disposing of all minerals and mineral oils in Northern Rhodesia notwithstanding the dominion or right which any person, company syndicate or partnership may possess in and to the soil on or under which such minerals and mineral oils are found or situated is vested in the British South Africa Company".

\textsuperscript{23} T.W. Baxter, Concessions of Northern Rhodesia, Occasional Paper No. 1 of June 1963 (National Archives of Rhodesia and Nyasaland).
\textsuperscript{24} Richard Hill, Zambia, Supra.
\textsuperscript{25} Ibid.
\textsuperscript{26} Harold Warwick Williams, The Mining Law of Northern Rhodesia, Supra.
\textsuperscript{27} Proclamation No. 5 of 1912 (Northern Rhodesia Laws).
When His Majesty's Government decided to relieve the Company of the administration of Northern Rhodesia and vested the same in the Governor, an agreement was signed between the Crown and the Company which assigned and transferred to the Crown all such rights and interests in land as it claimed to have acquired by virtue of concessions, but subject to certain provisions with regard to the rights of the Company to certain lands and minerals. In that agreement (Devonshire Agreement) the Crown also recognised all alienations of land which had been made by the Company in Northern Rhodesia before April 1st, 1924 except concessions made to the North Charterland Exploration Company. The Crown reserved the right to set apart such Native Reserves in the area granted to the North Charterland Exploration Company, such area being within the limits of Northern Rhodesia.

Harold M. Williams has argued that the Crown recognised the Company's title to mineral rights as part of payment to the Company for the expenses it incurred in the administration of Northern Rhodesia. He states that:

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29. On the creation of Native Reserves see Chapter Three, p.56.
30. Harold Marwick Williams, Mining Law of Northern Rhodesia, Supra, p.20.
"Financially there remained after (these) payments had been made a balance of just over £5 million, being expenditure by the Company in excess of its receipts on administrative accounts, concessions etc., up to 30th September, 1923. It could be fairly said, therefore, this unrecouped administrative expenditure of the Company at the time was the true purchase price of the mineral rights and of other assets which the Company retained when it ceased to administer the Territory."

It is difficult to accept the authenticity of the above figure of £5 million as money overspent by the Company on account of Northern Rhodesia administrative expenses, reason being that the Commercial and Administrative Accounts of the Company were not separated. For example, Administration side of the Company incurred expenses on behalf of the Commercial Branch and rendered services, notably legal advice, for which no payment was demanded.31

Many people in Northern Rhodesia including white settlers viewed the B.S.A.Co.'s deal in mineral rights as unconscionable,32 and had doubted the validity of the Company's

31. Letter from Mr. Baird, B.S.A.Co., Commercial Secretary to the Secretary in Livingstone, dated 16th December 1921 (Zambia National Archives, B53/216, Lusaka).

32. Sir Steward Gore-Browne in the Legislative Council for Northern Rhodesia, (Hansard No.60 of 1948).
claims to mineral rights. The Company, on the basis of Lewanika concessions, was claiming mineral rights in the Barotse Province (now Western Province), Western Province (now Copperbelt Province), and part of North-Western Province. But in fact the Copperbelt Province and North-Western Province were outside the area ruled by the Litunga of Barotseland and as such the Litunga had no power to assign the minerals in those areas.

The effects of 1912 Mining Proclamation on Economic Development.

The Mining Proclamation by the B.S.A.Co., in 1912 constituted a major obstacle to any attempt to challenge the Company over mining policy and development. This continued even when the Company was relieved of its administrative powers over the Territory. The new administration found itself with no power to interfere in mining affairs. To borrow the words of Governor Herbert Stanley in 1926, "the encouragement or discouragement of prospecting depends at


present upon the policy of the B.S.A.Co., rather than upon the policy of the Government.\textsuperscript{36} The vesting of mineral rights in the B.S.A.Co. meant that the right to prospect for minerals in the Territory had to be acquired from the Company; and having located the minerals, no mining or quarrying would start without the sanction of the Company.\textsuperscript{37}

By virtue of the concessions the B.S.A.Co., claimed to have acquired rights in land and minerals; and it behaved and acted accordingly. It made Special Grants of exclusive prospecting and mining rights.\textsuperscript{38} The grantee undertook to spend a minimum annual sum on prospecting activities; accepted reservation to the B.S.A.Co. of participation rights in any mining companies subsequently to be formed; and made a grant of royalty rights in favour of the B.S.A.Co. Allotment of shares to the B.S.A.Co. in mining ventures was made as part-price for concessionary rights.\textsuperscript{39} The Company thus enjoyed dividends and royalties without incurring mining expenses.

\textsuperscript{36} Governor Herbert Stanley in a letter to Secretary of State Amery, May 16th 1926 (PRO/533/350). (Zambian National Archives, Lusaka).

\textsuperscript{37} Proclamation No. 5 of 1912.

\textsuperscript{38} Sir T. Gregory, Ernest Oppenheimer and the Economic Development of Southern Africa, Supra., p.393.

In 1938 Yeta the Paramount Chief of Barotseland (now Western Province) gave a concession to Mr. Gordon James and others under which he assigned part of Barotseland. The B.S.A. Co., on the strength of Lewanika concessions, instituted an action in the High Court of Northern Rhodesia against Yeta and against Mr. Gordon James and others for a Declaration that the Gordon James concession was void. On 1st March 1938 judgment was entered by consent in favour of the Company as the plaintiff in the action. The High Court held that:

"In the residue of the Territory covered by the said concessions the sale and exclusive right to minerals (including the sale and exclusive right of making grants or dispositions of the same) is hereby declared to be vested in the Plaintiff Company and its successors in title and assigns".

The above judgment defined the character of the 'rights' the Company derived from concessions and these were limited to minerals as opposed to land. The judgment also revealed that the Crown held bare legal title or bare legal estate, in trust for the Company as the beneficial owner of the mineral rights. The Crown had no beneficial interest whatsoever in the mineral rights.

40. Richard Hall, Zambia, Supra. Also see Gervas Clay, Your Friend Lewanika, Supra.
In the 1940's European settlers began to realise that the mining law of 1912 was obsolete since the B.S.A.Co. had ceased to be the government of Northern Rhodesia. They realised that huge sums of money were paid to the Company in royalties instead of the government. Led by Mr Royal Welensky, they started a long struggle in the Legislative Council to replace the 1912 mining law. They urged for the transfer of mineral rights to the Northern Rhodesia Government. Consequently, an agreement was signed on September 14th, 1950 between the Secretary of State for Colonies, the Government of Northern Rhodesia and the B.S.A.Co. The agreement, inter alia, recognised the Company's claim to mineral rights but ironically, the Company agreed to transfer the mineral rights to the Government on 30th September 1986 (that is, 36 years after the agreement). The Company further undertook to assign to the Government 20 per cent of the net revenue derived by the Company from the exercise on and after 1st October, 1949 and until and including 30th September 1986 of all the mineral rights in Northern Rhodesia. The Company during the aforesaid period was

41. The view expressed by some members in the Legco was that the concessions were granted to the B.S.A.Co. as a government and not as a commercial venture (Hansard No.60 of 1948). Also see the memorandum on Colonial Mining Policy 1946 (Colonial No.206 of 1946).

42. Northern Rhodesia Agreement with the British South Africa Company on the Mineral Rights in Northern Rhodesia and for the eventual Transfer of those Rights to the Northern Rhodesia Government (Colonial Office Report No.272 of 1950, London).
entitled to retain for its own benefit the balance of 80 per cent of such net revenue, and no special rate, tax or duty was to be imposed in Northern Rhodesia on the Company, or on its mineral rights or the revenue therefrom.

The 1950 Agreement was not only binding on the signatories, it extended to any government of Northern Rhodesia for the time being however such government may from time to time be constituted, and it rendered future legislation as well as other actions in derogation of the agreement a breach thereof. His Majesty's Government, so long as it remained responsible for the Government of Northern Rhodesia, undertook to regard itself as responsible for securing the carrying out of the Agreement by the government for the time being of Northern Rhodesia. In the event of His Majesty's Government deciding to take steps at any time before the date of transfer to relinquish the government of Northern Rhodesia it would do its best to secure that under, or by virtue of the arrangements whereby His Majesty's Government would cease to be responsible, the government which assumes such responsibility would be bound to observe the provisions of the Agreement.

The 1950's saw the opening of new mines on the Copperbelt and a vigorous prospecting campaign outside it. This campaign was inspired by the B.S.A.Co., which was anxious for any

undiscovered mineral deposits to be identified and exploited. The aim was to exhaust all extractive minerals before 1986, the transfer year. Hence production went up. The B.S.A.Co., and its partner Anglo American Corporation of South Africa formed Chartered Exploration Ltd which was assigned an exclusive prospecting licence over 104,000 square miles. This partnership also managed to persuade Paramount Chief of Barotseland, though with difficulty, to open to prospecting parts of the area reserved under the 1900 and 1909 concessions (Lewanika Concessions).

44. This is inferred from the amount of money the B.S.A.Co. poured into prospecting. Lord Robins statement to the shareholders of the B.S.A.Co. on 7th February 1962 revealed that the Company spent £1 million for prospecting in one year. (Zambia National Archives, Lusaka).

45. Total production of the Copperbelt in 1945 was 233,000 short tons but this figure was almost doubled in 1957 when it rose to 461,000 short tones: Sir T. Gregory, Ernest Oppenheimer, Supra, p.455. Net Domestic Output in 1945 was £6.5 million. This rose to £97 million: Sir R. Prain, Selected Papers Vol. II, 1958-1960 (RST Group, London 1961). See also the Mining Yearbooks of Zambia, 1930 to 1969.

46. On the relationship between the B.S.A.Co. and Anglo American Corporation of South Africa, see p.41.

47. Formation of this new exploration Company is further evidence of the intention to exhaust all the minerals before 1986.
The Mining Ordinance 1958.

The 1950 Agreement witnessed the B.S.A.Co. loosening its grip on mineral rights in Zambia. This was followed by the Mining Ordinance 1958. The most significant change made by this legislation in the mining law of Zambia was that it dropped the preamble which was appended to Proclamation No. 5 of 1912. The 1958 Mining Ordinance as amended in 1962 formally vested the mineral rights in the Crown but subject to the rights of the Company, and those others who derived their title from the Company. In other words, the B.S.A.Co. was still the beneficial owner of mineral rights with the residual rights vested in the Government.

At independence, the new Government of Zambia insisted that it would not wait for 1986, the year of transfer, to receive the Company's mineral rights and the royalties attendant thereto. The new Government was ready to dishonour the 1950 Agreement if the Company was not prepared to negotiate an early transfer of the mineral rights. 48 The Company was thus forced to enter into a new agreement on 23rd October, 1964 whereby it surrendered the mineral rights to the Government for a price of £4 million. 49 This

49. The Zambian Government agreed to pay £2 million and the other £2 million was paid by the British Government. See Anthony Martin, Minding Their Own Business, Zambia's Struggle Against Western Control (Hutchinson, London 1972).
agreement did not affect other rights to mineral ownership and mining rights, held by Companies other than the B.S.A.Co. These rights were firmly enshrined in the new independence Constitution. 50

In practice, the Zambian government takeover of mineral rights previously held by the B.S.A.Co., meant very little. The B.S.A.Co., by Special Grants of exclusive rights, had parted with the most important mining area (the Copperbelt) to Rhodesian Congo Border Concession Ltd (R.C.B.C.) and N'kana Concessions Ltd, 51 both companies falling under the ambit of the two giant mining groups - R.S.T. and A.A.C. Thus the mining groups still held the mining rights in perpetuity. 52 Further, the other interests of the B.S.A.Co. in the mining industry of Zambia remained untouched. For example, it retained its shares in the mining companies.

The long battle to vest mineral rights into the State came to an end in 1969 with the passing of the Mines and Minerals Act. 53 The purpose of the Act was to revert all the mineral rights privately-owned to the State. Thus the mining companies which hitherto were holding their concession areas in perpetuity

51. Sir T. Gregory, Ernest Oppenheimer, Supra.
were once and for all deprived of their rights.

The Corporate Structure of the mines in Northern Rhodesia.

The pre-1954 corporate structure of mines in Northern Rhodesia reinforces the point that the country's economy based on copper, as it were, was a dependent one. Table C attempts to show that the producing mines in Northern Rhodesia were part and parcel of multinational consortia.

Anglo American Corporation of South Africa Ltd (AAC (S.A.)); and American Metal Company Ltd (AMAX) dominated the mining scene. Anglo American Corporation of South Africa was incorporated in South Africa in 1917. Its original incursion in Northern Rhodesia mining was the result of the relationship between Edmund Davis and Ernest Oppenheimer.54 Ernest Oppenheimer was the chairman of A.A.C. (S.A.) which was concerned with diamond activities and Edmund Davis was associated with the concession mines - R.C.B.C. Ltd and Nkana Concession Ltd. Davis invited Oppenheimer to assist financially in opening the first mining company in Northern Rhodesia at Bwana M'kubwa. Pursuant to the invitation A.A.C. (S.A.) purchased 100,000 Bwana M'kubwa shares in 1924.

54. Sir T. Gregory, Ernest Oppenheimer, Supra.
In addition to the shareholding in Bwana M'kubwa
Copper Mining Co. Ltd., A.A.C. (S.A.) acquired interests in
Rhodesia Broken Hill Development Co. Ltd, RCBC Ltd and Loangwa
Concession (NR) Ltd. Later on the Company also acquired
shares in Serenje Concession Ltd and Kasempa Concessions Ltd.
Finally AAC (SA) became consulting engineers to the R.S.A.Co. in
1926 and Ernest Oppenheimer became director of all the other
concession companies.

On May 22nd, 1928 Alfred Chester Beatty, one of the
directors in R.C.B.C. Ltd., and Bwana M'kubwa Copper Mining
Company Ltd., branched off from the ambit of Anglo American
Corporation of South Africa to form Rhodesian Selection Trust
(R.S.T.). Beatty allied himself with American interests through
American Metal Company Ltd., which became the largest shareholder
in R.S.T. In the same year Rhodesian Anglo American Ltd
(Rhoanglo), a subsidiary of Anglo American Corporation of South
Africa was incorporated in London to serve as the holding company
for all the producing companies within the AAC Group of companies.

55. Anglo American Corporation of South Africa Annual Report 1925.
56. Sir T. Gregory, Ernest Oppenheimer, Supra.
57. M.L.O. Faber and J.G. Potter, Towards Economic Independence,
Supra.
Producing companies in Zambia were owned by either Rhodesian Selection Trust or Rhodesian Anglo American Ltd, and were incorporated in London. This meant that they were liable to pay income tax in the United Kingdom and in Northern Rhodesia. Double-taxation relief laws applied, and these reduced Zambia's revenue from the mining companies. 58

The relationship between the two Rhodesian holding companies was less competitive but more cooperative. Ernest Oppenheimer explained the relationship between the two holding companies in his letter to Edmund Davis:

"I am happy that you have arranged for support of Chester Beatty. This is in conformity with our general desire to be on the most friendly terms with Rhodesian Selection Trust. There are two operating groups, namely RST and Rhoanglo, and we should give each other every possible support both in finance and in operations in the field". 59

Anglo American Corporation of South Africa was also linked with the B.S.A.Co. through a web of interlocking directorship of Edmund Davis and Ernest Oppenheimer. Edmund Davis became director of the B.S.A.Co. in 1925. He joined the board of AAC(SA)

59. Extract quoted from Sir T. Gregory, Ernest Oppenheimer, Supra.
in 1928 and was deputy Chairman of Rhoanglo. Ernest Oppenheimer, chairman of AAC(SA) and director of all concession companies also became director of the B.S.A.Co.

The incorporation of producing mines in Northern Rhodesia was transferred from London to Lusaka in 1954. In the case of companies belonging to AAC (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 Ltd., and Rhodesia Broken Hill Development Co. Ltd. - at their extra ordinary general meetings in December 1950 to transfer their incorporation to Northern Rhodesia. Rhoanglo and its associates were then incorporated in Northern Rhodesia on 11th May, 1954.

The transfer of the seat of control was meant to reduce United Kingdom tax liabilities on Northern Rhodesian producing companies. It did not disturb the 'ownership' and control as

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60. There were six concession companies, namely, R.C.B.C. Ltd., Nkana Concessions Ltd., Rhodesia Concessions Ltd., Loangwa Concessions Ltd., Serenje Concessions Ltd., and Kasempa Concessions Ltd. The B.S.A.Co. was represented on all six boards of the concessions companies and so was the AAC (SA) through Ernest Oppenheimer.


62. Ibid. See also Sir Theodore Gregory, Ernest Oppenheimer, Supra.
exercised by the holding and parent companies. The holding companies also moved their administrative headquarters from London to Salisbury which had become the administrative headquarters of the Federation of Rhodesia and Nyasaland.\textsuperscript{63}

Advantages of separate incorporation.

The corporate structure of the mining companies in Northern Rhodesia both 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 Company which have always been incorporated in South Africa and United States of America respectively. In the middle were two Rhodesian holding companies - Rhoanglo and Rhodesian Selection Trust. These two companies became incorporated in Zambia after 1964 and changed their names to Zambia Anglo American Ltd (Zamanglo) and Roan Selection Trust, but they have always remained subsidiaries of Anglo American Corporation of South Africa and American Metal Co. Ltd. Forming the base of the pyramid were the producing companies in Northern Rhodesia.

In legal theory it would have been contended that although

\textsuperscript{63} The moving of the administrative headquarters of the holding companies from London to Salisbury was political rather than economic in that even if the holding companies remained incorporated in London they, unlike producing companies, were not subjected to double-taxation.
the parent companies were the majority shareholders in holding companies which in turn were majority shareholders in producing companies, all companies in the pyramid were separate entities by virtue of incorporation. 64 In other words, companies incorporated in Northern Rhodesia were legal entities distinct from holding companies or parent companies in the United Kingdom, South Africa and the United States of America. But in practice the 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. 65 The main advantage the holding and parent companies derived from separate incorporations of producing companies was limited liability or no liability at all on debts incurred by producing companies. 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 would have been liable, and not the holding or parent companies.


65. For example, 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 L.M.E: See Sir Ronald Prain, Copper, the Anatomy of an industry (Mining Journal Books, London 1975) at p.94.
Relations between mining companies and the Colonial Government.

During the colonial era mining groups were treated as a separate kingdom within the realm. They were rarely tampered with in their economic endeavours. The explanation to this is found in the reluctance of the British Government to colonise Northern Rhodesia which has already been referred to; and also in the colonial guiding principle of Indirect Rule. The colonial government existed to govern, that is, to keep the peace and to allow copper to be produced, and not to stimulate growth. At that time the Copperbelt was a stagnant backwater, and it was found expedient to allow Northern Rhodesia to develop on the principles of a free enterprise society. There was very little hope in copper, and this was expressed by the first Governor of Northern Rhodesia, Sir Herbert Stanley when he declared:

"I will base no part of our program for the development of Northern Rhodesia on the doubtful possibility of finding mineral deposits of importance".

Three years later, after millions of pounds had been injected in the industry by private investors, the Copperbelt was transformed into a

66. Richard Hall, Zambia, Supra, p.266.
Governor Sir James Maxwell who succeeded Sir Herbert differed with his predecessor on the role of the mining industry in Northern Rhodesia. It was his contention that the development, expansion and direction of the industry should be controlled by the government for the benefit of all the people. This view was later embodied in the Memorandum on Colonial Mining Policy 1946. The memorandum asserted that it was of utmost importance that the government should retain adequate control at all stages in mining in order to ensure that mining enterprises were carried on in the interests of the Territory and for the general benefit of the community at large. Lord Robins of the B.S.A.Co., on the other hand, was of a different opinion. In his statement to the B.S.A.Co. shareholders he said:

"We shall continue to seek profitable outlets, but have resisted, and will continue to resist, suggestions that it would benefit the country or its people to invest in failures, and squander capital for propaganda purposes."

Lord Robins' views are collaborated by those of another prominent personality in copper mining industry, Sir Ronald Prain. Sir Ronald

69. 1927 Annual Report of the Department of Mines.
71. Statement to B.S.A.Co. shareholders, issued by Lord Robins on 7th February, 1962.
admitted that the copper industry developed virtually unfettered by government interference or control.\textsuperscript{72} The mining companies complied with the laws of the land; they paid taxes and royalties where appropriate, but they enjoyed almost complete freedom in the manner in which they sought capital, obtained loans, and in the way in which they managed their day to day operations and planned for the long-term expansion of their interests.

Strong as the views of the mining companies were on their unfettered freedom from government intervention or control, the Memorandum on Colonial Mining Policy 1946 shows a remarkable change of the government's attitude towards the mining companies. And barely a year after this memorandum the government embarked on planned economic development of Northern Rhodesia;\textsuperscript{73} and its overriding consideration seem to be that copper held a key position in national development. The mining companies policies conflicted with those of the government. The companies' policies were based on the primary consideration of maximising shareholders' profits. Hence, the companies extracted huge sums but made negligible contribution to local economic progress in return.\textsuperscript{74}

\textsuperscript{72} Sir Ronald Prain, Copper, Supra, p.222.
\textsuperscript{73} Northern Rhodesia Ten Year Plan 1947 (Government Printer, Lusaka).
\textsuperscript{74} President Kaunda, Towards Economic Independence, Supra, p.6.
In 1950 an agreement was reached between the B.S.A. Co. which had dominated the mining industry, the Government of Northern Rhodesia, and the British Government providing for Northern Rhodesia take-over of the mineral rights held by the B.S.A. Co. The agreement also assigned 20 per cent of the royalties to the Northern Rhodesia Government, but fell short of permitting the Northern Rhodesia Government to control the B.S.A. Co.

Similarly, no remarkable control was exercised in other mining companies except that these were made to pay export tax for the minerals they shipped outside the country. The big move towards government control began in August 1969 when the owners of Zambian copper mines were asked to sell 51 per cent of their shares to the government.75

External influences on the copper industry: The pricing mechanism.

Copper pricing mechanism has been a very crucial variable and sometimes a controversial issue in any copper-based economy. Sir Ronald Prain has stated that "copper price is the result of the forces of supply and demand". Other factors in turn affect supply and demand. On the supply side a major factor is the cost of producing copper, while on the demand side a major factor is the substitution point or, in other words, the price at which the uses

75. President Kaunda, This completes our Economic Independence, Supra.
of copper will be substituted by competitive materials. 76

Copper is sold at prices which are fixed individually and independently by producers, or at prices related to quotations on the London Metal Exchange. Commonly, international trade in copper is transacted on L.M.E. or prices related to that commodity market. Copper output of the larger producers is, in practice, sold directly to customers on 12 month contracts. 77 The pricing clause in this kind of contracts refers to quotations at the time of delivery although quotations are clearly unknown at the time of the contracts.

The problem with L.M.E. is that prices are over fluctuating, unrealistic and bear no relationship to the cost of production. 78 This is because copper is different from other base metals like lead, zinc, tin or aluminium which show a pattern of comparative stability. The grade of copper ores mined vary from 8 to 100 lb/ton or up to 300 lb/ton in the extreme. 79 On the

78. M.J. West, Price stability for copper, Supra.
79. Anthony Martin, Minding Their Own Business, Supra.
assumption of a reasonable uniformity in the mining cost per ton of ore, grade variations show that the mining cost per ton of saleable copper can vary as a factor of 1 to 12. However, it is consoling to note that grade variations are not necessarily reflected directly in the mining cost per ton of refined product.

Copper pricing is influenced by consumers' judgment of likely availability. This judgement results in stockholding decisions or rather introduces a stock-shift factor. Any change in stockholding creates an increased or reduced demand for metal when in fact actual end-consumption may not necessarily be changed. What is to be realised is that consumers' judgement can cause changes in demand and 'apparent' consumption.

Rhodesian Selection Trust attempted to stop instability in copper prices by introducing an "announced" price at which copper would be sold. The price, because of the threat of substitution, was kept below the L.M.E. level and it remained in force for quite long periods. The advantage for "announced" prices was to ensure certainly in copper price; and although it appeared that the "announced" prices were lower than the L.M.E. prices, this difference was offset in times when the price of copper at the L.M.E. had fluctuated to its lowest level. This price system, however, was not adopted by Anglo American Corporation Group and it was withdrawn before long in favour of the London Metal Exchange prices.

80. Sir Ronald Prain, Copper, Supra, p.106.
The L.M.E. prices were important to Northern Rhodesia, particularly for two reasons; the formulae for mineral royalties and export tax were based on the L.M.E. pricing system. That is to say:

(a) Royalty was a charge per ton produced equal to thirteen and a half (13½) per cent of the average L.M.E. price, less eight pounds (or K16).
Royalty = .135 (IME price, Less K16).
The price used was the Metal Exchange at the time of production. Royalties were thus not based upon the actual sales proceeds that the copper companies received. They formed part of the production costs. This fact discouraged the opening of small new mines or operating mines with marginal profits. 81

(b) Export tax was forty per cent of the price per long ton of copper above K600.00. 82 In terms of the London Metal Exchange pricing system, export tax was equal 2/5 of the L.M.E. price, less K600.00.
ET = .4 (IME price, less K600.00).
No export tax was paid when the copper price was below K600.00.

82. Both royalty tax and export tax have been abolished by the Mines and Minerals Act, 1969 (Government Printer, Lusaka).
It is because of the fact that copper pricing is beyond the determination of producing countries that it was decided to form the Inter-Governmental Council for Copper Exporting Countries (C.I.P.E.C.). One of the main tasks of CIPEC has been price stabilization. To this end, member countries decided to cut down production by 15 per cent. This would have the effect of raising copper prices on the L.M.E.; and history has shown that during periods of shortage, real or expected, the L.M.E. quotations have gone up, but during periods of surplus, the quotations have converged at the lower levels. Prices if fixed by associations like CIPEC are again not related to production costs for these vary widely from one ore grade to another and from country to country. There is, therefore no point escaping the fact that supply-demand situation is the ultimate and inexonerable force which govern the price of copper. Producing countries accordingly depend on these forces for their copper income notwithstanding the fact that wide fluctuations in average quotations cause hardships for producer nations, like Zambia, so dependent upon copper exports.

83. Chile, one of the CIPEC members, has decided to resume full production and thereby flood the market with copper: Times of Zambia, 8th June 1976.
84. M.J. West, Price stability for copper, Supra.
85. Sir Ronald Prain, Copper, Supra.
CHAPTER THREE

THE AGRARIAN ECONOMY IN PRE-INDEPENDENCE ZAMBIA

Introduction.

Throughout the colonial era up to the time of independence in 1964, agriculture was rated second to mining as the second highest sector in rank of contribution to the Gross Domestic Product.\(^1\) It was believed that agriculture would lead to general improvement in cash earning for 80 per cent of the people who lived in rural areas and whose cash earnings were still at subsistence level.\(^2\) But agriculture’s contribution to the national economy reveals yet another facet of Northern Rhodesia’s imbalanced economy. According to the Honourable T.C. Gardner’s breakdown in 1961,\(^3\) 75 per cent of the marketed crop was produced by European farmers numbering between seven to eight hundred, and farming about 3 per cent of the total land area. The remaining 25 per cent was produced by the 400,000 or so African farming families (representing a population of 2,000,000 African in rural areas) using over 10 per cent of the total area.

\(^1\) Monthly Digest of Statistics 1964 (Central Statistics Office, Lusaka).


\(^3\) Speech by The Hon. T.C. Gardner, C.B.E. to study Conference No. 1 on The Economic Future of Northern Rhodesia (The Central African Studies Association 1961, Lusaka).
For our purposes we would say there were two agricultures - the European agriculture and the African agriculture. Table D shows the significance of the two agricultures to the country's economy.

**TABLE D**

Agriculture's contribution to G.D.P., 1954 to 1962

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<tbody>
<tr>
<td>European</td>
<td>1.6</td>
<td>1.1</td>
<td>1.7</td>
<td>2.6</td>
<td>2.0</td>
<td>2.4</td>
<td>2.0</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>African</td>
<td>10.6</td>
<td>9.0</td>
<td>9.0</td>
<td>11.4</td>
<td>12.2</td>
<td>9.7</td>
<td>9.3</td>
<td>10.0</td>
<td>9.6</td>
</tr>
<tr>
<td>Total</td>
<td>12.2</td>
<td>10.1</td>
<td>10.7</td>
<td>14.0</td>
<td>14.2</td>
<td>12.1</td>
<td>11.3</td>
<td>12.6</td>
<td>12.1</td>
</tr>
</tbody>
</table>

Source: Quoted from Seers Report at p.53.

The above figures as contribution to G.D.P. for 80 per cent of the population show that African agricultural output in relation to the national economy was very small although the overall African Agricultural output may appear ninefold higher than European

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agricultural output. Of the African produce only a fraction was marketed and the remainder was consumed. This indicates that subsistence farming was the mode of life.

Agricultural productivity has been much too low and confined to maize and tobacco growing and rearing of cattle. Poor soil conditions are a natural limiting factor. Other influences inhibitive of agricultural development have been deliberate colonial policies, insufficient techniques and lack of credit and marketing facilities.

Colonial Policies.

Clause 40 of the Northern Rhodesia Order in-Council, 1911 provided that "the B.S.A. Co. shall from time to time assign to natives inhabiting Northern Rhodesia land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs of permanent water". This clause formed the framework for the dichotomy of Northern Rhodesia into Native Reserves and the white enclave along the line of rail. An adult African was only allowed 4.5 acres of

5. S.M. Makings, Agricultural change in Northern Rhodesia/ Zambia: 1945-1965 (Food Research Institute, Stanford University, California 1966).

cultivatable land, and his tenure was something short of leasehold or freehold while a European counterpart was allowed to acquire leasehold or freehold titles to any amount of land unalienated provided it was outside the Native Reserves and the Native Trustland.

An African's tenure to land was governed by customary land tenure system. Land in the Native Reserves was held by chiefs for distribution amongst subjects. Tenure to any land depended on personal relationship between a chief and his subject. It was automatically forfeited if a subject went to live in another chief's area or if a subject was expelled on suspicion that he practised witchcraft. Rights to customary land were not saleable but the occupant could distribute land to his relations, and on his death he was succeeded by his eldest son or eldest nephew born from his sister in accordance with the patrilineal or matrilineal systems respectively.

7. Document regarding the proposed establishment of Native Reserves, Gov. (Zam/02/1913/1, National Archives, Lusaka).

8. Native Trustland and Native Reserves were reserved for the exclusive African use while Crownland was held by the Government and could only be released to European settlers.


Creation of Native Reserves was guided by the principles of minimizing movements of the native population which practised shifting cultivation and of securing farming areas for white settlers.\textsuperscript{12} Because of the latter principle, Native Reserves consisted of land with very poor soils, and the Crownland whose parcels were being alienated to white settlers by device rather than coincidence happened to be the richest agricultural land.\textsuperscript{13}

The colonial social and political system discriminated against Africans to stifle African agriculture while at the same time protected European Agriculture.\textsuperscript{14} The Colonial Government was aware that the African farmer lacked productive skills in agriculture but inspite the paternalistic outlook which characterised the colonial rule,\textsuperscript{15} nothing was done to encourage better productive methods and as a result African agriculture was mainly 'chitemene system' and hoe cultivation.\textsuperscript{16} Chitemene system meant

\textsuperscript{12} Letter from Secretary for Native Affairs to the Acting Administrator, Livingstone, dated 31st December, 1913. (Zambia National Archives, Lusaka).

\textsuperscript{13} The area along the line of rail between Kalomo and Chisamba is the richest agricultural area in Zambia and it was reserved for European Farmers.

\textsuperscript{14} 1931 Annual Report of the Director of Agriculture, (Government Printer, Lusaka).

\textsuperscript{15} That was the meaning of Indirect Rule contained in Lord Lugard's Dual Mandate in British Tropical Africa, 1922. Also see Richard Hall, Zambia, at p.104.

\textsuperscript{16} The Prim Commission Report; Also Irving Kaplan (ed.), Area Handbook for Zambia.
lopping off the trees of the surrounding forest, pile them up and burn. The garden was then ready for sowing. And hoe cultivation was prevalently making ridge gardens.

By 1931 African producers had management to increase their surplus production of maize to the requirement of market oriented agriculture. They thus threatened the European market, and at that stage the then Director of Agriculture sounded the alarm in his annual report. He said:

"If the whole of this market were taken by the native (as it might well be, with the exception of a very few commodities, should deliberate attempts be made to foster production of crops for this purpose) the European population would be rapidly driven off the land, and it is hard to see how the individual native would greatly be benefited, for his share of proceeds would be infinitesimal".

The argument put up by the Director of Agriculture was self-defeating in that if the African share of the agriculture market would permit merely infinitesimal proceeds, then there was no fear of European farmers being driven off the land. The truth appears to be that the colonial Government was committed to the protection

of a market for white settlers and was not prepared to see African farmers competing with white farmers without taking sides. Contrary to the Colonial Foreign Office directives contained in Lord Passfield’s memorandum, European settlers’ interests were regarded paramount to those of other races. The Colonial Government, in fact, took up positive measures calculated to safeguard interests and market of European farmers by adopting a policy of prices and quotas which kept the domestic price of maize above the world price and unfairly limited the African’s share of the more profitable local market.

Marketing Policies.

Because of the danger of overproduction when only with a limited internal market, the Government appointed the Agricultural Advisory Board which met in 1935 to appoint a subcommittee to investigate the question of the marketing of maize. The subcommittee proposed the establishment of two separate pools – one for local sale and the other for export. The local pool was shared

20. Anthony Martin, Minding Their Own Business, Supra, p.32.
21. Anthony Martin, Minding Their Own Business, Supra, (b.d.)
between European and African maize growers. It was divided into three shares for Europeans and one for Africans. The above proposals were accepted and embodied in the Maize Control Ordinance 1935.

The essence of the Maize Control Ordinance as already observed was to secure a profitable market for the European farmers. This objective was achieved by setting out marketing channels for the agricultural produce. The bulk of agricultural produce was henceforth marketed through the Grain Marketing Board, the African Rural Marketing Service and the co-operative marketing societies.

(a) The Grain Marketing Board was a statutory board. Maize grown by Europeans within the Board's area of control was vested in the Board at the time it was harvested. That ensured that a European maize grower had an automatic market for his crop. In case of African maize, the Board became the legal owner the moment maize was acquired from an African producer by a buying agent or co-operative marketing society. African maize thus could not without the Board assuming responsibility.

Single fixed price was paid by the Board for each grade of maize delivered to any siding on the line of rail. Africans were at first not permitted to deliver their maize direct to the Board but eventually those Africans growing at least 5 acres of maize were allowed to deliver direct to the Board provided they had registered
with the Board in advance. Other African growers sold to a co-operative marketing society, to the Rural Marketing Service, or to a buying agent. But agents paid less than the Board because although they paid growers the line of rail price in spot cash, they deducted their handling and transport charges. That meant that rural growers stood at a disadvantage.

(b) Co-operative Marketing Societies developed after 1947 when the Colonial Government decided that post war rural development programme would require independent marketing organisations and that these would develop on cooperative lines. The earliest cooperative marketing societies, or rather African producers' associations as they were called, are found in the Petauke District of the Eastern Province. Two associations developed in Petauke – one handled tobacco and the other was to market food crops. Members purchased a one shilling share in the societies. These societies operated rural buying stations, transported produce to regional depots, graded, cleaned and fumigated produce as necessary, packed and despatched it to various consumers or, in the case of tobacco to auction floors at Fort Jameson (now Chipata). The cost of these operations, and of running the societies were deducted from the

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23. The Scers Report in note 4, p. 54.
24. George Kay, Changing Patterns of Settlement and Land Use in the Eastern Province of Northern Rhodesia (University of Hull Publications 1965).
proceeds ultimately received from the sale of crops. If there was a credit balance after paying off all the society's commitments, a bonus was declared and paid to each member according to the quality of the produce he had sold to the societies. From these two associations emerged the Petauke Cooperative Marketing Union Ltd (P.C.M.U.) which was swallowed in the Eastern Province Cooperative Marketing Association Ltd (E.P.C.M.A.).

(c) The African Rural Marketing Service was a substitute for the cooperative marketing societies, and it was formed to provide African farmers with marketing services in areas where co-operatives had not been established.

Maize marketing after adopting the above measures show that the colonial government had succeeded in securing market for European farmers. Table E compares maize marketing from 1956 to 1961.
### TABLE E

**Maize Purchased**

(Tons of 2,000 lb)

<table>
<thead>
<tr>
<th>1961 Harvest</th>
<th>European</th>
<th>African</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grain Marketing Board</td>
<td>125,900</td>
<td>93,574</td>
<td>219,474</td>
</tr>
<tr>
<td>Other agencies outside the Board's sphere</td>
<td>-</td>
<td>2,000</td>
<td>2,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>219,474</strong></td>
<td><strong>2,000</strong></td>
<td><strong>221,474</strong></td>
</tr>
</tbody>
</table>

A comparative table gives the following figures of maize purchased through all marketing channels.

<table>
<thead>
<tr>
<th>Year</th>
<th>European</th>
<th>African</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>1956</td>
<td>89,283</td>
<td>66,383</td>
<td>155,666</td>
</tr>
<tr>
<td>1957</td>
<td>117,634</td>
<td>89,925</td>
<td>207,559</td>
</tr>
<tr>
<td>1958</td>
<td>54,300</td>
<td>5,500</td>
<td>59,800</td>
</tr>
<tr>
<td>1959</td>
<td>100,800</td>
<td>54,480</td>
<td>155,280</td>
</tr>
<tr>
<td>1960</td>
<td>95,747</td>
<td>74,015</td>
<td>169,762</td>
</tr>
</tbody>
</table>

Credit facilities.

The other factor which seem to have severely hit the growth of African agriculture is lack of capital resources. With capital available, the input of the African agriculture would have been something else now. European farmers were at an advantage in that they were able to obtain credit from commercial banks. Both African and European farmers did not initially get credit facilities from the Government as the Government seem not to have had any national policy for development until 1947. But pursuant to the 1947 Ten Year Plan, Land and Agricultural Bank of Northern Rhodesia was formed in 1953. The Bank's function was to provide capital to Europeans for the purchase and development of farms, and short term capital on seasonal basis for crop production. Finance was not available to Africans because security of title to land was not available to back such loans. The Bank as then organized advanced loans on securities, in the all, which African farmers could not afford. These were:-

(a) Land improvement: Only few Africans had titles to land and on that basis only a few of African farmers would borrow on the security of land and improvements.

25. 1947 Ten Year Development Plan.
(b) Crops: African farmers as a whole were still peasant farmers as contrasted with commercial farmers and thus African crops were too small to support a worthwhile charge of a bill of sale.

(c) Government guarantee: African farmers had no influence in the government circles and accordingly could not be expected to persuade the Colonial Government to guarantee loans on their behalf.

Amongst European farmers, those who had proved to be competent were further assisted by the Farmers Debt Adjustment Board which was established in 1958. The Board ensured that those farmers, if they got into financial difficulties because of unfavourable farming conditions, remained on the land producing as if nothing had happened to them. In 1963 the responsibilities of the Board under this scheme were transferred to the Land Bank.

African farmers waited for ten years before credit facilities were made available to them. This was through the rural Co-operative Credit Associations which were established from 1963. The rural Co-operative Credit Associations were assisted by Commercial banks. The Banks allowed Co-operative Credit Associations credit facilities of up to three times more than the money deposited with the bank. The Associations then extended these terms to members so that for every amount of money a farmer invested in a Cooperative Credit Association, that farmer was
eligible to get a loan three times as much as his capital investment in that Association.  

Cooperative Credit Associations existed only in rural areas and therefore their implication was to drive African farmers away to the rural areas where they would be able to get credit facilities but where the infrastructure was poor and unconducive to market farming.

Apart from rural credit associations, African farmers received interest free loans from:-

(a) Peasant Farming Scheme which was financed by the United Kingdom Government; and

(b) African Farming Improvement Fund which was financed by a levy on the price of African grown maize.

Compared with the financial assistance European farmers received from the Land and Agricultural Bank, African farmers only got 'peanuts' from financial institutions accessible to them, and consequently it was almost impossible for them to develop into commercial farmers.

The extent of African advancement in agriculture up to 1964 in summed up in the following quotation from the Seers Report:-

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27. Information obtained from the Department of Cooperative in the Ministry of Rural Development, Lusaka.

"Subsistence farming is the mode of life of about 450,000 farm families who comprise 70 per cent of the population and who generate a total annual agricultural output estimated at only £25 million, of which approximately £5 million represents cash income. This is supplemented by an estimated £3.5 million remitted by the absentee male wage-earning members of the family. Shifting agriculture is still the general rule in most provinces, and the land hoe is the only cultivation implement used by tens of thousands of farmers. A number has reached the oxen state of development, but less than 400 farmers own a tractor."
CHAPTER FOUR

COMMERCE AND INDUSTRY IN PRE-INDEPENDENCE ZAMBIA

Introduction.

Development of modern commerce and industry in Zambia must be seen against the background of empire building by Cecil Rhodes. Rhodes wanted to extend the British Empire from Cape to Cairo. His dream was to form a joint stock company (B.S.A. Co.), modelled on the Elizabethan pattern of chartered companies, with monopoly and full authority over the territories it had acquired. He petitioned the Imperial Parliament to set seal of its approval on the adventure, to give the company official standing and to facilitate the grant of a royal charter. The royal charter was granted in 1889.

The objects of the B.S.A. Co. as outlined in the charter were mainly three:

(a) to establish British supremacy in the Cape and its hitherland;
(b) to develop the wealth of the extensive territories that came to be known as Rhodesia; and

1. Cecil Rhodes was born in 1853 in England. He went to South Africa where he made a fortune in diamond mines. His ambition was to fly a British flag on the whole continent of Africa. Northern Rhodesia and Southern Rhodesia were named after him.

2. Rudolph Robert, Chartered Companies, Their Role in the Development of Overseas Trade (G. Bell and Son Ltd., London 1969)
(c) to raise the standard of life of the native population.

In pursuance of the objects of the charter, the B.S.A.Co. set towards the north. Through treaties and military occupation it established itself in the area which came to be known as Northern Rhodesia. Other settlers followed. Since the Company was basically a commercial enterprise its occupation of the Territory also gave impetus to the commencement of "modern" commerce and industry.

Evidence of some industrial activities though limited, can be seen as early as 1912 but industry on a considerable scale started with the opening of mines and this was followed up with refining and smelting industries; and also by other industries in consumer goods such as flour milling and soap making. Commerce started from the time settlers and indigenous people came into contact. Ever since modern trade has assumed the place of the old system of barter.

4. L.H. Gann, A History of Northern Rhodesia, Supra.
Immigration and trading laws.

Conditions for entry into Northern Rhodesia by immigrant races were not stringent. In a letter to the Assistant Secretary, the Chief Immigration Officer said important conditions laid down for entry into Northern Rhodesia by Proclamation No. 5 of 1915 and as amplified by the Government Notice No. 48 of 1923 and Ordinance No. 4 of 1925 were: 7

(a) Possession of a current passport;
(b) Possession of a sum of money, his own property, of not less than £50.00; and
(c) Ability to read and write a European language.

Once in Northern Rhodesia any immigrant desiring to practice or carry on any profession, trade or business had to obtain a licence from the Administrator or from the proper officer. 8 He was additionally required to comply with the Registration of Business Names Ordinance from 1931 and thereafter. 9

With regard to African traders, it was much more difficult to obtain a trading licence. Usually issue of trading licence

7. Letter No. IM 14/1926 about M.G. Patel dated 8th May, 1926, from The Chief Immigration Officer to Assistant Secretary (Zambia National Archives, Lusaka).
8. The Northern Rhodesia Licence and Stamp Proclamation 1920 (Government Printer, Lusaka).
was at the mercy of individual District Commissioners or Magistrates in each district. In districts such as the Barotse District, issue of trading licences was restricted to Europeans only, and it was one of the conditions of issue that an African is never allowed to conduct any store even as an agent except in the presence of and under the supervision of his master. Other districts like Broken Hill (now Kabwe), where the District Commissioners or Magistrates were liberal, Africans could have a general dealers licence, and it was the official policy within such districts to encourage African trading and the employment of African agents.

The Trades Licensing Ordinance applicable to all districts in the Territory was passed in 1930. This was followed by the Trades and Business Ordinance 1947. These Ordinances did not discriminate against races or nationalities. However, the licensing officer had the power to refuse or restrict a licence if satisfied on evidence that the grant of a licence would be contrary to the interests of consumers or would cause hardship to a trader who has taken objection to the grant of a licence, or where

10. Minute No. 10/112/1921 from the Resident Magistrate, Mongu to the Secretary, Northern Rhodesia Administration, dated 14th November, 1921 (Zambia National Archives); and Government Notice No. 62 of 1920.

11. Letter from the District Commissioner at Broken Hill to the Secretary in Livingstone, dated 8th August 1922 (Zambia National Archives, Lusaka).
the licence was calculated to cause nuisance or annoyance to persons residing in the neighbourhood.\(^{12}\)

A provision existed under the 1947 Trades and Business Ordinance for the establishment of Appeal Tribunals but this provision had not been put into operation. Consequently, Indian applicants for licences who had their applications turned down on non-legal grounds or on legal grounds which had not been established had no redress.\(^{13}\)

**Discrimination in the allocation of trading areas.**

European settlers engaged in trade did not want competition from any other races. As early as 1905 they had protested to the B.S.A.Co. Administration for granting trading licences to Indians but D.E. Brodie, on behalf of the administration, defended the issue of trading licences to Indians when he wrote to the Assistant Manager of African Lakes Corporation Ltd:

"My Directors (B.S.A.Co. directors) are informed that Indian traders cater almost exclusively for Native trade, paying particular attention to the fancies and requirements of the native. They also establish a small trade in

\(^{12}\) Supplementary report of the Trades Licensing Committee, (Government Printer, Lusaka 1947).

\(^{13}\) Letter from Attorney General to the chief Secretary, dated 19th March 1948, (Zambia National Archives, Lusaka).

* Words in brackets are mine.
the natural products of the country, exchanging their 
ware for hides, bee wax, grain, oil seed etc., a business 
which is troublesome for European Store keepers".14 

The issuing of trading licences to Indian traders engaged in 
African trade was encouraged by the Administration but Indians who 
wanted to engage in European trade met with opposition from the 
white settler community, and often they were discriminated against 
by licensing authorities. Meanwhile European traders were urged to 
desist from African trade so that they catered solely for the 
European community. To that end, the District Commissioner for 
Livingstone wrote:

"While stores in outlying places are a benefit to the 
native, enable him to sell his grain, tobacco, skin etc., 
without having to travel long distances, and to buy various 
things he needs, they would not justify the employment of a 
decent white man. The type of white man who would take 
charge of them is the very type we do not want in the 
country... the degenerate white, working for little more 
than a kafir's wages among natives. It is far better in 
every way to see the semi-educated native in such a 
position".15

14. Quote from a letter by the Assistant Secretary to the Assistant 
Manager of African Lakes Corporation Ltd., Fort Jameson, dated 

15. Letter by the District Commissioner, Livingstone to the 
Secretary, Livingstone, Minute No. 55/3/22 (Zambia National 
Archives, Lusaka).
Municipal Councils and Management Boards excluded traders in 'African trade' from the environments of European centres.\textsuperscript{16} They further pressurised on the Government for the creation of First and Second Class Trading Areas. In compliance, the government allotted certain stands near African townships for exclusive African trading, and certain stands near European residential portions of the towns to cater mainly for Europeans tastes. The official view was that African customers should have access to all trading areas.\textsuperscript{17} But Africans who went to shop in the First Class Trading Areas were served through pigeon holes while Europeans were served over the counter.\textsuperscript{18}

One implication of the creation of First and Second Class Trading Areas was to set the budding African traders on competition with the experienced Indian traders, and the result was that African entrepreneurship was swallowed by the Indian traders.\textsuperscript{19}

The only protective measure to safeguard African entrepreneurship was that Trading Stores in the Native Reserves were run by

\textsuperscript{16} Minute addressed by the Chief Secretary to the District Commissioner at Broken Hill, dated 21st January, 1928 (Zambia National Archives, Lusaka). Also Notice published in the Bulawayo Chronicle by the Secretary of Lusaka Management Board.

\textsuperscript{17} Letter from Secretary for Native Affairs to the Chief Secretary dated 9th January, 1933 (Zambia National Archives, Lusaka).


\textsuperscript{19} The Pim Commission Report, Supra.
Africans to the exclusion of Indian traders, but inspite of this protective measure, African traders and hawkers had many obstacles to contend with except where they dealt in few commodities produced locally. They were severely handicapped by their inability to obtain goods at or near wholesale prices; and their small capital and turnover deprived them of the advantages of large purchasers.

Constraints to commercial and industrial development.

Commerce and industry constituted a relatively small sector of the national economy. Capital was a limiting factor on one hand and market on the other. This paradoxical phenomenon of scarcity of capital when mining Companies were making fantastic profits demonstrated lack of interest the companies controlling the national economy had over national development. Mining Companies were reluctant to invest in commerce and industry on the pretext that population of Northern Rhodesia and the per capita income of


22. Table C, on p. 39
the indigenous people would not allow market for viable and profitable enterprises.\textsuperscript{23} W.J. Basschau who carried a survey on the development of secondary industries in 1945 lends support to the mining Companies' contention. He observed:

"with a population of under 1,400,000 only 16,000 are Europeans permanently resident with fairly high incomes, and the local market for new industries must therefore be very low in total purchasing power as compared with most other countries".\textsuperscript{24}

African workers were deliberately paid low wages that excluded the purchase of all but the most important necessities.\textsuperscript{25}

The mining companies, in particular, developed a dual wage structure which prescribed permanent low wages for Africans and

\textsuperscript{23} De Gaay Fortman has argued that Zambia's home market for industrial products at that time was large in relation to its population, size and stage of development. A market of Zambia's size offered opportunities for domestic production of manufacturers: Charles Elliot (ed.), \textit{Constraints on Economic Development of Zambia} (Oxford Univ. Press, Nairobi 1971) at p.212. In comparison with other countries, with comparable levels of population and income per head, A. Young thinks Zambia is still seriously under-industrialised in most manufacturing sectors; A. Young, \textit{Patterns of Development in Zambia Manufacturing Industry since Independence} (East African Economic Review, Vol. 1, No.2 of December 1969) pp. 5 to 6.

\textsuperscript{24} W.J. Basschau, \textit{Report on the Development of Secondary Industries in Northern Rhodesia} 1945 at p.4 (Government Printer, Lusaka).

\textsuperscript{25} W.J. Basschau Report, Supra.
high salaries for Europeans. The argument used to justify a dual wage structure was that when the mining companies opened the Zambian mines they found on one hand a large supply of cheap but unskilled and illiterate labour, and on the other hand a great difficulty in persuading Europeans to work in what was then considered an unhealthy climate and where even the barest amenities were lacking. Arising from this situation, it was contended, the mining companies employed a large number of Africans at low wages of pay, but had to offer very high salaries to obtain European staff.  

There was nothing wrong with the dual wage structure as initially conceived for it merely complied with the market requirements but unfortunately this situation was exploited for racial reasons by the European Trade Union. The Union practised colour bar which prevented Africans from acquiring skill, exercising skill or even obtaining full reward for the exercise of skill. In this way the purchasing power of the African worker was limited by the practise of colour bar. This helped to narrow the local market for new industries.

26. H.R. Tempest, A survey of Northern Rhodesia's Prosperity during the years 1951-1955, (Griffin Estates Ltd, Managing and General Agents, P.O. Box 1018, Lusaka).

# TABLE F

<table>
<thead>
<tr>
<th>Industry</th>
<th>Africans</th>
<th></th>
<th>Non-Africans</th>
<th></th>
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<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Average Earnings in pounds</td>
<td>Number</td>
<td>Average Earnings in pounds</td>
</tr>
<tr>
<td>Agriculture</td>
<td>40,300</td>
<td>54</td>
<td>670</td>
<td>956</td>
</tr>
<tr>
<td>Mining &amp; Quarrying</td>
<td>37,800</td>
<td>293</td>
<td>6,840</td>
<td>2,326</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>21,600</td>
<td>137</td>
<td>3,430</td>
<td>1,493</td>
</tr>
<tr>
<td>Building &amp; Construction</td>
<td>30,000</td>
<td>120</td>
<td>2,400</td>
<td>1,434</td>
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<tr>
<td>Electricity &amp; Water</td>
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<td>124</td>
<td>510</td>
<td>1,875</td>
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<td>Wholesale &amp; Retail Trade</td>
<td>14,400</td>
<td>124</td>
<td>4,990</td>
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<td>Finance &amp; Insurance</td>
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<td>1,260</td>
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</tr>
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<td>Education</td>
<td>9,300</td>
<td>176</td>
<td>1,310</td>
<td>1,121</td>
</tr>
<tr>
<td>Health</td>
<td>6,200</td>
<td>122</td>
<td>1,140</td>
<td>1,256</td>
</tr>
<tr>
<td>Private Domestic Service</td>
<td>33,400</td>
<td>81</td>
<td>100</td>
<td>622</td>
</tr>
<tr>
<td>Other Services</td>
<td>10,800</td>
<td>113</td>
<td>2,270</td>
<td>992</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>238,100</td>
<td>139</td>
<td>30,860</td>
<td>1,476</td>
</tr>
<tr>
<td><strong>Subsistence population</strong></td>
<td>1,692,000</td>
<td>18</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The most critical issue in the industrial development of Northern Rhodesia was the source of capital. Residents, on the whole, were not a source of much capital. The government too, was not in a position to initiate or sponsor industrial development. The bulk of capital employed in the Territory was subscribed by private entrepreneurs who were resident outside the Territory; and these in most cases invested in beverages and tobacco industry where the market was wide.

Investors were sceptical about investing in other manufacturing industries for fear that goods produced in Northern Rhodesia would not compare favourably with those manufactured in the South, or any other free trade area governed by the Congo Basin Treaties.

Professor S.H. Frankel has made estimates of capital investment for the period between 1870 and 1936.

32. Congo Basin Treaties forbade discrimination in trade amongst the signatories to the Treaties.
### TABLE G

Professor S.H. Frankel: Capital Investment in Africa.

<table>
<thead>
<tr>
<th>Name of a Country</th>
<th>Public Listed Capital in £ thousands</th>
<th>Private Listed Capital in £ thousands</th>
<th>Non Listed Capital in £ thousands</th>
<th>Total in £ thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. Rhodesia</td>
<td>35,993</td>
<td>53,484</td>
<td>9,309</td>
<td>102,403</td>
</tr>
<tr>
<td>N. Rhodesia</td>
<td>2,731</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bechuanaland</td>
<td>886</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nyasaland</td>
<td>10,298</td>
<td>1,000</td>
<td>848</td>
<td>12,146</td>
</tr>
</tbody>
</table>


The above figures show that the Government of Northern Rhodesia had very little capital to list for developments. Further, the local budget was very small; it was expected to be barely greater than £1.2 million in 1943. This factor discouraged any economic planning for the future.33

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33. The Governor in an address to the Legislative Council on November 20, 1943, explained that he did not think it was wise to plan the future on the basis of an expected revenue greater than £1.2 million (1943 Hansard, Government Printer, Lusaka).
Planned economic development of Northern Rhodesia dates from 1947. The Ten Year Plan that was launched involved £13 million of which £2 2/3 million was to come from the Colonial Development and Welfare Fund; this £2 2/3 million was part of the £50 million the Colonial Development and Welfare Act 1945 (U.K.) provided for Africa. Out of this money only £4 million was put aside as capital for the Industrial Loans Board which the government formed in 1950 for the purpose of encouraging the establishment of local industries by providing loans to industrialists.

The Federation of Rhodesia and Nyasaland and the economic development of Northern Rhodesia.

Efforts of the Government of Northern Rhodesia to boost economic development suffered a blow in 1953 as a result of the Rhodesia Nyasaland Act (U.K.) which provided for the formation of the Federation of Rhodesia and Nyasaland.

The Federal government introduced Federal tariff to provide protection for industries within the Federation, but at

34. Northern Rhodesia Ten Year Plan 1947, Supra.
36. Federal tariff came into effect in 1955 but applied to Nyasaland in 1957 after GATT agreed to remove the application of the Congo Basin Treaties forbidding discrimination in trade.
the same time established a customs union to widen market for the manufacturing industry in the Federation. Trade agreements with South Africa which allowed privileged access of South African goods to the market in Northern and Southern Rhodesias were also abolished.37 These measures did not stimulate growth of industries in Northern Rhodesia or Nyasaland because Southern Rhodesia as the headquarters of the Federation claimed virtually all industries to the exclusion of all partners. The finished products of Southern Rhodesia then found market in the north and thereby reducing Northern Rhodesia to the position of a dumping market.38 Free trade continued between the two Rhodesias after the dissolution of the Federation but was stopped just before independence.39

Taking market as one of the determining factors for the location of secondary industries, it is difficult to see why secondary industrial development was concentrated in Salisbury area when the Copperbelt in Northern Rhodesia might have provided a bigger market.40 One is tempted to conclude that the issue at stake was political rather than economic.41

37. Arthur Hazlewood, The Economics of Federation, Supra.
Remarks.

From the standpoint of Zambia's economic development two remarks can be made on the foregoing. First, free trade policies both before and during the Federation worked against the encouragement of foreign investors in Northern Rhodesia. Foreign investors were not only going to be confronted with a narrow local market but were going to face stiff competition from other industrialists in the free trade area. Without free trade with more industrialised countries Northern Rhodesia, as De Gaay Fortman has pointed out, would have offered good market for lots of industries.

The second remark relates to the negative attitude of the mining companies. The failure of these companies to channel investible surpluses in other industries robbed the country of development parallel to that which took place in Southern Rhodesia. If the mining companies which yielded fantastic profits were in hands of a government or any institution committed to the betterment of the general welfare of the people as opposed to the maximisation of the shareholders' profits, the economic picture of Zambia at independence would have been different.

42. De Gaay Fortman, in note 23, p. 76.
43. The total sum paid out in dividends by all the mining companies between June 1954 and Jun 1964 has been estimated at £259 million. See R. Hall, Zambia, Supra, p. 265.
PART II

TENTATIVE SOLUTIONS TO COLONIAL DISTORTIONS
CHAPTER FIVE

ECONOMIC LIBERALISM

Introduction.

The economy of Zambia at independence was imbalanced and foreign owned. A large part of the country was rural, poor and in stagnation. Only a small urbanized area, precisely the Copperbelt and a narrow corridor along the line of rail represented some development; and only a limited number of foreign owned enterprises had sprouted there. Outside the urban areas infrastructure and services were poor.¹

The main economic activity in terms of output was mining although majority of the people depended on agriculture. There were a few manufacturing industries and these were geared mainly to support the mining industry. On the whole, consumer and capital goods were imported.

After independence it was believed that the economic anomalies Zambia had inherited were due largely to emphasis on financial planning instead of resource planning.² The new economic development strategy was therefore to be based on resource planning.

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That is to say, the Government's programme was to consist not of a
decision to spend a certain amount of money, but rather of the
determination to press ahead with a programme of projects scattered
all over the country. The financial limit set for capital
expenditure on approved projects was estimated at £35 million.³

The desire of the Government was to maximise the rate of
productive growth and to lay the basis for a more even distribution
of income. Peasant families were to be integrated into cash economy
and the gap between haves and have nots was to be narrowed. But
Zambia lacked both capital and expertise to implement this very
ambitious economic programme.⁴ This meant that Zambia's dream was
to be realised through the use of hired capital and skills.

It was not an easy thing for a newly independent country,
like Zambia, to attract investment from outside as long as invest-
ment bankers and many foreign companies regarded Africa as risky —
an impression borne out of recurrent military coups which

³. Ibid.

⁴. Mr. Nalilungwe, the then Minister of Commerce, Industry and
Foreign Trade is quoted to have said: "A very wide gulf exists
in the levels of training skill, managerial ability and capital
resources between the Africans and the other members of the
community. Unless special attention is given to the problem of
redressing this imbalance, it would be a long time before an
appreciable number of Zambians reached positions of responsibility
in the higher levels of the industry" — African Research Bulletin,
Vol. 2 No. 4 of 1965 London, at p.285B.
interrupted production and led to economic chaos.\(^5\) Zambia's image was particularly tarnished by political instability and economic sabotage evidenced during the struggle for political independence.\(^6\)

The new economic policy for industrialisation.

The new economic policy took into account the need to attract foreign capital and skills. It provided incentives for new and developing industries. It also compromised private enterprise with state enterprise.\(^7\) The State was to own certain basic industries and to participate jointly with private investors in certain others. The remainder of the industrial field was left open to private investors.\(^8\) This policy was aimed at promoting import substitution industries, labour intensive modes of production, the training of Zambia nationals, and rural location of industries to


6. Robert Pohtberg, *Rise of Nationalism in Central Africa; the making of Malawi and Zambia 1873-1964* (Cambridge University Press 1967). Also see the maiden speech by Mr. K. Kaunda, leader of the ruling nationalist party, UNIP, in *Northern Rhodesia Hansard No. 106 of 1965* at p. 98


8. Industrial Development in Africa, *United Nation* 1967 at p. 303. Also see the speech of Mr. Nalilungwe in *Zambia Hansard No. 4 of 1965* at p. 1061.
spread the benefits of development throughout the country. 9

A number of new laws were passed to make the new economic policy attractive to investors.

(a) Customs and Excise legislation.

Two amendments 10 were made to the Customs and Excise Act 1955 to provide for tariff protection, waiver of duty on raw materials and component parts, and to make anti-dumping provisions.

(i) Tariff protection: The Government was to provide tariff protection to selected new and developing industries. Selection of these industries was to be made by The Tariff Advisory Board on the basis of information submitted by individual manufacturers but protection of the local market was to be granted by the Ministers of Commerce and Industry and Finance on the recommendations of the Board.

(ii) Waiver of duty on raw materials and component parts: The Government was to admit all raw materials and component parts for use in manufacturing industry duty free either in the tariff or by way of industrial rebate.

9. Mark Bostock, "The Background to participation", in Mark Bostock and Charles Harvey (ed.), Economic independence and Zambian Copper, Supra.

(iii) Anti-Dumping provisions: Before these provisions were made, goods were dumped on Zambian markets at prices which were less than the domestic value in the country of origin. This had detrimental effects on new and developing industries in Zambia. Where such a situation was suspected, dumping duties were to be imposed.

(b) Income Tax legislation.

Favourable income tax conditions were provided for pioneer industries, double taxation liabilities were removed on foreign companies intending to start operations in Zambia, and many more other tax incentives were given.

(i) Pioneer Industries (Relief from Income Tax) Act of 1965: Object of the Act was to encourage the development and diversification of new industries on a scale suitable to the needs of the economy and to provide tax incentives for that purpose. A complete exemption from income tax was given to selected new industries for periods of from two to five years.

(ii) Double-taxation Agreements: Where the same income was liable to tax in both Zambia and United Kingdom or United States of America, double taxation agreements with those countries provided that such income should not be doubly taxed.
(iii) The Taxes Charging and Amendment Ordinance 1964:

This Ordinance provided for the grant of a special tax rebate of 2s 6d. in the pound for those companies recently set up in Zambia which had previously been exempted from payment of Territorial Surcharge and which would otherwise have been deprived of relief as a result of the inclusion of the Territory Surcharge in the main tax charge, and the loss of its separate identity. This rebate did not apply to industries which commenced operations in Zambia after 1st April 1963, but such industries which were new to Zambia would have been entitled to consideration under Pioneer Industries (Relief from Income Tax) Act, 1965.

(c) The Exchange Control Act 1965:

Regulations made under the Exchange Control Act required licences for all imports from all countries. The purpose of the licences was to control imports and also to control the flow of foreign exchange. Non-resident companies were permitted to remit profits and dividends abroad, but subject to the production of necessary documentary evidence. These companies also could repatriate capital brought into the country, together with increases in that capital arising in Zambia from their operation.
(d) Control of Goods Act:

This Act empowered the government to impose import and export controls on all goods. The purpose of these controls was to ensure the free flow of trade and to protect the national interests in times of emergency. Controls would be used to implement industrial policy if the Government was requested by a local industry. This Act made it legally possible that import of competitive goods would be restricted to a quota basis or "shut-out" completely.

In addition to the above listed enactments, there were individual rights and freedoms which were guaranteed and safeguarded by the independence constitution of Zambia.\(^{11}\) Notably, there was a provision expressly prohibiting legislation of any law which was discriminatory on the grounds of race, colour, tribe, creed or political opinions. Individuals were guaranteed protection from deprivation of property and protection from any form of discrimination. By virtue of these provisions, foreign investors were assured that there was not going to be wholesale nationalisation of privately owned properties.\(^{12}\) The constitution also ensured that

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no future alterations or amendments to the protective provisions would be made without having the matter referred to a referendum "in which all persons who are registered for the purposes of elections to the National Assembly shall be entitled to vote and unless those provisions have been supported by the votes of a majority of all the persons entitled to vote in the referendum". 13

Implementation of the industrialisation policy.

Industrial Development Corporation of Zambia (Indeco) was singled out as the government's vanguard in its industrialisation policy. Indeco which became a government wholly owned enterprise in August 1964, was previously jointly owned by the R.S.T. Group, the A.A.C. Group, the R.S.A.Co. and Commonwealth Development Corporation. 14 The objects of the new look Indeco were specific and many but were all calculated to enable the corporation to spearhead the implementation of the policy of industrialisation. 15

Indeco was not a government department and it was not, strictly speaking, a private enterprise although it was

13. Section 72 of Appendix 3 of the Laws of Zambia, Supra.
incorporated under the Companies Act as a private company. It was responsible broadly to the Ministry of Commerce, Industry and Foreign Trade but was autonomous in its day to day functions.

State participation in industry was done through Indeco. The Corporation sponsored the establishment of industries considered to be in the national interests and entered into joint ventures with willing private investors.

The Corporation was also geared to promoting Zambian entrepreneurship in industry and commerce. Here preference was to be given to activities with special reference in rural areas. But this objective did not materialise due to the obvious fact that there were no skilled Zambians to take up the challenge.

Indeco also provided financial assistance to private foreign investors in Zambia who did not have sufficient working capital. The Corporation contributed to up to 50 per cent of the total requirements of an enterprise but it did not assume any active role in the management of the affairs of its clients, let alone to control the industries which it assisted.

16. Department of the Registrar of companies, Supra.
18. It was not the policy of the Government to manage or control industries sponsored through Indeco: Anthony Martin, Minding Their Own Business, Supra, p.59.
The scope and importance of Indeco increased dramatically from 1965 onwards, partly due to the unilateral declaration of independence (UDI) in Rhodesia.\(^\text{19}\) The immediate reaction of the international community to UDI was that of condemnation followed by the United Nations' imposition of economic sanctions on the rebel colony.\(^\text{20}\) Zambia which till then had been identified with the Southern African economic matrix had to find alternative partners, if only to avoid sanction-busting.\(^\text{21}\) Petroleum supplies from the South were cut and Zambia's normal exports and imports were threatened. As a result of UDI there were, among other things, shortages of consumer and capital goods, and increased prices to consumers. Zambia's hitherto dependable outlet to the outside world was blocked\(^\text{22}\) while the alternative ports, roads and transportation organisations were inherently


20. Ibid.

21. The amount of trade between Zambia and Rhodesia at that time show that Zambia received between 35 per cent to 40 per cent of total imports from Rhodesia: Annual Statement of External Trade, (Central Statistics Office, Lusaka 1964-65).

22. The border between Zambia and Rhodesia remained open until 1973 when it was close, but since UDI Zambia has been reluctant to have any dealings with the rebel colony.
incapable of carrying Zambian imports to maintain the national economy. To alleviate problems, Indeco was given new tasks of hastening the industrialisation programme in essential goods, and of creating new trade routes to East African ports.

Effects of the industrialisation policy.

If the trend in gross domestic product is taken to provide a measure of overall growth of the economy from 1964 up to 1968 when the first Economic Reforms were announced, one would say Zambia's economic growth had almost doubled. The GDP at 1969 prices had increased from K649.9 million in 1965 to K1,240.1 million in 1969. The average per capita income also shows an increase from K157.20 in 1965 to K272.30 in 1969, all at 1969 prices.

The above figures offer evidence that Zambia had experienced an economic boom for the period under review. The figures, however, conceal the disparities in incomes between different people and sections; and also conceal the fact that the Government's objective of bring about a more equitable distribution


of income had not been achieved.

There is no question that many private companies had made substantial contributions to local development, directly or indirectly, but the companies' major decisions had to be made with the overall corporate interests in mind. These interests were not necessarily the same as the country's. In particular, the country's desire that industries be located in rural areas never came to fruition. All the industries that sprung up were concentrated on the Copperbelt and the line of rail; and rural areas which lacked adequate infrastructure and economically viable markets remained in stagnation. Fucrom Holdings Ltd., a subsidiary of Indeco which was assigned the task of developing rural industries only managed to set up 19 projects by 1974.26

Foreigners who had set up business enterprises in Zambia were repatriating investible surpluses which otherwise would have helped the Government in its efforts to distribute the benefits of the national wealth evenly.27 The worst example one would think of is that of a certain company which prospered out of money borrowed within Zambia but it repatriated all its profits.28

27. President Kaunda, Zambia Towards Economic Independence, Supra, p.6. See also the Patel Currency case (Selected Judgements of Zambia, No. 1 of 1968).
28. Ibid.
Indigenous people were excluded from holding responsible positions in foreign owned businesses. This conflicted with the Philosophy of Humanism. According to Humanism, Zambia is a man-centred society which has firm belief in equal opportunities for everybody and in fair distribution of wealth. Humanism is a philosophy which does not tolerate greed while it welcomes private initiative. This duality in the philosophy accounts for the tolerance of socialism and mild capitalism in Zambia.

It would appear the economic development strategy opted for by the Government failed largely because of its reliance on private enterprises as instruments for socially acclaimed development goals. One has to bear in mind that the most favourable private business organisation inherited from the colonial

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30. Humanism was adopted as a national philosophy at a UNIP National Council meeting in 1967.


33. From January 1964 to 1967 investment in the private sector amounted to £18,250,000. 75 per cent or £13,500,000 of this investment was provided from private sources. INDECO invested £400,000 in 1964 and £500,000 in 1965. Source: Industrial Development in Africa, United Nations 1967, Supra.
past is the company formed under the Companies Act.\textsuperscript{34} Unfortunately, this form of business entity is not well-placed to be entrusted with social responsibilities because these are bound to be frustrated by the rule of ultra vires.\textsuperscript{35} This rule precludes all acts which do not benefit the company, and the directors may, if they initiated or sanctioned such actions, find themselves liable to compensate the company for any loss of its assets.\textsuperscript{36} It follows from the ultra vires rule that legally, the directors can have no regard for outside interests, such as those of the company's employees, and the general public, except in so far as they are relevant to the basic duty of making profits for the shareholders.\textsuperscript{37}

\textsuperscript{34} Cap. 686 of the Laws of Zambia (Government Printer, Lusaka).

\textsuperscript{35} The application and scope of the ultra vires rule is discussed at length in Gower, Principles of Modern Company Law, at p.83.

\textsuperscript{36} Parker v Daily News Ltd., and others [1962] 2 All E.R. 929.

CHAPTER SIX

THE ECONOMIC REFORMS, 1968

Introduction.

The Economic Reforms announced by President Kaunda on 19th April, 1968 were said to be principally for the removal of foreign domination of Zambia's economic field by acquiring control of most major means of production and services by the State and by facilitating the development of genuine Zambian entrepreneurship in the tertiary sector. ¹

These Reforms can be understood against the background that ever since political independence the Government had embarked on a programme of providing incentives for economic development hoping that both the foreigners and indigenous people would benefit from the boom that was rightly anticipated. The Government was fully aware that foreigners had an advantage over the Zambians in that they had know-how and capital, and when they lacked capital, the local financial institutions were more than too willing to assist. The Government, therefore, had tried to assist the Zambian public with loans and know-how. ²

¹. President Kaunda, Towards Economic Independence, Supra. Also see Enterprise, The Indeco Journal, 4th Quarter 1972, at p.9.
Loans provided by the Government through Credit Organisation of Zambia or Industrial Finance Company were very small and were mainly for fixed capital development. These did not include working capital in most cases but it was hoped that a Zambian businessman, like his foreign counterpart, would obtain credit facilities from the Banks, Insurance Companies, Building Societies and other financial institutions. The financial institutions insisted on sufficient securities before extending credit facilities to Zambians. ³ The result was that a Zambian businessman was unable to obtain sufficient working capital to see him take off.

Meanwhile foreign entrepreneurship was growing at a fast rate and was getting beyond the control of the Government. This was so because most foreign owned enterprises made no efforts to move away from unacceptable sources of supply and continued to be controlled from Rhodesia and South Africa. ⁴ They were involved in gross under-capitalisation, excessive local borrowing, reluctance


⁴ Locally operating foreign companies which were connected with the South continued to obtain their supplies from the South notwithstanding that the country in which they were operating had declared trade embargo with Rhodesia after U.D.I.
to Zambianize, large scale repatriation of capital and operated price rings with similar companies thereby they created a false monopoly position. It appeared the only pragmatic approach to the above mentioned vices was to bring the locally operating economic institutions under local control.

The Reforms.

(a) President Kaunda directed that the tertiary sector of the economy was to be exclusively manned by Zambian nationals, institutions and the State. The resident expatriates who hitherto had dominated the sector were to be phased out. The operations of foreign-controlled enterprises outside the tertiary sector were also to be subjected to the needs of the State - that is, the State would at its own discretion demand partnership with those foreign controlled enterprises.

It was the view of the Government that if Zambian participation in certain spheres of the economy was to be facilitated, competition from foreigners was to be eliminated. For that reason, no foreigners were to be granted new trading licences in the tertiary sector nor would have expired licences renewed, but instead they were asked to sell their shops or businesses to Zambians or alternatively apply to become citizens without necessarily having changed their attitudes.

(b) The President asked owners of certain firms to invite the Government to join their enterprise so that the Government
would be able to control these enterprises according to the needs of the nation. The enterprises involved included those in the building and brewing industries, transport services, retail and wholesale trading and daily newspapers.

These enterprises were to offer at least 51 per cent of their shares to INDECO on behalf of the State. Values of the shares and terms of payment were left to INDECO to negotiate but INDECO was instructed to pay only for "fair value" represented by book value. That excluded such things as business good will or payment for future profits.

The Government was expecting State participation to be brought about by consent through negotiations. In the event of failure of negotiations the Government intended to compulsorily acquire shares in the companies concerned.

Implications of the Reforms.

The Reforms had a duo implication. One, they meant that the Government was assuming firm control over enterprises which hitherto had been run on principles of free enterprise. Two, they meant that the Government was abdicating from its earlier policy on economic development which gave equal opportunities to both Zambians and foreigners in their economic endeavours. 5

5. See Chapter Five on Economic Liberalism, p.85.
The Reforms did not mean that Zambia would completely do away with foreign enterprises. A foreign businessman still had a place in Zambia: he was told to move away from the tertiary sector to the industrial, mining or agricultural sectors and at the same time he was cautioned that should he establish a large enterprise there the State would move in and ask for 51 per cent interest.

Approved foreign investments in Zambia were not affected by the Reforms, and it was the declared intention of the Government to offer protection to those investments. According to President Kaunda, the Government was going to enact a *Foreign Investments Protection Act* to provide that a foreign controlled company which was to be established in Zambia from a certain date would get a certificate from the Government which would guarantee among other things:-

(a) that due dividends and interest payments on foreign capital would be remitted abroad;

(b) that repatriation of capital brought in from abroad would be allowed;

(c) that no expropriation would occur for a set number of years; and

(d) that any nationalisation thereafter would be at a fair valuation, the method of which was to be laid down in the certificate.

6. This legislation was never enacted.
The mining industry, inspite of its special place in the economy of Zambia, was not affected by the Reforms. At that time the industry's role in the economic reforms was only limited to the utilisation of profits on mining developments. To achieve that, the President proposed to amend the Exchange Control Regulations so that all foreign controlled companies could only remit in dividends not more than 30 per cent of the equity capital of the companies and provided that the 30 per cent did not exceed 50 per cent of their profits. This contradicted the spirit of the Foreign Investments Act which would have allowed for the repatriation of dividends and interest payment on foreign capital.

Implementation of the Reforms.

A - The State Enterprise.

There was no legal duty on any of the companies to offer their shares to the State, and the State had no right to acquire shares compulsorily. It was therefore up to the companies concerned

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   Exchange Control (Amendment) (No.2) Regulations, 1968 (Statutory Instrument No. 174).
   Exchange Control (Amendment) (No. 3) Regulations, 1968 (Statutory Instrument No. 338).
   Exchange Control (Amendment) (No. 4) Regulations, 1968 (Statutory Instrument No. 349).
   Exchange Control (Amendment) (No. 5) Regulations, 1968 (Statutory Instrument No. 419).

8. Section 18 of the Independence Constitution, Supra.
to invite or not to invite the State in their enterprises. Sol-ńki Brothers Ltd., for one, refused to invite State participation. 9

The Government instructed INDECO, the industrial arm of the State, to negotiate with those foreign-owned companies that had agreed to offer 51 per cent or more of their shares to the State. INDECO negotiated for the price to be paid for the shares offered to the State and the manner in which payment was to be made. The formula that became acceptable to all parties was that payment for the shares taken up by the State would be made out of future dividends that would have gone to the State, and that management and internal control should remain with the previous owners. 10

B - The Zambian Private Enterprise.

The President directed that retail trading outside the main city centres would be confined to Zambian citizens from the end of 1968. 11 In addition to that, he also directed that small

10. INDECO was invariably persuaded to enter into management and consultancy agreements until the State had fully discharged its payments.
11. The period of grace for foreigners engaged in retail and wholesale trade was extended to 1st January 1972: See Ministry of Trade and Industry, Blue Print for Economic Reforms 1971, (Government Printer, Lusaka).
and medium-sized government building contracts (contracts below K100,000), rural transport contracting and quarrying should be reserved exclusively for the aspiring Zambian businessmen. The objective of the directives, as earlier mentioned, was to "create a vacuum in which Zambians could hardly fail to make faster progress".  

Implicit in the above directives was the order that the foreign businessmen who were affected should sell their businesses to Zambian, take up Zambian citizenship themselves or close down the businesses. Those who opted for the first choice over-valued their businesses and thereby made it almost impossible for the average Zambian to take over the businesses. In fact most aspiring Zambian businessmen failed to raise the necessary capital for the take over. The Government did not have enough money to give out as loans. Further, it proved itself wrong by hoping that the local foreign owned financial institutions would utilise their excess liquidity to assist Zambian business.  

Other foreigners preferred to take up Zambian citizenship at any cost rather than lose their businesses to genuine Zambians.

12. Anthony Martin, Minding Their Own Business, Supra, p.75.
Amongst these, only a few succeeded in getting citizenship through proper channels, the rest decided to 'buy' theirs by resorting to briberies and other forms of corruption.  

Those who did not want to sell their businesses to genuine Zambians or take up Zambian citizenship resisted the third choice of closing down their businesses by making false conveyances to their children who were Zambians by virtue of their birth in Zambia. They remained 'directors' or 'managers' on behalf of their children.

There was still another group of foreigners who resisted the economic reforms by using Zambians as fronts for their businesses. They registered the businesses in the names of their Zambian workers and pretended to remain on business premises in order to ensure smooth take overs.

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14. This was evidenced in the cases of Mulwanda v The People, The People v Sencenta and The People v Crispin Nyalugwe. (All unreported). The people who were involved in the citizenship racket were Permanent Secretaries or Senior Officials in the Ministry of Home Affairs.

15. See Sections 4, 7 and 8 of the Independence Constitution together with Sections 4 and 9 of the Citizenship Act, Cap. 121.
C - The Trades Licensing Act, 1968.

This Act was an attempt to implement the economic reforms. It repealed the Colonial legislation on the matter because the latter fell short of meeting the targets of the Mulungushi Reforms. The major aim of the Act was to create conditions favourable to Zambian citizens who wanted to go into business.

However, judging from the objections and criticisms made by the opposition members of parliament, there would seem to have been considerable misgivings as to the intention and efficacy in implementing this Act. As soon as Mr. Justin Chimba who was the Minister of Commerce and Industry introduced the Bill in Parliament, revealing the discretionary powers which were to be left to the Minister and Licensing Officers, opposition members expressed the fear that the Bill if passed would be used against political opposition - an impression borne out of Mulungushi speech when the President warned that he would fire Mr. J. Chimba if the latter gave trading licences to the members of the Watch Tower Sector, and those of the opposition party. Fears of the opposition, although could have been overstated, were not without justification.

18. The Watch Tower Sector was opposed to UNIP, the ruling party.
because as soon as the Act came into operation there were cases of bias which arose from different political opinions and influenced the granting of trading licences. 19

Under the Act, there are four types of trading licences that can be issued, namely -

(i) retail licence;
(ii) wholesale licence;
(iii) commercial travellers' licence; and
(iv) hawker's, pedlar's, stallholders licence.

Retail licence and hawker's, pedlar's, stallholders licence are given to Zambians alone while the wholesale licence and commercial travellers' licence may be issued to any individual or partnership or body corporate. Hence, the expatriate businessman still has opportunity to carry on his business and exploitative tendencies so long as he merely switched from holding retail licence to wholesale or commercial travellers' licence.

There are two factors that can be said to have weakened the efficacy of The Trades Licensing Act:

(a) The Minister has power to issue "reserved licences" 20 to non-Zambians especially for the sale of certain specialised goods

such as furniture, electrical fittings and apparatus, pharmaceuti-
cals, cosmetics, machinery and spares, and all those other goods
specified in the Schedule of Regulation 2 of the Trades Licensing
Act.

(b) Retail licences could also be issued to non-Zambians
provided that the non-Zambians issued with such licences operated
from a "prescribed area" and were, prior to this Act, in possession
of a general trading licence. 21 Further persons allowed to operate
in "prescribed areas" could only sell "prescribed goods". Most
Asian and Greek businessmen who did not want to take up citizenship
opted for this licence on the contention that they dealt in essential
goods.

Zambian citizens who took over expatriate businesses faced
a difficult time from expatriates in that the expatriates owned both
the factory and the wholesale and sometimes even the sub wholesale;
hence they controlled prices. 22 When they increased prices, the
Zambian with retail business had also to increase prices thereby
shifting the burden to the consumer. 23

It has also to be noted that the Price Control Regulations
had not been put into practice, and that meant Zambia was
still a free price system.
23. The main reason for raising factory prices was to discredit
the economic reforms in the eyes of the consumer who did not
hesitate to compare the pre-economic reforms era with the
economic reforms era.
The Definition of a Zambian.

Zambians for the purposes of take-over were brought under one or the other of the following categories:-

(a) Individual;
(b) A group of individuals forming a partnership;
(c) A Zambian limited company;
(d) A Zambian co-operative society; and
(e) A State-owned company or undertaking.

In all cases, a Zambian for the purposes of the economic reforms meant one who was either holding a Zambian passport or was in possession of a Green National Registration Card.\(^{24}\)

Under the Citizenship Act both the Minister of Home Affairs and the President had powers to register citizens,\(^{25}\) but the President’s powers could only be used on rare occasions. The qualifications which the Act had laid down for citizenship by naturalisation were very easy to obtain,\(^{26}\) so that left as it was, the Act would have defeated the spirit of the economic reforms.

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25. Sections 4 and 5 of the Citizenship Act, Cap 121.
26. Section 7(1) of the Citizenship Act, Cap 121.
At the moment Zambia can be said to have no Citizenship Act since Cap 121 has been superceded by the provisions of the Articles of the Republican Constitution,\(^\text{27}\) Part II, under which Parliament is by now supposed to have enacted new citizenship laws to provide for a Citizenship Board, inter alia, to scrutinize applications for citizenship. This has not been done yet and practice shows that applications for grant of citizenship are still processed under the old procedure. Legally, that is ultra vires the powers of Citizenship Officers.

**Conclusion.**

To a greater extent, the Economic Reforms had failed to wrestle control of the national economy from the foreigners and to repose it in the hands of Zambians. In most cases the foreigners resisted to surrender their businesses to genuine Zambians and the Government found itself legally incapable of enforcing the take overs. The only achievement that can be said of the Reforms was to lay foundation for Zambian entrepreneurship which was not established until after 1st January, 1972.\(^\text{28}\)

However, the Economic Reforms enlarged the sphere of State enterprise. Although the State did not immediately assume internal

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\(^{28}\) 1st January, 1972 was the day when the tertiary sector was completely abandoned by foreigners : See Ministry of Trade and Industry, Blue Print for Economic Reforms 1973.
control of the enterprises in which it had acquired 51 per cent interest, participation in equity capital itself was a step towards the realisation of national aspirations.

Above all, the economic reforms were not seriously aimed at removing foreign domination of Zambia's economic field. If that was the aim, then the Government would have not refrained from nationalising the copper industry which formed the backbone of the nation's economy. Instead the Government only interested itself in relatively small enterprises which had connections with Rhodesia and South Africa.

The Economic Reforms, and particularly the Solanki Brothers' case, revealed the Government's limitations in the control of national economy. This experience led to the passing of an Act to abolish future Referenda which would have been necessary in order to amend or repeal certain constitutional clauses. The new Act made it possible to amend Section 18 of the Independence Constitution so that the State would make compulsory acquisition of certain properties and thereby implement the Economic Reforms.

30. Referendum (Amendment Act (Act No. 5 of 1969).
31. For example, Chapter Three of the Independence Constitution.

The policy statement.

On 11th August, 1969, President Kaunda announced second round of the Economic Reforms, but this time of much more far-reaching consequences. He announced that the Government intended to take 51 per cent interest in the mining companies; and apart from the mining companies, he made it clear that he did not wish to call any specific industrial and commercial companies to offer 51 per cent of their shares to INDECO but advised all the large enterprises to form partnership with INDECO.²

Like in the 1968 Reforms, the President left it to INDECO to negotiate the value and terms of payment which was to be a "fair value" based on the book value.³ In addition, the President stated that he did not expect INDECO to go to the

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1. President Kaunda, Towards Complete Independence, Supra.

2. The main reason why President Kaunda did not specify enterprises he wanted to be nationalised was because of mistrust foreigners had shown towards 1968 Reforms - See Gaay Fortman (ed.), After Mulungushi, Supra, at p.177, on "A plea for Understanding", an address to Overseas Development Institute, London, on 18th July, 1968 by President Kaunda.

3. Book value as formula for computing compensation was unilaterally chosen by Zambia but it did not arouse protests like in Chile: See p.9, Supra.
Government for funds but to procure finance for all the takeovers from other sources. 4

The Government's intention to participate in the mining industry was announced barely a year after the President had promised not to nationalise the mines in his Mulungushi Reforms. People in Zambia, like elsewhere, were taken aback by this announcement. Nevertheless, the announcement had very important implications for the economic development of Zambia.

The President recalled the disappointment he had expressed the previous year over an almost complete lack of mining development since independence. Nothing or very little in terms of control over the mining policy and investment was achieved although the Zambian government had taken over the mineral rights which were vested in the B.S.A. Co. In terms of revenue, however, the take-over had meant some K70 million accruing to the Government per year. 5

The two mining Groups, AAC and RST, had retained in perpetuity the mineral rights over valuable areas and the Government, though armed with political power, was legally restricted

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4. Since Zambia was not a source of much capital, this meant that INDECO had to obtain foreign loans or buy shares on credit.

in its freedom of action, including the take away of the mineral rights vested in the mining Groups. The Government was only able to tackle the problem of mineral rights after the Constitutional Amendment Referendum had sanctioned the repeal of the constitutional clauses which hitherto had been regarded as a bottleneck to Zambia's economic planning and development. After the Referendum, and specifically on 11th August, 1969, the President was able to announce that the ownership of all mineral rights would revert to the State. He also promised that the old system of mineral rights would be replaced by a system of prospecting, exploration and mining licences.

Subsequent to the promise, the existing mines were granted mining licences in the place of mineral rights, and a number of local and international companies were given prospecting and exploration licences. What is of interest to note here is that the Government, like the B.S.A. Co., reserved the right to participate in new mines to be formed at the time of granting the mining licence; and the formula of participation was 51 per cent shares in favour of the Government.

7. This was made possible by the repeal of Section 18 of the Independence Constitution. The new section provided for compulsory acquisition of property provided adequate compensation was paid.
The President was aware of the mining companies' point of view on lack of mining developments which they blamed on the royalty system. To meet this point of view both the Royalties and Export Tax were to be abolished, and a new mineral tax based on 51 per cent of the profits was to be introduced instead.

Unfortunately, the new tax formula failed to achieve the objective it was meant for. It aroused doubtful feelings from foreign investors who thought it was high when taken in conjunction with income tax which at the standard Zambian income tax rate stood at 45 per cent of the profits. Potter has argued that since the Mineral tax was treated as a cost, the total tax rate on profits came to 73.05 per cent. The Chairman of R.S.T., Sir Ronald Prain also noted that total tax was high by world standards.

It has long been realised that the formula was unsatisfactory as an incentive to new mining development and the situation has been remedied by giving the Minister for Mines power


to refund Mineral tax in certain cases.\textsuperscript{14}

The take-over negotiations.

INDECO was instructed to negotiate, on behalf of the government, the value and terms of payment but INDECO would only agree to pay a "fair value" represented by book value. The Government had no money to pay as a deposit against 51 per cent shares; and INDECO was therefore to negotiate payment out of future dividends.

The formula of 51 per cent on which INDECO was basing its negotiations was aimed at ensuring ownership and control, at the same time ensuring continuity in production and investment.\textsuperscript{15} INDECO was therefore to ensure increasing cooperation with and between the companies to bring about maximum efficiency and minimum operating costs which were necessary for continued production and investment.

The main terms of nationalisation as given to INDECO were:

(a) First the Government instructed INDECO to negotiate for majority ownership for the greatest benefit of Zambia in terms of policy and direction of the mining

\textsuperscript{14} Mines and Minerals Act, 1969.

\textsuperscript{15} Maxwell Stemp Associates, Anatomy of the Zambia Copper Nationalisation, Supra, p.19.
company; and also in order to carry out rapid
Zambianisation for the industry.\textsuperscript{16}

(b) Second the Government wanted to keep A.A.C. and
R.S.T. because of their vast experience and
influence amongst potential foreign investors to
Zambia. The Government was convinced that total
nationalisation was likely to affect production
levels or even lead to economic chaos which in turn
would have reinforced the social problems Zambia was
experiencing; and that it was also going to become
difficult to attract foreign investors for future
expansion of the mines.

c) Third the Government wanted to exert internal control
on the mining companies. The Government already had
external control before 1969: that is to say, it had
control over fiscal, exchange control, work permits
and on the employment policies of the companies but,
nevertheless, was unable to control the Board of
Directors, the executive organ of any company. And
since the civil service was not well versed with the

\textsuperscript{16} Zambia's Mining Industry, ZIMCO Ltd., P.O. Box 90, Lusaka
at p.7.
necessary knowledge on mining operations, it is
doubtful whether these were fully utilised.\textsuperscript{17}

Notwithstanding this acute lack of knowledge on mining
affairs, it was the intention of the Government to increase its
control on future operation by assuming internal control. This
increased control was to be based on the theory that the majority
shareholder controls the company through majority vote as well as
appointment of directors.\textsuperscript{18}

Any resistance that was anticipated from the mining
companies on 51 per cent take over was overwhelmed, it would
appear, by the agreement that they would remain involved both in
ownership and management.\textsuperscript{19} Further, the Exchange Control
regulations made after 1968 Reforms were relaxed to enable the
mining companies to repatriate their profits.\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{17} A Metal and Minerals Research Unit which had been established
in the Ministry of Mines in 1967 was still too new to fully
understand the intricacies of copper mining economy.
\item \textsuperscript{18} There is no evidence that the Government had addressed itself
to the emotive aspect of control which depends on personality.
Since the 51 to 49 per cent formula meant a margin of two
shares in between, it only conferred a passive role, as
opposed to an active role, to the Government. Therefore,
mutual consensus was required if at all any envisaged develop-
ments were to materialise.
\item \textsuperscript{19} It was agreed that R.C.M. and MCCM each would have 11
directors; 6 G.R.Z. appointees including Chairman representing
51 per cent 'A' shareholding; and 5 directors, one of whom was
the Managing Director, appointed and representing 49 per cent
shareholding of the 'B' shareholders.
\item \textsuperscript{20} See The Mines Acquisition (Special Provisions) Act, 1970, Supra.
\end{itemize}
The Government negotiators left it up to the mining companies to draft the memoranda and articles of association for the new companies to be formed. The mining companies, naturally, wanted to protect their interests and they used that opportunity to entrench themselves.

The Schemes of Arrangement.

The mining assets, undertakings and all liabilities of A.A.C. Group of Companies - Nchanga, Rhokana and R.C.R., as well as the shares and loan interests of Nchanga and Rhokana in certain Zambian companies were to be vested in Bancroft with effect from 1st January, 1970.21 And Bancroft was to change the name to Nchanga Consolidated Copper Mines Ltd., (NCCM). The capital of Bancroft was first reduced from K27,500,000 to nil by cancelling the existing preference and ordinary shares. Forthwith Bancroft was recapitalised by the creation of new preference and ordinary share. The ordinary shares were classified into 'A' ordinary shares representing 51 per cent government interest and 'B' ordinary shares representing the interests of others. In consideration of the transfer of 'A' ordinary shares of Bancroft which were vested in ZIMCO, on behalf of the State, ZIMCO issued

U.S. $178,698,992 6 per cent stock credited as fully paid.
The ZIMCO loan stock 1982, as they were called, were redeemable over 12 years period.

A new company called Zambia Copper Investment Limited (ZCI) was formed in Bermuda with the sanction of the Parliament in Zambia. This company was to hold the loan stock, the balance of 49 per cent of the equity of Bancroft together with the excluded assets.

A similar arrangement was made within the RST Group of Companies to enable Zambia acquire 51 per cent of RST. In exchange for the shares ZIMCO issued U.S. $9,519,638 6 per cent bonds repayable over 8 years. The Bonds were known as 6 per cent Guaranteed Dollar Bonds. All payments on the Bonds were made directly to Manufacturers Hanover Trust Co. of United States of America, as paying agent for R.S.T. Scheme of Companies.

Above all these, the Government of the Republic of Zambia was made to guarantee for the due and punctual payment of the principal of and interest on the Bonds and loan stock.


23. Excluded assets were the remaining assets held by the Scheme of companies but which were excluded from the amalgamation.

The agreements for take over were finally signed on 24th December, 1969 and they are known as the Master Agreements.

The new structure of Zambian Mining Industry.

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  ZIMCO
   /\  \
MINDECO

MCCM

INDECO 51%

Zambia Copper Investment Bermuda 49%

Zambia Anglo American (Bermuda) 47%

RCM

INDECO 51%

Zambia Copper Investment Bermuda 8.5%

Zambia Anglo American (Bermuda) 3.5%

RST (USA) 37%

Culture of Shareholders

Legal and financial constraints arising from take-overs.

1. The Articles and Memoranda of Association.

(a) The articles provided that dividend was to be paid in an aggregate amount equal to consolidated net profits of the operation Companies after only appropriations in respect of capital expenditure, expenditure for exploration and prospecting and of reserves for necessary working capital, had been deducted. These provisions imposed a duty on directors to declare a dividend on net profits after deducting therefrom only appropriations. Dividends to be paid to shareholders were not to exceed certain limits. If that happened, repayment of the Zimco bonds or loan stock were to be accelerated. For instance, if dividends paid by B.C.N. on its 'A' shares beginning from 1971 onwards exceeded the equivalent of U.S. $28,558,916, then \( \frac{2}{3} \) of the amount of each such excess would be distributed by ZIMCO to the trustee in U.S. dollars on the basis of the official parity established with the International Monetary Fund.

(b) The articles provided that payment of principal of and interest on the bonds or loan stock were exempted from all existing and future taxes imposed by Zambia, and from Zambian exchange control laws except for residents
of Rhodesia. In the event of default of payment, the Trustee or the holders of not less than 25 per cent principal amount then outstanding were free to demand for immediate payment of the principal and interest outstanding.

(c) On "special matters", which included, among others, disposal of a substantial part of the assets of R.C.M. and N.C.C.M., engagement in any activity substantially different from that performed prior to takeover and borrowing of funds by issue of securities, majority votes of both 'A' and 'B' directors were required. This weakened the Government's anticipated control and, if anything, strengthened the need for mutual cooperation between the 'B' shareholders and the Government.

(d) Both 'A' and 'B' directors were required separately to approve appropriations, acts, dealings, or transactions which in the opinion of the 'B' directors were not on commercially competitive terms or dictated towards the optimisation of production and profit. The test that was applied here was subjective, making it quite easy for 'B' directors to block any move by 'A' directors.
2. **Special legislation.**

(a) Income Tax (Special Provision) (No. 1), Act 1970 - This Act made three provisions in favour of the mining companies. It provided that:

(i) R.C.M. and N.C.C.M., and their subsidiaries were not to be subjected to an aggregate direct tax greater than the 73.05 per cent of taxable income resulting from the combination of mineral and income taxes at 1970 calculations.\(^{25}\)

(ii) Dividends payable by RCM and NCCM to shareholders who were not Zambian residents were free of any withholding or other tax in excess of 45 per cent on profit.\(^{26}\)

(iii) NCCM and RCM were not to be subjected to any discriminatory indirect taxation.

(b) Mines Acquisition (Special Provisions) Act, 1970 - This Act gave guarantees on the repatriation of dividends. It provided that for as long as ZINCO bonds were outstanding, all dividends declared by NCCM and RCM to non-Zambian residents would be freely remittable. Non Zambian shareholders were therefore

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25. See note 12 on p.117.

26. 45 per cent is the fixed rate of Company Income tax in Zambia.
free to repatriate their dividends even if it meant the drainage of all investible surpluses. The Government, however, entered into re-investment agreements. Under these agreements, BRT agreed to contribute from funds not subject to Zambian exchange control a 36.75 per cent share not exceeding K15 million of capital finance required by RCM for existing or new mining ventures. Zamanglo (ZAA) agreed to hold available up to K18 million for investment in new mining ventures for a 5 year period.

(c) The Mines Acquisition (Special Provisions) (No. 2) Act, 1970 -

This legislation was enacted by Parliament in Zambia to enable Zamanglo to convert itself from a Zambian Company into a Bermudian Company. This transfer of incorporation is similar to the one that took place in 1953 to enable Rhoanglo Group of Companies to run away from United Kingdom tax liabilities. But no reason has been given for the


transfer of Zamanglo to Bermuda. It can only be
guessed that perhaps it was for a similar reason.

3. Jurisdiction.

The Government and the Mining Companies agreed that
the law to be used was Zambian law as it existed on
24th December, 1969. Arbitration, when, and if
required, was to follow the rules set by the World
Bank Convention on the Settlement of Investment
Disputes between States and nationals of other States
(ICSID). Subsequent to this agreement, Zambia
passed the Investment Disputes Convention Act to
ratify the World Bank Convention.

If Zambia breached the Convention, implications appear to
be clear. In the first place, ICSID is an institution sponsored by
the World Bank, and in the second place, Zambia's foreign reserves
are held by the World Bank which also influences Zambia's trade
relationship with other countries. Zambia would, therefore, not
like to breach the convention and risk forgoing its cordial rela-
tionship with the World Bank.

30. Convention on the Settlement of Investment Disputes between
States and nationals of other States is reproduced in the
schedule to the Investment Disputes Convention Act, Act No. 18
of 1970 (Government Printer, Lusaka).

From the point of view of Zambia, it is worth noting that the convention subjected a sovereign State to the jurisdiction of ICSID — indeed, a measure of dependence.

Other Agreements and Contracts between the Government and RST and ZAA.

1. Management and Consultancy Agreements.

The two operating companies, NCCM and RCM, signed service agreements with their previous parent companies for 10 years. In the RCM/RST agreement it was provided that:

"RST shall provide to RCM all managerial, financial, commercial, technical and other services which, prior to January 1, 1970, were supplied and provided by the R.S.T. Group to Mufulira, Luanshya and Mwinilunga with the intention that the business affairs and operations of RCM shall be maintained in a manner no less efficient and to an extent and standard no less than those before 1st January, 1970, and which shall be directed towards the optimisation of production and profit of RCM and any subsidiary company".

These services defeated one purpose for nationalisation, viz, to control the internal affairs of the mining companies. Under the Management agreement the two Groups provided financial, commercial and technical management advice. The Groups also provided
specialised services such as engineering design, and supervision of construction or commissioning of major capital works. This meant that the groups prepared business plans, viability studies and work study.

For the services rendered, RST received a fee of \( \frac{1}{4} \) per cent of gross sales proceeds plus 2 per cent of profit after 51 per cent Mineral Tax. Engineering services were charged separately at the rate of 3 per cent with all costs reimbursed, and all the RST staff seconded to RCM were paid for in total by RCM.

The contracts gave monopoly to RST and Zamanglo in so far as RCM and NCCM could not enter into any other agreements for the provision of services which RST and ZAA were to render without prior permission from RST or ZAA. In the case of RCM, the contract was to expire anytime after 31st December, 1979, provided either party had given the other 2 years prior notice. If the contract was to be terminated before 31st December, 1979 by RCM, two years prior notice was again necessary. On top of this it was also necessary to show that:

(a) either RST's interests in RCM had fallen below 20 per cent or RST had failed to maintain a satisfactory standard of service;

(b) the advice given was repeatedly not accepted or implemented by the 'A' directors in RCM.
Similar provisions for the termination of NCCM/ZAA management and consultancy agreement were made, and the contracts were to mature on 31st December, 1979.  

However, RCM/RST and NCCM/ZAA contracts came to an end in 1975 after 2 years prior notice had been given in 1973 by the President.  

Table H gives the estimated financial results of the Management and Consultancy.

32. Both RCM/RST and NCCM/ZAA Agreements were for a period of 10 years.

33. Alan Rake (ed.), African Development Magazine, October 1973, at p.215. The notice was given by President Kaunda in his capacity as Chairman of ZIMCO, the parent company for RCM and NCCM.
<table>
<thead>
<tr>
<th>Copper price</th>
<th>K650</th>
<th>K850</th>
<th>K1050</th>
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<td>Fees:</td>
<td>Km</td>
<td>Km</td>
<td>Km</td>
</tr>
<tr>
<td>Recruitment</td>
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<td>.9</td>
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<td>Engineering</td>
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<td>.5</td>
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<td>Services</td>
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<tr>
<td>% of Gross</td>
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<tr>
<td>Sales (ii)</td>
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<td>4.5</td>
<td>5.5</td>
</tr>
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<td>2 per cent of Profit before Income Tax</td>
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<td>2.8</td>
<td>4.2</td>
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<td>Total payable by RCM and NGCM</td>
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</tr>
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</table>

Notes:  
(i) Table basically deducted from Appendix G of the RST shareholder information circular.  
(ii) 700,000 tons output per annum is assumed.  
(iii) We assume that for income tax purposes one half of the profit is earned in Zambia.  

2. Sales and marketing contracts.

The previous parent companies were made the exclusive agents for purposes of finding purchasers for all ores, metals and minerals produced. The Commission for this function was \( \frac{1}{2} \) per cent of gross sales proceeds of copper products and \( 2\frac{1}{2} \) per cent of gross sales proceeds of cobalt products. The termination and monopoly clauses in these contracts were similar to those of the management and services contracts.

It was estimated that on the Sales and Marketing contracts RST and ZAA would break even and there would therefore be no change on the previous financial position. 34

The termination of take over agreements.

Only three and half years after the Government had signed partnership agreements with RST and ZAA, President Kaunda issued a statement 35 confessing that while the working relations between the Government on one hand, and RST and ZAA on the other hand were good, certain provisions in the takeover agreements had proved detrimental to Zambia's national interests and aspirations. The most important of the provisions referred to were:-

(a) that the effective control of the mining industry was vested firmly in the minority shareholders who had management and consultancy monopoly and were reluctant to Zambianise key management positions in the industry.

(b) that the veto power given to the minority shareholders frustrated the Government's attempts to plan and direct mining development;

(c) that the formula for the redemption of bonds (including loan stock) which was rigid irrespective of profitability militated against mining expansion; and

(d) that profits could not be utilised for any non-mining activities. For instance, profits could not be used to develop rural areas which were comparatively backwards.

In accordance with the terms provided for termination of agreements, the President gave two years' notice and directed that the outstanding ZINCO bonds and loan stock should be redeemed. This move was taken in order to ensure firm control and proper management of the mining industries in the interests of the nation.

Having made the Government's intention clear, the President went further to direct that:
(a) RGM and MCCN should provide for themselves with all the management and technical services;

(b) Minister responsible for mines should be Chairman for RGM and MCCN; and

(c) The Government, and not 'B' shareholders should appoint the Managing Directors for both RGM and MCCN.

The other measures taken by the President were not necessarily meant to facilitate Government control and management. For example, special taxation provisions and exchange control regulations that were enjoyed by RST and ZAA were withdrawn so that these companies could be treated like any other companies in Zambia. This measure, perhaps, was meant to curb the drainage of investible capital.
PART III

PROBLEMS AND PROSPECTS
CHAPTER EIGHT

PROBLEMS AND PROSPECTS

This dissertation began with historical and legal explanations of economic dependence up to the time of political independence in 1964. It examined the main factors that led to dependence and challenged the assumptions that post-independence liberal approach to economic development and subsequently the Economic Reforms would bring about economic independence. The conclusions drawn elaborate the fallacies in the arguments advanced, and attempt to discredit the means used to attain the desired economic transformation.

Economic Reforms and Economic Independence.

Economic independence in Zambia can be viewed as a policy objective which is basically political in origin and non-economic in character. It aims at transforming the national economy firstly from foreign domination to Zambian domination and secondly from its copper base to a diversified base. The argument that is often put forward to justify the efforts made towards economic independence is that it is a necessary condition for the achievement of other development goals such as integrating the rural economy with the urban economy and ensuring fair distribution of wealth, but the means at hand and methods provided by the economic reforms do not justify that argument.
This case study shows that economic independence as conceived in Zambia, is an objective that can easily be traded off against other national aspirations such as economic growth or expansion.¹ One only has to look at bargaining positions of the Government and the private foreign investors at the time of takeovers to realise that the means would not have justified the declared end. The Government only had political power behind it when foreign investors had the necessary capital as well as the manpower. That meant the Government was to depend on the mobilisation of foreign capital and hiring of foreign technocrats. In short, new patterns of dependence were to be introduced inevitably.²

It is proposed to test the validity of this hypothesis against the Government's methods for the attainment of economic independence which in turn will reveal the actual impact the economic reforms have had on the economy of Zambia.

The Government had hoped to remove foreign domination from the economic field by deliberately discouraging expatriates from the tertiary business through licence control and by State participation in all major enterprises. That meant opening of new horizons for both the State and its nationals. What appears to have

1. See Articles and Memoranda of Association for NCMM and RCM which provided that profits generated by the Mining Companies were to be reinvested in the mines only.

2. This dependence has got nothing to do with ownership but with capital and skills which in turn involved internal control.
been overlooked, as already pointed out, was the fact that there were no sufficient Zambians with the necessary capital and know-how. These two constraints have been very pronounced both in the State sector and in the Zambian private sector.

A. The Zambian private sector.

In the Zambian private sector, licensing control has been the only legal weapon for phasing out foreigners. This, to a greater extent, has produced negative solutions rather than positive ones. Firstly Zambian individuals were not adequately prepared before the introduction of the Reforms and the Government had not provided sufficient protection and financial assistance to the upcoming Zambian businessmen. Secondly expatriate businessmen formed themselves into syndicates of distribution, wholesale and retail trade and deliberately raised the cost of living. Thirdly expatriate businessmen used Zambians as fronts. Fourthly the expatriate landlords were free to evict the Zambian businessman from business premises if he defaulted in the payment of rent and since he had not incorporated his business his stock-in-trade and personal household belongings were then put up for auction. Fifthly most shops which were to be taken over by Zambians had been kept under lock and key by the owners who expected to have such shops reopened upon acquisition of Zambian citizenship; and in the meantime

there were shortages of goods.

The second restrictive weapon to discourage non-Zambian enterprises was the Government's credit policy. This policy, though not formally legalised, discouraged non-Zambian enterprises from using domestic bank finance to generate high profits. According to this policy, commercial bank loans to foreign companies were limited on the basis of one-for-two for every Kwacha of paid-up capital. Loans to Zambian companies or individuals were limited on the bases of one-for-one for every Kwacha of paid-up capital.4

The few Zambians who had the know-how were assisted with loan capital and have now turned themselves into business barons. They are under no legal obligation to share their wealth with poor and needy Zambians and they have not been ordered by the State to contribute to the 'common man's fund'5 to ensure fair distribution of the nation's wealth.

The Government is aware that the economic reforms have resulted into the localisation of capitalism and it is trying to remedy the situation by persuading Zambians to form themselves into

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4. The limitation placed on lending to foreign firms is no longer a major restrictive weapon since foreign firms can get loans from abroad: See Zambia, Economic Facts and Figures - Investment opportunities (Government Printer, Lusaka) at p.42.

5. There is no such thing as the 'common man's fund' yet but Party leaders who are opposed to local capitalism and to the creation of a society of unequals are actively campaigning for the formation of such a fund.
cooperative movements instead of orthodox companies. As a matter of fact, the Government is even contemplating of abolishing the private sector before the situation gets out of hand. 6

The other method that has been devised to curb acquisitive tendencies in some Zambians is the Leadership Code. 7 Under the Code, any Zambian who is classified as a leader should not receive two salaries and should declare his assets and liabilities to the State. However, the efficacy of the Leadership Code is yet to be seen and the people who have defied it are yet to be compelled to obey it. 8

R. The State Sector.

The State sector has been equally unsatisfactory in that it has thrived on borrowed capital and on hired skills. This sector involves the establishment of enterprises owned by the State, either through governmental creation of new ventures or nationalisation of existing firms.

The State-owned enterprises are called Parastatal Organisations and are based on the British theory that they

promote business efficiency and political accountability. In Zambia, particularly, it has been argued that the parastatals provide the proper balance between managerial autonomy and governmental control. This argument raises the question of balance between autonomy and control. Since most of the State-owned enterprises are still managed, technical-wise, by foreigners, the Government has tended to control these enterprises more closely than is desirable. Most State enterprises have lost the reality of independent existence and it has become difficult to measure the performance of these enterprises. The Government has provided them with a shield and henceforth everything that is done can be relegated to direct ministerial instructions.

The parastatals, it would seem, are the least suitable institutions for the implementation of the Economic Reforms in that the Reforms were said to be aimed, among other things, at assuming internal control of the locally operating major means of production and services. Paradoxically, a parastatal by its nature is autonomous in the sense that it is free from the direct supervision of a Government Minister in the execution of its day to day business and this is in order to ensure flexibility and initiative of private


enterprise. The tutelary Minister is only supposed to lay down
broad guidelines within which it operates so as to ensure that
government policy and national interests are safeguarded. If the
Government has realised that it cannot exert internal control
through parastatal device, there is one other main legal alter-
native - to make a State owned enterprise into a ministerial
department within the formal structure of the Government. The main
argument against this alternative is that the State enterprises
will cease to exercise the initiative and flexibility of private
enterprises, and will be subjected to governmental red tape.

Performance of Zambian parastatals, which could only be
accurately assessed by reference to assigned objectives, is
difficult to state because of too much governmental interference.
For instance, objectives of parastatals have ranged from render-
ing services at sub economic rates to making profits in the
sense that income is higher than expenditure, but all the para-
statals are indiscriminately castigated for not making profits.11
The profits that are expected are indeed, based on fallacious
assumptions that parastatals which are service-oriented are not
profitable ventures. However, Zambian parastatals have been

characterised by internal inefficiency, nepotism and waste,\(^{12}\) thus they are mostly an uneconomic ventures.

Conclusions.

1. State enterprises in Zambia have failed to live up to their expectations because of following the British model which had assumed the availability of both local capital and manpower but these were invalid assumptions in the Zambian Economic Reforms.

2. Creation of parastatal bodies in Zambia as instruments for implementing the Economic Reforms contradicted the Government's wish to wrestle internal control from foreigners. This wish was further rendered illusory by Management and Consultancy Agreements which totally left internal control to previous foreign owners of the nationalised enterprises.

3. Control envisaged in the Economic Reforms has been diluted to cooperation between the Government and foreign investors.\(^{13}\) A. Simmance has rightly argued that partially-owned State enterprises are "... not under continuous direct

\(^{12}\) A. Simmance, The Relationship between Central Government and Parastatals in Zambia (University of Zambia Papers, Serial No. P.A. 210/71/76) at p.6. Also see President Kaunda's speech at the Ninth UNIP National Council, Mulungushi, in Zambia Daily Mail, 21st September, 1976.

\(^{13}\) V. Subramaniam, "Do the Owners control managers?" Enterprise of March 1973, ZIMCO, P.O. Box 90, Lusaka.
administration of an individual ministry. The Government's interest is as a shareholder and it exercises its authority as any other majority shareholder would do. This is because the Companies Act that was inherited at independence is still the framework under which most State-owned enterprises operate.

4. The fact that parastatals have been formed on a bigger scale and foreigners have been chased from certain economic spheres does not presuppose the attainment of economic independence because Zambia, among other things, is very dependent on foreign capital and skill.

Prospects.

In light of the numerous shortcomings of the Economic Reforms, it is submitted that effective transformation of Zambia's economy is only expected to materialise when Zambia has trained her own manpower and has redeemed all the foreign loans. At the moment, the University of Zambia and technical colleges throughout Zambia are producing local manpower to reduce dependence on hired skills, and it is hoped that in the near future Zambia shall have produced adequate local skills to replace foreigners.

However, it is doubtful whether foreign loans will be redeemed rapidly because parastatals, on the whole, have proved to

be uneconomic ventures. To crown it all, Copper which had always been looked up as the mainstay of the national economy is proving uneconomic to produce, not to mention that it is a wasting asset. The only hope perhaps lies in the slogan "Go back to the land" which is aimed at boosting the agriculture industry.

15. President Kaunda, Watershed Speech, Supra.
16. Ibid. Also see the speech by President Kaunda in the Zambia Daily Mail, 21st September, 1976.
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